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

7304

2015-2016 Regular Sessions

I N A S S E M B L Y

May 4, 2015

Introduced by M. of A. ROBINSON -- (at request of the Department of Law) -- read once and referred to the Committee on Banks

AN ACT to amend the general business law, the financial services law, the state finance law and the executive law, in relation to securities fraud whistleblower incentives and protections

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

Section 1. Section 353-a of the general business law is renumbered section 353-b and a new section 353-a is added to read as follows:

S 353-A. SECURITIES FRAUD WHISTLEBLOWER INCENTIVES AND PROTECTIONS. 1. DEFINITIONS. (A) "COVERED ENFORCEMENT ACTION" SHALL MEAN: (I) ANY ONE OR MORE ENFORCEMENT ACTIONS BROUGHT BY THE ATTORNEY GENERAL UNDER SECTION THREE HUNDRED FIFTY-THREE OF THIS ARTICLE THAT RESULTS IN MONETARY SANCTIONS EXCEEDING ONE MILLION DOLLARS IN THE AGGREGATE; OR (II) ANY INVESTIGATIONS, INQUIRIES, SETTLEMENTS OR ANY OTHER ACTION BROUGHT OR MADE BY THE ATTORNEY GENERAL IN RELATION TO A VIOLATION OF THIS ARTICLE THAT RESULTS IN MONETARY SANCTIONS EXCEEDING ONE MILLION DOLLARS IN THE AGGREGATE.

(B) "MONETARY SANCTIONS" SHALL MEAN:

(I) ANY MONIES ORDERED TO BE PAID, OR THAT ARE OTHERWISE PAID OR FORFEITED AS A RESULT OF A COVERED ENFORCEMENT ACTION OR RELATED ACTION; AND (II) ANY MONIES DEPOSITED INTO A DISGORGEMENT FUND OR PUBLIC BENEFIT FUND AS A RESULT OF A COVERED ENFORCEMENT ACTION OR RELATED ACTION.

(C) "ORIGINAL INFORMATION" SHALL MEAN INFORMATION THAT:

(I) IS DERIVED FROM THE INDEPENDENT KNOWLEDGE OR ANALYSIS OF A WHISTLEBLOWER;

(II) IS NOT KNOWN TO THE ATTORNEY GENERAL FROM ANY OTHER SOURCE, UNLESS THE WHISTLEBLOWER IS THE ORIGINAL SOURCE OF THE INFORMATION; AND

(III) IS NOT EXCLUSIVELY DERIVED FROM AN ALLEGATION MADE IN A JUDICIAL OR ADMINISTRATIVE HEARING, IN A GOVERNMENTAL REPORT, HEARING, AUDIT OR INVESTIGATION OR FROM THE NEWS MEDIA, UNLESS THE WHISTLEBLOWER IS A

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

LBD07595-03-5

SOURCE OF THE INFORMATION. FOR PURPOSES OF THIS SUBPARAGRAPH: (A) AN ALLEGATION IS NOT MADE IN A GOVERNMENTAL REPORT OR INVESTIGATION BECAUSE IT WAS DISCLOSED OR PROVIDED PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW, OR UNDER ANY OTHER FEDERAL, STATE OR LOCAL LAW, RULE OR PROGRAM ENABLING THE PUBLIC TO REQUEST, RECEIVE OR VIEW DOCUMENTS OR INFORMATION IN THE POSSESSION OF PUBLIC OFFICIALS OR PUBLIC AGENCIES; AND (B) AN ALLEGATION IS NOT MADE IN THE NEWS MEDIA MERELY BECAUSE INFORMATION OF ALLEGATIONS OR TRANSACTIONS HAVE BEEN POSTED ON THE INTERNET OR ON A COMPUTER NETWORK.

(D) "RELATED ACTION" SHALL MEAN ANY JUDICIAL OR ADMINISTRATIVE ACTION BROUGHT BY A STATE OR LOCAL AGENCY OR ENTITY BASED UPON THE ORIGINAL INFORMATION PROVIDED BY A WHISTLEBLOWER TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION THAT RESULTS IN MONETARY SANCTIONS EXCEEDING ONE MILLION DOLLARS IN THE AGGREGATE.

(E) "WHISTLEBLOWER" SHALL MEAN ANY INDIVIDUAL OR ENTITY WHO PROVIDES OR TWO OR MORE INDIVIDUALS OR ENTITIES ACTING JOINTLY WHO PROVIDE INFORMATION TO THE ATTORNEY GENERAL RELATING TO A VIOLATION OF THIS ARTICLE.

2. WHISTLEBLOWER AWARDS. (A) ONE OR MORE WHISTLEBLOWERS WHO VOLUNTARILY PROVIDE ORIGINAL INFORMATION TO THE ATTORNEY GENERAL THAT WAS THE BASIS FOR A SUCCESSFUL COVERED ENFORCEMENT ACTION, OR A RELATED ACTION, SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, BE ENTITLED TO RECEIVE BETWEEN TEN AND THIRTY PERCENT OF THE MONETARY SANCTIONS THAT RESULT FROM SUCH ACTION. ANY PAYMENT TO A PERSON PURSUANT TO THIS PARAGRAPH SHALL BE MADE FROM THE MONETARY SANCTIONS OF THE COVERED ENFORCEMENT ACTION OR RELATED ACTION.

(B) A WHISTLEBLOWER WHO PROVIDES THE ATTORNEY GENERAL WITH INFORMATION RELATED TO INFORMATION PREVIOUSLY REPORTED TO THE ATTORNEY GENERAL BY A WHISTLEBLOWER WHO IS ELIGIBLE FOR AN AWARD UNDER THIS SECTION SHALL NOT BE ENTITLED TO AN AWARD, UNLESS THE INFORMATION PROVIDED BY THE SECOND WHISTLEBLOWER MATERIALLY ADDS TO THE INFORMATION REPORTED TO THE ATTORNEY GENERAL BY THE FIRST WHISTLEBLOWER.

