

STATE OF NEW YORK

4954--B

2021-2022 Regular Sessions

IN SENATE

February 19, 2021

Introduced by Sens. MYRIE, BROUK, KRUEGER, RAMOS, 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 -- 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. Section 350-d of the general business law, as amended by
2 chapter 208 of the laws of 2007, is amended to read as follows:

3 § 350-d. Civil penalty. (a) Any person, firm, corporation or associ-
4 ation or agent or employee thereof who engages in any of the acts or
5 practices stated in this article to be unlawful shall be liable to a
6 civil penalty of not more than five thousand dollars for each violation,
7 which shall accrue to the state of New York and may be recovered in a
8 civil action brought by the attorney general. In any such action it
9 shall be a complete defense that the advertisement is subject to and
10 complies with the rules and regulations of, and the statutes adminis-
11 tered by the Federal Trade Commission or any official department, divi-
12 sion, commission or agency of the state of New York.

13 (b) Provided, however, that any firm, corporation or association or
14 agent or employee thereof who engages in any of the acts or practices
15 stated in section three hundred forty-nine of this article to be unlaw-
16 ful in connection with an abnormal disruption of the market as defined
17 in section three hundred ninety-six-r of this chapter shall be liable to
18 a civil penalty of not more than fifteen thousand dollars for each

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

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1 violation or three times the actual restitution needed, whichever is
2 greater, which shall accrue to the state of New York and may be recov-
3 ered in a civil action brought by the attorney general. In any such
4 action it shall be a complete defense that the advertisement is subject
5 to and complies with the rules and regulations of, and the statutes
6 administered by the Federal Trade Commission or any official department,
7 division, commission or agency of the state of New York.

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

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

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

14 (A) any intentional fraud or intentional misrepresentation of a mate-
15 rial fact with respect to a financial product or service or involving
16 any person offering to provide or providing financial products or
17 services; ~~or~~

18 (B) any violation of state or federal fair debt collection practices
19 or federal or state fair lending laws; ~~and~~ or

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

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

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

34 (A) penalties for regulated persons under the banking law shall be as
35 provided for in the banking law and penalties for regulated persons
36 under the insurance law shall be as provided for in the insurance law;
37 and

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

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

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

1 lating persons under either the insurance law or the banking law shall
2 be allocated.

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

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

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

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

18 (D) The net worth and annual business volume of the subject of the
19 investigation.

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

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