STATE OF NEW YORK

4954

2021-2022 Regular Sessions

IN SENATE

February 19, 2021

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business 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:

Section 1. The general business law is amended by adding a new article 23-C to read as follows:

ARTICLE 23-C

FRAUD IN CONNECTION WITH AN ABNORMAL DISRUPTION OF THE MARKET

Section 359-n. Definitions.

359-o. Fraud in connection with an abnormal disruption of the market.

§ 359-n. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Abnormal disruption of the market" shall mean any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor.

2. "Superintendent" shall mean the superintendent of financial services.

§ 359-o. Fraud in connection with an abnormal disruption of the market. 1. In addition to any liability for damages or a civil penalty imposed pursuant to article twenty-one-a, sections three hundred thirty-nine-c, three hundred forty-nine, three hundred fifty-c, three hundred fifty-d, three hundred fifty-two, three hundred ninety-c, and three hundred ninety-six-r of this chapter, regarding purchases or sales of securities or commodities, deceptive practices, false advertising,

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

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and anti-phishing; section one thousand three hundred three of the business corporation law, regarding proceedings by the attorney general relating to foreign corporation activity within the state; section four hundred eight of the financial services law, regarding financial fraud prevention; section forty-four of the banking law, regarding unsafe and unsound banking practices; section four hundred three of the insurance law, regarding fraudulent insurance acts; and subdivision twelve of section sixty-three of the executive law, regarding proceedings by the attorney general for equitable relief against fraudulent or illegal consumer fraud, a partnership, corporation, company, trust or association, or any agent or employee thereof, who engages in any conduct prohibited by said provisions of law, and whose conduct is perpetrated in connection with, and with the intent to unlawfully gain from, an abnormal disruption of the market, may be liable for an additional civil penalty.

2. (a) In determining whether to impose a supplemental civil penalty pursuant to subdivision one of this section, the court shall consider, in addition to other appropriate factors:

(1) Whether the defendant knew that the defendant's conduct was made in connection with an abnormal disruption of the market with an intent to unlawfully gain from such disruption or whether the defendant's conduct was in willful disregard to an abnormal disruption of the market with an intent to unlawfully gain from such disruption;

(2) Whether the defendant's conduct caused a person or persons to suffer loss or encumbrance of a primary residence, principal employment or source of income, payments received under a pension or retirement plan or a government benefits program, assets essential to health or welfare; or

(3) Any other substantial economic damage resulting from the defendant's conduct.

(b) In determining the amount of any supplemental civil penalty imposed pursuant paragraph (a) of this subdivision, the court shall make a finding as to the amount of the defendant's unlawful gain made in connection with the abnormal disruption of the market. If the record does not contain sufficient evidence to support such a finding, the court may conduct a hearing upon such issues. After making such finding, the court shall impose a civil penalty of three times the amount of the defendant's gain or twenty-five thousand dollars, whichever is greater and, where appropriate, order restitution to aggrieved parties.

3. (a) Where a violation of this section is alleged to have occurred, the attorney general may apply in the name of the People of the State of New York to the supreme court of the state of New York within the judicial district in which such violations are alleged to have occurred, on notice of five days, for an order enjoining or restraining commission or continuance of the alleged unlawful acts. In any such proceeding, the court shall impose a civil penalty in accordance with paragraph (a) of subdivision two of this section and, where appropriate, order restitution to aggrieved parties.

(b) Without limiting any investigatory or enforcement power granted to the superintendent under any other provision of the law, the superintendent may undertake an investigation if the department has a reasonable suspicion that a person or entity has engaged, or is engaging, in fraud or misconduct in connection with violations of this section. The superintendent may, in a proceeding after notice and a hearing, require an entity subject to investigation or enforcement of the superintendent, to pay to the state a penalty not to exceed five thousand dollars per

offense for any violation of this section, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of the banking law, any condition imposed in writing by the superintendent in connection with the grant of any application or request, or any written agreement entered into with the superintendent. The superintendent, in determining the amount of any penalty assessed pursuant to this section, shall take into consideration the net worth and annual business volume of the subject of said investigation.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law. Effective immediately, the superintendent of financial services may make regulations and take other actions reasonably necessary to implement this act on such effective date.