(C) THE DETERMINATION OF THE AMOUNT OF AN AWARD MADE WITHIN THE RANGE ESTABLISHED BY THIS SECTION SHALL BE SOLELY IN THE DISCRETION OF THE ATTORNEY GENERAL. IN DETERMINING THE AMOUNT OF AN AWARD MADE WITHIN THE RANGE ESTABLISHED BY THIS SECTION, THE ATTORNEY GENERAL SHALL TAKE INTO CONSIDERATION THE FOLLOWING FACTORS:

(I) THE SIGNIFICANCE OF THE INFORMATION PROVIDED BY THE WHISTLEBLOWER TO THE SUCCESS OF THE COVERED ENFORCEMENT ACTION OR RELATED ACTION;

(II) THE DEGREE OF ASSISTANCE PROVIDED BY THE WHISTLEBLOWER AND ANY LEGAL REPRESENTATIVE OF THE WHISTLEBLOWER IN THE COVERED ENFORCEMENT ACTION OR RELATED ACTION;

(III) THE INTEREST OF THE STATE IN DETERRING VIOLATIONS OF THIS ARTICLE AND PROMOTING THE REPORTING BY WHISTLEBLOWERS OF INFORMATION RELATING TO SUCH VIOLATIONS; AND

(IV) SUCH ADDITIONAL RELEVANT FACTORS AS THE ATTORNEY GENERAL MAY ESTABLISH BY RULE OR REGULATION.

(D) NO AWARD SHALL BE MADE TO ANY WHISTLEBLOWER IF THE ATTORNEY GENERAL SHALL DETERMINE THAT THE WHISTLEBLOWER:

(I) IS, OR WAS AT THE TIME THE WHISTLEBLOWER ACQUIRED THE ORIGINAL INFORMATION SUBMITTED TO THE ATTORNEY GENERAL, A MEMBER, OFFICER OR EMPLOYEE OF A FEDERAL, STATE OR LOCAL LAW ENFORCEMENT AGENCY THAT REGULATES SECURITIES OR THAT PROSECUTES SECURITIES VIOLATIONS;

(II) WAS CONVICTED OF A CRIMINAL VIOLATION RELATED TO THE COVERED ENFORCEMENT ACTION FOR WHICH THE WHISTLEBLOWER OTHERWISE COULD RECEIVE AN AWARD UNDER THIS SECTION;

(III) MATERIALLY FAILED TO SUBMIT INFORMATION TO THE ATTORNEY GENERAL IN SUCH FORM AS THE ATTORNEY GENERAL MAY REQUIRE;

(IV) IS, OR WAS AT THE TIME THE WHISTLEBLOWER ACQUIRED THE ORIGINAL INFORMATION SUBMITTED TO THE ATTORNEY GENERAL, AN OFFICER OR EMPLOYEE OF A SELF-REGULATORY ORGANIZATION THAT REGULATES SECURITIES AND WHO HAS A DUTY BY VIRTUE OF SUCH POSITION TO INVESTIGATE OR REPORT A SECURITIES VIOLATION; PROVIDED THAT THIS SUBPARAGRAPH SHALL NOT APPLY IF THE WHISTLEBLOWER REPORTED THE ORIGINAL INFORMATION TO SUCH SELF-REGULATORY ORGANIZATION AND THE ATTORNEY GENERAL DETERMINES THAT THE ORGANIZATION DID NOT TAKE ADEQUATE MEASURES WITHIN SIXTY DAYS TO INVESTIGATE OR SANCTION CONDUCT THAT WOULD BE A VIOLATION OF THIS ARTICLE; OR

(V) (A) KNOWINGLY AND WILLFULLY MAKES FALSE, FICTITIOUS OR FRAUDULENT STATEMENTS OR REPRESENTATIONS TO THE ATTORNEY GENERAL WHEN SUBMITTING INFORMATION UNDER THIS SECTION, OR (B) USES ANY FALSE WRITING OR DOCUMENT KNOWING THE WRITING OR DOCUMENT CONTAINS ANY FALSE, FICTITIOUS OR FRAUDULENT STATEMENT OR ENTRY WHEN SUBMITTING INFORMATION UNDER THIS SECTION.

(E) (I) ANY DETERMINATION MADE UNDER THIS SUBDIVISION, INCLUDING WHETHER, TO WHOM, OR IN WHAT AMOUNT TO MAKE AWARDS, SHALL BE IN THE DISCRETION OF THE ATTORNEY GENERAL; PROVIDED THAT SUCH AMOUNT SHALL CONFORM TO THE RANGE ESTABLISHED BY PARAGRAPH (A) OF THIS SUBDIVISION, AND SHALL TAKE INTO ACCOUNT THE FACTORS LISTED IN PARAGRAPH (C) OF THIS SUBDIVISION.

(II) ANY SUCH DETERMINATION MAY BE CHALLENGED IN ACCORDANCE WITH ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, PROVIDED THAT ANY SUCH CHALLENGE SHALL BE BROUGHT WITHIN FORTY-FIVE DAYS OF THE DATE OF ANY SUCH DETERMINATION.

(F) NO CONTRACT WITH THE DEPARTMENT OF LAW OR ANY OTHER AGENCY SHALL BE NECESSARY FOR ANY WHISTLEBLOWER TO RECEIVE AN AWARD UNDER THIS SECTION.

(G)(I) ANY WHISTLEBLOWER WHO MAKES A CLAIM FOR AN AWARD UNDER THIS SECTION MAY BE REPRESENTED BY COUNSEL.

(II) ANY WHISTLEBLOWER WHO ANONYMOUSLY MAKES A CLAIM FOR AN AWARD UNDER THIS SECTION SHALL BE REPRESENTED BY COUNSEL IF THE WHISTLEBLOWER ANONYMOUSLY SUBMITS THE INFORMATION UPON WHICH THE CLAIM IS BASED. PRIOR TO THE PAYMENT OF AN AWARD, A WHISTLEBLOWER SHALL DISCLOSE THE IDENTITY OF THE WHISTLEBLOWER AND PROVIDE SUCH OTHER INFORMATION AS THE ATTORNEY GENERAL MAY REQUIRE, DIRECTLY OR THROUGH COUNSEL FOR THE WHISTLEBLOWER.

