

HOUSE BILL REPORT

HB 1370

As Reported by House Committee On:
Consumer Protection & Business
Appropriations

Title: An act relating to the payment of awards to whistleblowers who report violations of state or federal securities laws and providing protection to whistleblowers and internal reporters.

Brief Description: Providing the payment of awards to whistleblowers who report violations of state or federal securities laws and providing protection to whistleblowers and internal reporters.

Sponsors: Representatives Reeves, Corry, Reed, Morgan, Ramel, Pollet and Leavitt; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/31/23, 2/7/23 [DP];

Appropriations: 2/20/23, 2/23/23 [DP].

Brief Summary of Bill

- Establishes the Whistleblower Award and Protection Act, which sets forth parameters for granting awards to whistleblowers who provide information regarding securities fraud, and establishes prohibited acts of retaliation.
- Allows whistleblower awards to be paid from the Securities Prosecution Fund and increases the fund limit to \$1 million.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass. Signed by 13 members: Representatives Walen, Chair; Reeves, Vice Chair; Corry, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Cheney, Connors, Donaghy, Hackney, Ryu, Sandlin, Santos

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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Staff: Megan Mulvihill (786-7304).

Background:

The Department of Financial Institutions (DFI), through its Securities Division, is responsible for the regulation of the securities market in this state. This division, in turn, has an Enforcement Section that investigates consumer complaints and responds to case referrals from the Attorney General's Office, law enforcement agencies, and other securities regulators. In addition to providing technical assistance to law enforcement agencies, the Enforcement Section has both legal and investigative staff who initiate administrative, civil, and criminal proceedings against violators of the Securities Act.

The Securities Prosecution Fund (Fund) is derived from fines levied against violators, as well as money received via restitution and disgorgement orders. The Fund is used to pay for costs and charges incurred in the preparation, initiation, and prosecution of criminal charges by the Attorney General's Office and local prosecutors. The Fund is subject to a limit of \$350,000. If the Fund reaches this limit, all excess fines received by the Securities Division for the Fund must be deposited in the Financial Services Regulation Fund until the balance of the Fund falls below \$350,000.

At the federal level, the Securities and Exchange Commission (SEC) has a whistleblower program that provides monetary incentives for individuals to report possible violations of federal securities laws. Under the program, eligible whistleblowers who provide information that leads to successful enforcement action resulting in monetary sanctions exceeding \$1 million are entitled to an award between 10 and 30 percent of the monetary sanctions collected. Employer retaliation is also prohibited against a whistleblower who provided information to the SEC or assisted in any investigation or proceeding based on the information submitted.

Summary of Bill:

Whistleblower Award and Protection Act.

The Whistleblower Award and Protection Act (Act) is established to grant awards to whistleblowers who provide original information to the Securities Division that leads to the successful enforcement of an administrative or judicial action. The Act also sets forth protections from retaliation.

Awards.

The securities administrator may award an amount to one or more whistleblowers who voluntarily provide original information in writing and in the form and manner required. The securities administrator has the discretion to determine the award amount, consistent

with stated limits, and in determining the award amount, the securities administrator must consider:

- the significance of the original information provided by the whistleblower to the success of the administrative or judicial action;
- the degree of assistance provided by the whistleblower in connection with the administrative or judicial action;
- the programmatic interest of the securities administrator in deterring violations of the securities law by making awards; and
- any other factors the securities administrator considers relevant.

If the securities administrator makes one or more awards, the aggregate amount of awards must be between 10 and 30 percent of the monetary sanctions imposed and collected in the related administrative or judicial action. Awards must be paid from the Fund.

The securities administrator may not provide an award to a whistleblower who: (1) is convicted of a felony in connection with the administrative or judicial action for which the whistleblower otherwise could receive an award; (2) acquires the original information through the performance of an audit of financial statements required under the securities laws and for whom providing the original information violates federal law; (3) fails to submit information to the Securities Division in such form as the securities administrator may prescribe; (4) knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation as part of, or in connection with, the original information provided or the administrative or judicial proceeding; (5) knowingly and willfully makes any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the securities administrator or another authority; (6) knows that, or has a reckless disregard as to whether, the original information provided is false, fictitious, or fraudulent; (7) has a legal duty to report the original information to the securities administrator or Securities Division; (8) is, or was at the time the whistleblower acquired the original information, a member, officer, or employee of: the DFI; the SEC; any other state securities regulatory authority; a self-regulatory organization; the public company accounting oversight board; any law enforcement organization; any foreign government; any political subdivision, department agency, or instrumentality of a foreign government; or any other foreign financial regulatory authority; (9) is the spouse, parent, child, or sibling of the securities administrator or an employee of the DFI, or resides in the same household as the securities administrator or an employee of the DFI; or (10) directly or indirectly acquires the original information provided to the Securities Division from a person identified in (2), (8), (9), or with the intent to evade any provision of the Act.