(H)(I) THE ATTORNEY GENERAL SHALL NOT DISCLOSE ANY INFORMATION WHICH COULD REASONABLY BE EXPECTED TO REVEAL THE IDENTITY OF A WHISTLEBLOWER, UNLESS AND UNTIL SUCH INFORMATION IS REQUIRED TO BE DISCLOSED TO A PARTY IN CONNECTION WITH AN ACTION OR PROCEEDING BROUGHT BY THE ATTORNEY GENERAL, A LAWFULLY ISSUED SUBPOENA BY A FEDERAL OR STATE LAW ENFORCEMENT AUTHORITY, OR OTHERWISE BY A COURT ORDER. SUCH INFORMATION SHALL BE DEEMED INFORMATION EXEMPTED FROM DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

(II) NOTWITHSTANDING THE PRECEDING SUBPARAGRAPH, WITHOUT THE LOSS OF ITS STATUS AS CONFIDENTIAL IN THE HANDS OF THE ATTORNEY GENERAL, ALL INFORMATION REFERRED TO IN THIS SUBDIVISION MAY, WHEN DETERMINED BY THE ATTORNEY GENERAL TO BE NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ARTICLE, BE MADE AVAILABLE TO THE APPROPRIATE REGULATORY AND LAW ENFORCEMENT AUTHORITIES OF THIS STATE, ANOTHER STATE, THE FEDERAL GOVERNMENT, FOREIGN GOVERNMENTS, OR SELF-REGULATORY ORGANIZATIONS. EACH REGULATORY OR LAW ENFORCEMENT AUTHORITY TO WHICH THE ATTORNEY GENERAL MAKES AVAILABLE THE INFORMATION REFERRED TO IN THE PRECEDING SUBPARA-

GRAPH SHALL AGREE TO MAINTAIN SUCH INFORMATION IN ACCORDANCE WITH SUCH ASSURANCES OF CONFIDENTIALITY AS THE ATTORNEY GENERAL DEEMS APPROPRIATE.

3. RETALIATION. (A)(I) IT SHALL BE UNLAWFUL FOR ANY CURRENT OR PROSPECTIVE EMPLOYER, CONTRACTOR OR AGENT TO DISCHARGE, DEMOTE, SUSPEND, THREATEN OR HARASS, DIRECTLY OR INDIRECTLY, OR IN ANY OTHER MANNER DISCRIMINATE AGAINST ANY PERSON IN HIRING OR IN THE TERMS AND CONDITIONS OF EMPLOYMENT OR CONTRACTING BECAUSE OF ANY LAWFUL ACT DONE BY SUCH PERSON: (A) IN PROVIDING INFORMATION TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION; (B) IN INITIATING, TESTIFYING IN OR ASSISTING IN ANY INVESTIGATION OR COVERED ENFORCEMENT ACTION UNDER THIS ARTICLE, OR ANY RELATED ACTION; OR (C) IN REPORTING ANY VIOLATION OF THIS ARTICLE TO ANOTHER GOVERNMENT ENTITY, TO A DIRECT SUPERVISOR OR TO A COMPLIANCE OFFICER OF SUCH EMPLOYER, CONTRACTOR OR AGENT.

(II) ANY PERSON WHO IS DISCHARGED, DEMOTED, SUSPENDED, THREATENED OR HARASSED OR IN ANY OTHER MANNER DISCRIMINATED AGAINST IN THE TERMS AND CONDITIONS OF EMPLOYMENT, OR OTHERWISE HARMED OR PENALIZED BY AN EMPLOYER, OR A PROSPECTIVE EMPLOYER, BECAUSE OF LAWFUL ACTS DONE BY SUCH PERSON OR ASSOCIATED OTHERS IN FURTHERANCE OF ANY COVERED ENFORCEMENT ACTION OR RELATED ACTION OR OTHER EFFORTS TO STOP ONE OR MORE VIOLATIONS OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO REPORTING SUCH VIOLATIONS TO ANY GOVERNMENT ENTITY, TO A DIRECT SUPERVISOR OR TO A COMPLIANCE OFFICER OF SUCH EMPLOYER OR PROSPECTIVE EMPLOYER, SHALL BE ENTITLED TO ALL RELIEF NECESSARY TO MAKE SUCH PERSON WHOLE. SUCH RELIEF SHALL INCLUDE BUT NOT BE LIMITED TO:

(A) AN INJUNCTION TO RESTRAIN CONTINUED DISCRIMINATION;

(B) HIRING, CONTRACTING OR REINSTATEMENT TO THE POSITION SUCH PERSON WOULD HAVE HAD BUT FOR THE DISCRIMINATION OR TO AN EQUIVALENT POSITION;

(C) REINSTATEMENT OF FULL FRINGE BENEFITS AND SENIORITY RIGHTS;

(D) PAYMENT OF TWO TIMES BACK PAY, PLUS INTEREST; AND

(E) COMPENSATION FOR ANY SPECIAL DAMAGES SUSTAINED AS A RESULT OF THE DISCRIMINATION, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEYS' FEES.

(B) FOR PURPOSES OF THIS SUBDIVISION, A "LAWFUL" ACT SHALL INCLUDE, BUT NOT BE LIMITED TO, OBTAINING OR TRANSMITTING TO THE ATTORNEY GENERAL OR PRIVATE COUNSEL EMPLOYED TO INVESTIGATE OR POTENTIALLY FILE WITH THE ATTORNEY GENERAL INFORMATION RELATING TO A VIOLATION OF THIS ARTICLE, EVEN THOUGH SUCH ACT MAY VIOLATE A CONTRACT, SEVERANCE AGREEMENT, EMPLOYMENT TERM, OR DUTY OWED TO THE EMPLOYER OR CONTRACTOR.

(C) ANY PERSON SEEKING RELIEF PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION MAY BRING AN ACTION IN THE APPROPRIATE SUPREME COURT FOR THE RELIEF PROVIDED IN THIS SUBDIVISION. A CIVIL ACTION UNDER THIS SUBDIVISION SHALL BE COMMENCED NO LATER THAN TEN YEARS AFTER THE DATE ON WHICH THE VIOLATION OF THIS ARTICLE IS COMMITTED.

4. NO WAIVER OR PREEMPTION. (A) THIS SECTION SHALL NOT: (I) PREEMPT, LIMIT OR RESTRICT THE AUTHORITY OR DISCRETION OF THE ATTORNEY GENERAL TO INVESTIGATE OR ENFORCE VIOLATIONS OF THIS ARTICLE; (II) LIMIT ANY POWERS GRANTED ELSEWHERE IN THIS CHAPTER AND OTHER LAWS TO THE ATTORNEY GENERAL, STATE AGENCIES OR LOCAL GOVERNMENTS TO INVESTIGATE OR ENFORCE POSSIBLE VIOLATIONS OF THIS ARTICLE; (III) AUTHORIZE A PRIVATE RIGHT OF ACTION INVOLVING FRAUDULENT PRACTICES IN CONNECTION WITH THE SECURITIES; (IV) PREVENT OR PROHIBIT A PERSON FROM VOLUNTARILY DISCLOSING ANY INFORMATION CONCERNING A VIOLATION OF THIS ARTICLE TO ANY LAW ENFORCEMENT AGENCY OR SELF-REGULATORY ORGANIZATION; OR (V) PREEMPT, LIMIT, RESTRICT OR OTHERWISE AFFECT THE RIGHTS AND REWARDS PROVIDED TO QUI TAM PLAINTIFFS UNDER ARTICLE THIRTEEN OF THE STATE FINANCE LAW.

(B) THE RIGHTS AND REMEDIES PROVIDED FOR IN THIS SECTION MAY NOT BE WAIVED BY ANY AGREEMENT, POLICY FORM, OR CONDITION OF EMPLOYMENT. NO SALARY OR WAGES EARNED BY THE WHISTLEBLOWER DURING HIS OR HER EMPLOYMENT, NOR ANY CONSIDERATION PROVIDED THE WHISTLEBLOWER IN CONNECTION WITH HIS OR HER SEVERANCE FROM SUCH EMPLOYMENT, RELATED TO ORIGINAL INFORMATION OR THE COVERED ENFORCEMENT ACTION OR RELATED ACTION MAY BE RECOUPED BY ANY RIGHT OF ACTION BROUGHT BY THE EMPLOYER.

(C) NOTHING IN THIS SECTION SHALL BE DEEMED TO DIMINISH THE RIGHTS, PRIVILEGES, OR REMEDIES OF ANY WHISTLEBLOWER UNDER ANY FEDERAL OR STATE LAW, OR UNDER ANY COLLECTIVE BARGAINING AGREEMENT.

5. REGULATIONS. THE ATTORNEY GENERAL IS AUTHORIZED TO ADOPT SUCH RULES AND REGULATIONS AS ARE NECESSARY TO EFFECTUATE THE PURPOSES OF THIS SECTION; PROVIDED THAT THE ATTORNEY GENERAL SHALL CONSULT WITH THE SUPERINTENDENT OF THE DEPARTMENT OF FINANCIAL SERVICES PRIOR TO PROPOSING SUCH RULES OR REGULATIONS.

S 2. Subsection (a) of section 104 of the financial services law is amended by adding five new paragraphs 6, 7, 8, 9 and 10 to read as follows:

(6) "COVERED JUDICIAL OR ADMINISTRATIVE ACTION" SHALL MEAN: (A) ANY ONE OR MORE JUDICIAL OR ADMINISTRATIVE ACTIONS BROUGHT BY THE DEPARTMENT UNDER THE INSURANCE LAW, THE BANKING LAW OR THIS CHAPTER THAT RESULTS IN MONETARY SANCTIONS EXCEEDING ONE MILLION DOLLARS IN THE AGGREGATE; AND (B) ANY INVESTIGATIONS, INQUIRIES, SETTLEMENTS OR ANY OTHER ACTIONS BROUGHT OR MADE WITHIN THE SOLE DISCRETION OF THE SUPERINTENDENT, BY THE DEPARTMENT UNDER THE INSURANCE LAW, THE BANKING LAW OR THIS CHAPTER THAT RESULT IN MONETARY SANCTIONS EXCEEDING ONE MILLION DOLLARS IN THE AGGREGATE.

(7) "MONETARY SANCTIONS" SHALL MEAN:

(A) ANY MONIES ORDERED TO BE PAID, OR THAT ARE OTHERWISE PAID OR FORFEITED AS A RESULT OF A COVERED JUDICIAL OR ADMINISTRATIVE ACTION OR ANY SETTLEMENT OF SUCH ACTION, OR RELATED ACTION; AND

(B) ANY MONIES DEPOSITED INTO A DISGORGEMENT FUND OR PUBLIC BENEFIT FUND AS A RESULT OF A COVERED JUDICIAL OR ADMINISTRATIVE ACTION OR ANY SETTLEMENT OF SUCH ACTION, OR RELATED ACTION.