Any individual who anonymously makes a claim must be represented by counsel. A whistleblower must disclose their identity and provide other required information prior to receiving an award. Information that could reasonably be expected to reveal the identity of the whistleblower is exempt from disclosure under the Public Records Act.

Retaliation Protection.

No employer may directly or indirectly terminate, discharge, demote, suspend, threaten, harass, or in any other manner retaliate against an individual because of any lawful act done by the individual:

- in providing information to the state or law enforcement agency concerning a possible violation of state or federal securities laws, rules, or regulations that has occurred, is ongoing, or is about to occur;
- in initiating, testifying in, or assisting in any investigation, or administrative or judicial action of the securities administrator, Securities Division, or other law enforcement agency based upon or related to such information;
- in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002, the Securities Act of 1933, the Securities Exchange Act of 1934, or other law, rule, or regulation subject to the jurisdiction of the SEC, or the Securities Act; or
- in making disclosures to a person with supervisory authority over the employee, or such person working for the employer who has the authority to investigate, discover, or terminate misconduct, regarding matters subject to the jurisdiction of the securities administrator, Securities Division, or the SEC.

An individual is not protected from retaliation if the individual: (1) knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation; (2) knowingly or with reckless disregard uses a false writing or document that contains false, fictitious, or fraudulent information; or (3) knows that or has a reckless disregard as to whether the disclosure is of original information that is false or frivolous.

An individual who alleges any act of retaliation that is in violation of the Act may bring action for relief. A prevailing individual may be reinstated with the same compensation, fringe benefits, and seniority status that the individual would have had. In addition, the individual may receive two times the amount of back pay otherwise owed to the individual, with interest, compensation for litigation costs, expert witness fees, reasonable attorney's fees, actual damages, an injunction to restrain a violation, or any combination thereof.

An action must be brought within six years after the date on which the violation occurred or within three years after the date when facts material to the right of action are known, or reasonably should have been known, by the employee alleging a violation. No action may be brought in any circumstance more than 10 years after the date on which the violation occurred.

No person may take action to impede an individual from communicating directly with the Securities Division staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement with respect to such communications, except for:

- agreements concerning communications covered by the attorney-client privilege; and
- information obtained in connection with legal representation of a client on whose behalf an individual or the individual's employer or firm are providing services, and the individual is seeking to use the information to make a whistleblower submission

for the individual's own benefit.

The rights and remedies provided for under the Act may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

The limit for the Fund is increased to \$1 million.

The securities administrator may adopt such rules and regulations as may be necessary.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This proposal has a lot in common with other whistleblower acts and is based on the SEC whistleblower program. Similar programs were enacted in Utah and Indiana. The Act does not require operating funds for the awards, and it protects individuals with confidentiality, protections from retaliation, and an express cause of action. These programs work by providing a carrot to incentivize people to bring forward violations. The SEC program has been in effect since 2011 and has generated over \$1.3 billion dollars in awards from whistleblowers. Between 2011 and 2018, there were 327 Washington-based reported violations. This program will help with investigations and increase enforcement of violations to protect Washington residents.

(Opposed) None.

Persons Testifying: Representative Kristine Reeves, prime sponsor; and Drew Bouton and Faith Anderson, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn,

Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Staff: Emily Stephens (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Consumer Protection & Business:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Whistleblower programs are effective. According to the Securities and Exchange Commission (SEC), over 300 Washingtonians have filed whistleblower complaints with the SEC from 2011 to 2018. The Department of Financial Institutions cannot estimate how much whistleblower activity would occur under the bill. The bill has no State General Fund impact.

(Opposed) None.

Persons Testifying: Drew Bouton, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.