(8) "ORIGINAL INFORMATION" SHALL MEAN INFORMATION THAT:

(A) IS DERIVED FROM THE INDEPENDENT KNOWLEDGE OR ANALYSIS OF A WHISTLEBLOWER;

(B) IS NOT KNOWN TO THE DEPARTMENT FROM ANY OTHER SOURCE, UNLESS THE WHISTLEBLOWER IS THE ORIGINAL SOURCE OF THE INFORMATION; AND

(C) IS NOT EXCLUSIVELY DERIVED FROM AN ALLEGATION MADE IN A JUDICIAL OR ADMINISTRATIVE HEARING, IN A GOVERNMENTAL REPORT, HEARING, AUDIT OR INVESTIGATION OR FROM THE NEWS MEDIA, UNLESS THE WHISTLEBLOWER IS A SOURCE OF THE INFORMATION. FOR PURPOSES OF THIS SUBPARAGRAPH: (I) AN ALLEGATION IS NOT MADE IN A GOVERNMENTAL REPORT OR INVESTIGATION BECAUSE IT WAS DISCLOSED OR PROVIDED PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW, OR UNDER ANY OTHER FEDERAL, STATE OR LOCAL LAW, RULE OR PROGRAM ENABLING THE PUBLIC TO REQUEST, RECEIVE OR VIEW DOCUMENTS OR INFORMATION IN THE POSSESSION OF PUBLIC OFFICIALS OR PUBLIC AGENCIES; AND (II) AN ALLEGATION IS NOT MADE IN THE NEWS MEDIA MERELY BECAUSE INFORMATION OF ALLEGATIONS OR TRANSACTIONS HAVE BEEN POSTED ON THE INTERNET OR ON A COMPUTER NETWORK.

(9) "RELATED ACTION" SHALL MEAN ANY JUDICIAL OR ADMINISTRATIVE ACTION BROUGHT BY ANOTHER STATE OR LOCAL AGENCY OR ENTITY BASED UPON ORIGINAL INFORMATION PROVIDED BY A WHISTLEBLOWER TO THE DEPARTMENT THAT RESULTS IN MONETARY SANCTIONS EXCEEDING ONE MILLION DOLLARS IN THE AGGREGATE.

(10) "WHISTLEBLOWER" SHALL MEAN ANY INDIVIDUAL OR ENTITY WHO PROVIDES OR TWO OR MORE INDIVIDUALS ACTING JOINTLY WHO PROVIDE INFORMATION RELATING TO A VIOLATION OF THE BANKING LAW, THE INSURANCE LAW, THIS CHAPTER OR RULES AND REGULATIONS PROMULGATED THEREUNDER TO THE DEPARTMENT.

S 3. The financial services law is amended by adding two new sections 410 and 411 to read as follows:

S 410. FINANCIAL SERVICES WHISTLEBLOWER AWARDS. (A) (1) IN ANY COVERED JUDICIAL OR ADMINISTRATIVE ACTION, OR RELATED ACTION, ONE OR MORE WHISTLEBLOWERS WHO VOLUNTARILY PROVIDE ORIGINAL INFORMATION TO THE DEPARTMENT THAT WAS THE BASIS FOR THE SUCCESSFUL JUDICIAL OR ADMINISTRATIVE ACTION, OR A RELATED ACTION, SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, BE ENTITLED TO RECEIVE BETWEEN TEN AND THIRTY PERCENT OF THE MONETARY SANCTIONS THAT RESULT FROM SUCH ACTION. ANY PAYMENT TO A PERSON PURSUANT TO THIS PARAGRAPH SHALL BE MADE FROM THE MONETARY SANCTIONS OF THE COVERED JUDICIAL OR ADMINISTRATIVE ACTION, OR RELATED ACTION.

(2) A WHISTLEBLOWER WHO PROVIDES THE DEPARTMENT WITH INFORMATION RELATED TO INFORMATION PREVIOUSLY REPORTED TO THE DEPARTMENT BY A WHISTLEBLOWER WHO IS ELIGIBLE FOR AN AWARD UNDER THIS SECTION SHALL NOT BE ENTITLED TO AN AWARD, UNLESS THE INFORMATION PROVIDED BY THE SECOND WHISTLEBLOWER MATERIALLY ADDS TO THE INFORMATION REPORTED TO THE DEPARTMENT BY THE FIRST WHISTLEBLOWER.

(3) ANY AMOUNT PAID UNDER PARAGRAPH ONE OF THIS SUBSECTION SHALL BE FIRST APPLIED IN ACCORDANCE WITH THE PROVISIONS OF SUCH PARAGRAPH BEFORE BEING APPLIED, IF APPLICABLE, IN ACCORDANCE WITH SUBPARAGRAPH (B) OF PARAGRAPH ONE OF SUBSECTION (A) OF SECTION FOUR HUNDRED EIGHT OF THIS ARTICLE.

(B)(1) THE DETERMINATION OF THE AMOUNT OF AN AWARD MADE WITHIN THE RANGE ESTABLISHED BY THIS SECTION SHALL BE SOLELY IN THE DISCRETION OF THE SUPERINTENDENT.

(2) IN DETERMINING THE AMOUNT OF AN AWARD MADE WITHIN THE RANGE ESTABLISHED BY THIS SECTION, THE SUPERINTENDENT SHALL TAKE INTO CONSIDERATION THE FOLLOWING FACTORS:

(A) THE SIGNIFICANCE OF THE INFORMATION PROVIDED BY THE WHISTLEBLOWER TO THE SUCCESS OF THE COVERED JUDICIAL OR ADMINISTRATIVE ACTION;

(B) THE DEGREE OF ASSISTANCE PROVIDED BY THE WHISTLEBLOWER AND ANY LEGAL REPRESENTATIVE OF THE WHISTLEBLOWER IN A COVERED JUDICIAL OR ADMINISTRATIVE ACTION;

(C) THE INTEREST OF THE DEPARTMENT IN DETERRING VIOLATIONS OF THE BANKING LAW, THE INSURANCE LAW OR THIS CHAPTER AND PROMOTING THE REPORTING BY WHISTLEBLOWERS OF INFORMATION RELATING TO SUCH VIOLATIONS; AND

(D) SUCH ADDITIONAL RELEVANT FACTORS AS THE SUPERINTENDENT MAY ESTABLISH BY RULE OR REGULATION.

(C) NO AWARD SHALL BE MADE TO ANY WHISTLEBLOWER IF THE SUPERINTENDENT SHALL DETERMINE THAT THE WHISTLEBLOWER:

(1) IS, OR WAS AT THE TIME THE WHISTLEBLOWER ACQUIRED THE ORIGINAL INFORMATION SUBMITTED TO THE DEPARTMENT, A MEMBER, OFFICER OR EMPLOYEE OF A FEDERAL, STATE OR LOCAL LAW ENFORCEMENT AGENCY THAT REGULATES BANKING, INSURANCE OR FINANCIAL SERVICES PRODUCTS; OR

(2) IS, OR WAS AT THE TIME THE WHISTLEBLOWER ACQUIRED THE ORIGINAL INFORMATION SUBMITTED TO THE DEPARTMENT, AN OFFICER OR EMPLOYEE OF A SELF-REGULATORY ORGANIZATION THAT REGULATES BANKING, INSURANCE OR FINANCIAL SERVICES PRODUCTS AND WHO HAS A DUTY BY VIRTUE OF SUCH POSITION TO INVESTIGATE OR REPORT A LEGAL VIOLATION INVOLVING BANKING, INSURANCE, OR FINANCIAL SERVICES PRODUCTS; PROVIDED THAT THIS SUBPARAGRAPH SHALL NOT APPLY IF THE WHISTLEBLOWER PROPERLY REPORTED THE ORIGINAL INFORMATION TO

SUCH SELF-REGULATORY ORGANIZATION AND THE SUPERINTENDENT DETERMINES THAT THE ORGANIZATION DID NOT TAKE ADEQUATE MEASURES WITHIN SIXTY DAYS TO INVESTIGATE CONDUCT THAT WOULD BE A VIOLATION OF THIS ARTICLE; OR

(3) WAS CONVICTED OF A CRIMINAL VIOLATION RELATED TO THE COVERED JUDICIAL OR ADMINISTRATIVE ACTION FOR WHICH THE WHISTLEBLOWER OTHERWISE COULD RECEIVE AN AWARD UNDER THIS SECTION; OR

(4) MATERIALLY FAILED TO SUBMIT INFORMATION TO THE DEPARTMENT IN SUCH FORM AS THE DEPARTMENT MAY REQUIRE; OR

(5)(A) KNOWINGLY AND WILLFULLY MAKES FALSE, FICTITIOUS OR FRAUDULENT STATEMENTS OR REPRESENTATIONS TO THE DEPARTMENT WHEN SUBMITTING INFORMATION UNDER THIS SECTION, OR (B) USES ANY FALSE WRITING OR DOCUMENT KNOWING THE WRITING OR DOCUMENT CONTAINED FALSE, FICTITIOUS OR FRAUDULENT STATEMENTS OR ENTRIES WHEN SUBMITTING INFORMATION UNDER THIS SECTION.

(D) (1) ANY WHISTLEBLOWER WHO MAKES A CLAIM FOR AN AWARD UNDER THIS SECTION MAY BE REPRESENTED BY COUNSEL.

(2) ANY WHISTLEBLOWER WHO ANONYMOUSLY MAKES A CLAIM FOR AN AWARD UNDER THIS SECTION SHALL BE REPRESENTED BY COUNSEL IF THE WHISTLEBLOWER ANONYMOUSLY SUBMITS THE INFORMATION UPON WHICH THE CLAIM IS BASED. PRIOR TO THE PAYMENT OF AN AWARD, A WHISTLEBLOWER SHALL DISCLOSE THE IDENTITY OF THE WHISTLEBLOWER AND PROVIDE SUCH OTHER INFORMATION AS THE DEPARTMENT MAY REQUIRE, DIRECTLY OR THROUGH COUNSEL FOR THE WHISTLEBLOWER.

(E) NO CONTRACT WITH THE DEPARTMENT SHALL BE NECESSARY FOR ANY WHISTLEBLOWER TO RECEIVE AN AWARD UNDER THIS SECTION, UNLESS OTHERWISE REQUIRED BY THE DEPARTMENT BY RULE OR REGULATION.

(F) ANY DETERMINATION MADE UNDER THIS SECTION SHALL BE SOLELY IN THE DISCRETION OF THE SUPERINTENDENT; PROVIDED THAT SUCH AWARD SHALL BE IN THE RANGES ESTABLISHED BY PARAGRAPH ONE OF SUBSECTION (A) OF THIS SECTION, AND THE SUPERINTENDENT SHALL TAKE INTO ACCOUNT THE FACTORS LISTED IN PARAGRAPH TWO OF SUBSECTION (B) OF THIS SECTION IN DETERMINING THE AMOUNT OF THE AWARD. ANY SUCH DETERMINATION MAY BE CHALLENGED IN ACCORDANCE WITH ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, PROVIDED THAT ANY SUCH CHALLENGE SHALL BE BROUGHT WITHIN FORTY-FIVE DAYS OF THE DATE OF ANY SUCH DETERMINATION UNDER CHALLENGE.

S 411. RETALIATION PROTECTIONS. (A) NO CURRENT OR PROSPECTIVE EMPLOYER, CONTRACTOR OR AGENT MAY DISCHARGE, DEMOTE, SUSPEND, THREATEN OR HARASS, DIRECTLY OR INDIRECTLY, OR IN ANY OTHER MANNER DISCRIMINATE AGAINST ANY PERSON IN HIRING OR IN THE TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE OF ANY LAWFUL ACT DONE BY SUCH PERSON:

(1) IN PROVIDING INFORMATION TO THE DEPARTMENT IN ACCORDANCE WITH THIS SECTION;

(2) IN INITIATING, TESTIFYING IN OR ASSISTING IN ANY INVESTIGATION OR JUDICIAL OR ADMINISTRATIVE ACTION OF THE DEPARTMENT OR RELATED ACTION; OR

(3) IN REPORTING ANY VIOLATION OF THE INSURANCE LAW, THE BANKING LAW OR THIS CHAPTER TO ANOTHER GOVERNMENT ENTITY, TO A DIRECT SUPERVISOR OR TO A COMPLIANCE OFFICER OF SUCH EMPLOYER, CONTRACTOR OR AGENT.

(B)(1) ANY PERSON WHO IS DISCHARGED, DEMOTED, SUSPENDED, THREATENED OR HARASSED OR IN ANY OTHER MANNER DISCRIMINATED AGAINST IN THE TERMS AND CONDITIONS OF EMPLOYMENT, OR OTHERWISE HARMED OR PENALIZED BY AN EMPLOYER, OR A PROSPECTIVE EMPLOYER, BECAUSE OF LAWFUL ACTS DONE BY SUCH PERSON OR ASSOCIATED OTHERS IN FURTHERANCE OF ANY COVERED JUDICIAL OR ADMINISTRATIVE ACTION OR RELATED ACTION OR OTHER EFFORTS TO STOP ONE OR MORE VIOLATIONS OF THE INSURANCE LAW, THE BANKING LAW OR THIS CHAPTER, INCLUDING BUT NOT LIMITED TO REPORTING SUCH VIOLATIONS TO ANY GOVERNMENT ENTITY, TO A DIRECT SUPERVISOR OR TO A COMPLIANCE OFFICER OF SUCH EMPLOYER OR PROSPECTIVE EMPLOYER, SHALL BE ENTITLED TO ALL RELIEF NECES-

SARY TO MAKE SUCH PERSON WHOLE. SUCH RELIEF SHALL INCLUDE BUT NOT BE LIMITED TO:

(A) AN INJUNCTION TO RESTRAIN CONTINUED DISCRIMINATION;

(B) HIRING, CONTRACTING OR REINSTATEMENT TO THE POSITION SUCH PERSON WOULD HAVE HAD BUT FOR THE DISCRIMINATION OR TO AN EQUIVALENT POSITION;

(C) REINSTATEMENT OF FULL FRINGE BENEFITS AND SENIORITY RIGHTS;

(D) PAYMENT OF TWO TIMES BACK PAY, PLUS INTEREST; AND

(E) COMPENSATION FOR ANY SPECIAL DAMAGES SUSTAINED AS A RESULT OF THE DISCRIMINATION, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEYS' FEES.

(2) FOR PURPOSES OF THIS SECTION, A "LAWFUL" ACT SHALL INCLUDE, BUT NOT BE LIMITED TO, OBTAINING OR TRANSMITTING TO THE DEPARTMENT OR PRIVATE COUNSEL EMPLOYED TO INVESTIGATE OR POTENTIALLY FILE WITH THE DEPARTMENT INFORMATION RELATING TO VIOLATIONS OF THE BANKING LAW, THE INSURANCE LAW, OR THIS CHAPTER, EVEN THOUGH SUCH ACT MAY VIOLATE A CONTRACT, SEVERANCE AGREEMENT, EMPLOYMENT TERM, OR DUTY OWED TO THE EMPLOYER OR CONTRACTOR.

(3) ANY PERSON SEEKING RELIEF PURSUANT TO THIS SUBSECTION MAY BRING AN ACTION IN THE APPROPRIATE SUPREME COURT FOR THE RELIEF PROVIDED IN THIS SECTION. THE LIMITATIONS PERIOD OF ANY SUCH ACTION SHALL BE TEN YEARS.

(4) NOTHING IN THIS SECTION SHALL BE DEEMED TO DIMINISH THE RIGHTS, PRIVILEGES, OR REMEDIES OF ANY WHISTLEBLOWER UNDER ANY FEDERAL OR STATE LAW, OR UNDER ANY COLLECTIVE BARGAINING AGREEMENT.

(C)(1) NEITHER THE SUPERINTENDENT NOR ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT, SHALL DISCLOSE ANY INFORMATION, INCLUDING INFORMATION PROVIDED BY A WHISTLEBLOWER TO THE DEPARTMENT, WHICH COULD REASONABLY BE EXPECTED TO REVEAL THE IDENTITY OF A WHISTLEBLOWER, UNLESS AND UNTIL SUCH INFORMATION IS REQUIRED TO BE DISCLOSED TO A PARTY IN CONNECTION WITH AN ACTION OR PROCEEDINGS BROUGHT BY THE SUPERINTENDENT, A LAWFULLY ISSUED SUBPOENA BY A FEDERAL OR STATE LAW ENFORCEMENT AUTHORITY, OR OTHERWISE BY A COURT ORDER. SUCH INFORMATION SHALL BE DEEMED INFORMATION EXEMPTED FROM DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

(2) NOTWITHSTANDING THE PRECEDING PARAGRAPH, WITHOUT THE LOSS OF ITS STATUS AS CONFIDENTIAL IN THE HANDS OF THE SUPERINTENDENT, ALL INFORMATION REFERRED TO IN PARAGRAPH ONE OF THIS SUBSECTION MAY, IN THE DISCRETION OF THE SUPERINTENDENT, WHEN DETERMINED BY THE SUPERINTENDENT TO BE NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ARTICLE, BE MADE AVAILABLE TO THE APPROPRIATE REGULATORY AND LAW ENFORCEMENT AUTHORITIES OF THIS STATE, ANOTHER STATE, THE FEDERAL GOVERNMENT, FOREIGN GOVERNMENTS, OR SELF-REGULATORY ORGANIZATIONS. EACH REGULATORY OR LAW ENFORCEMENT AUTHORITY TO WHICH THE SUPERINTENDENT MAKES AVAILABLE THE INFORMATION REFERRED TO IN THE PRECEDING PARAGRAPH SHALL AGREE TO MAINTAIN SUCH INFORMATION IN ACCORDANCE WITH SUCH ASSURANCES OF CONFIDENTIALITY AS THE SUPERINTENDENT MAY DETERMINE TO BE APPROPRIATE.

(D)(1) NOTHING IN THIS SECTION SHALL LIMIT, OR SHALL BE CONSTRUED TO LIMIT THE SUPERINTENDENT'S AUTHORITY UNDER SECTIONS TWO HUNDRED TWO AND THREE HUNDRED ONE OF THIS CHAPTER, OR THAT OF OTHER LAW ENFORCEMENT AUTHORITIES.

(2) NOTHING IN THIS SECTION SHALL LIMIT, OR SHALL BE CONSTRUED TO LIMIT, THE RIGHTS AND REWARDS PROVIDED TO QUI TAM PLAINTIFFS UNDER ARTICLE THIRTEEN OF THE STATE FINANCE LAW.

(E) THE RIGHTS AND REMEDIES PROVIDED FOR IN THIS SECTION MAY NOT BE WAIVED BY ANY AGREEMENT, POLICY FORM, OR CONDITION OF EMPLOYMENT, INCLUDING BY A PRE-DISPUTE ARBITRATION AGREEMENT, WHICH SHALL NOT BE VALID OR ENFORCEABLE IF IT REQUIRES ARBITRATION OF A DISPUTE ARISING UNDER THIS SECTION. NO SALARY OR WAGES EARNED BY THE WHISTLEBLOWER

DURING HIS OR HER EMPLOYMENT, NOR ANY CONSIDERATION PROVIDED THE WHISTLEBLOWER IN CONNECTION WITH HIS OR HER SEVERANCE FROM SUCH EMPLOYMENT, RELATED TO ORIGINAL INFORMATION OR THE COVERED JUDICIAL OR ADMINISTRATIVE ACTION MAY BE RECOUPED BY ANY RIGHT OF ACTION BROUGHT BY THE EMPLOYER.

(F) THE SUPERINTENDENT IS HEREBY AUTHORIZED AND EMPOWERED TO PROMULGATE SUCH RULES AND REGULATIONS AS THE SUPERINTENDENT SHALL DEEM APPROPRIATE FOR THE ENFORCEMENT OF THIS SECTION; PROVIDED THAT THE SUPERINTENDENT SHALL CONSULT WITH THE ATTORNEY GENERAL PRIOR TO PROPOSING SUCH RULES OR REGULATIONS.

S 4. Paragraph (b) of subdivision 11 of section 4 of the state finance law, as added by section 1 of part HH of chapter 55 of the laws of 2014, is amended to read as follows:

(b) Paragraph (a) of this subdivision shall not apply to (1) moneys to be distributed to the federal government, to a local government, or to any holder of a bond or other debt instrument issued by the state, any public authority, or any public benefit corporation; (2) moneys TO BE DISTRIBUTED TO A WHISTLEBLOWER PURSUANT TO SECTION THREE HUNDRED FIFTY-THREE-A OF THE GENERAL BUSINESS LAW OR SECTION FOUR HUNDRED TEN OF THE FINANCIAL SERVICES LAW, OR to be distributed solely or exclusively as a payment of damages or restitution to individuals or entities that were specifically injured or harmed by the defendant's or settling party's conduct and that are identified in, or can be identified by the terms of, the relevant judgment, agreement to settle, assurance of discontinuance, or relevant instrument resolving the claim or cause of action; (3) moneys recovered or obtained by a state agency or a state official or employee acting in their official capacity where application of paragraph (a) of this subdivision is prohibited by federal law, rule, or regulation, or would result in the reduction or loss of federal funds or eligibility for federal benefits pursuant to federal law, rule, or regulation; (4) moneys recovered or obtained by or on behalf of a public authority, a public benefit corporation, the department of taxation and finance, the workers' compensation board, the New York state higher education services corporation, the tobacco settlement financing corporation, a state or local retirement system, an employee health benefit program administered by the New York state department of civil service, the Title IV-D child support fund, the lottery prize fund, the abandoned property fund, or an endowment of the state university of New York or any unit thereof or any state agency, provided that all of the moneys received or recovered are immediately transferred to the relevant public authority, public benefit corporation, department, fund, program, or endowment; (5) moneys to be refunded to an individual or entity as (i) an overpayment of a tax, fine, penalty, fee, insurance premium, loan payment, charge or surcharge; (ii) a return of seized assets, or (iii) a payment made in error; and (6) moneys to be used to prevent, abate, restore, mitigate, or control any identifiable instance of prior or ongoing water, land or air pollution.

S 5. Paragraph (b) of subdivision 16 of section 63 of the executive law, as added by section 4 of part HH of chapter 55 of the laws of 2014, is amended to read as follows:

(b) Paragraph (a) of this subdivision shall not apply to any provision in the resolution of a claim or cause of action providing (1) moneys to be distributed to the federal government, to a local government, or to any holder of a bond or other debt instrument issued by the state, any public authority, or any public benefit corporation; (2) moneys TO BE DISTRIBUTED TO A WHISTLEBLOWER PURSUANT TO SECTION THREE HUNDRED FIFTY-

THREE-A OF THE GENERAL BUSINESS LAW, OR to be distributed solely or exclusively as a payment of damages or restitution to individuals or entities that were specifically injured or harmed by the defendant's or settling party's conduct and that are identified in, or can be identified by the terms of, the relevant judgment, stipulation, decree, agreement to settle, assurance of discontinuance, or relevant instrument resolving the claim or cause of action; (3) moneys recovered or obtained by the attorney general where application of paragraph (a) of this subdivision is prohibited by federal law, rule, or regulation, or would result in the reduction or loss of federal funds or eligibility for federal benefits pursuant to federal law, rule, or regulation; (4) moneys recovered or obtained by or on behalf of a public authority, a public benefit corporation, the department of taxation and finance, the workers' compensation board, the New York state higher education services corporation, the tobacco settlement financing corporation, a state or local retirement system, an employee health benefit program administered by the New York state department of civil service, the Title IV-D child support fund, the lottery prize fund, the abandoned property fund, or an endowment of the state university of New York or any unit thereof or any state agency, provided that all of the moneys received or recovered are immediately transferred to the relevant public authority, public benefit corporation, department, fund, program, or endowment; (5) moneys to be refunded to an individual or entity as (i) an overpayment of a tax, fine, penalty, fee, insurance premium, loan payment, charge or surcharge; (ii) a return of seized assets; or (iii) a payment made in error; and (6) moneys to be used to prevent, abate, restore, mitigate or control any identifiable instance of prior or ongoing water, land or air pollution.

S 6. This act shall take effect on the ninetieth day after it shall have become a law.