SENATE BILL REPORT
HB 1370

As of March 14, 2023

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: Passed House: 3/3/23, 96-0.
Committee Activity: Business, Financial Services, Gaming & Trade: 3/16/23.

Brief Summary of Bill

- Establishes a program at the Department of Financial Institutions that provides monetary awards to whistleblowers who report violations of state securities laws and protects them from retaliation by their employers.
- Exempts information that could identify a whistleblower from disclosure under the Public Records Act.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Staff: Kellee Gunn (786-7429)

Background: Regulation of Securities. In Washington, the securities industry is regulated by the Department of Financial Institutions (DFI) through its Division of Securities. If a person is found to have violated the Securities Act of Washington, DFI may fine them up to $10,000 per violation.

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.

The fines paid must be deposited into the Securities Prosecution Fund.

If the balance of the Securities Prosecution Fund reaches $350,000, all additional fines collected by the Division of Securities, and all other additional funds received on the account, shall be deposited into the Financial Services Regulation Fund.

Model Whistleblower Award and Protection Act. The North American Securities Administrators Association (NASAA) represents state and provincial securities regulators in the United States, Canada and Mexico. In 2020, NASAA approved the Model Whistleblower Award and Protection Act which establishes a state-level program that provides monetary awards to whistleblowers who report violations of state securities laws and protects such whistleblowers and internal reporters from retaliation by their employers. States which implemented state-level whistleblower programs include Indiana, Utah, Montana, and Vermont. Montana and Vermont's laws are based on NASAA model act.

The Securities and Exchange Commission administers a similar whistleblower program under Sec. 922 of the Dodd-Frank Act.

Summary of Bill: Whistleblower Award. A program is established at DFI that provides monetary awards to whistleblowers who report violations of state securities laws and protects them from retaliation by their employers.

Whistleblowers who voluntarily provide original information in writing to DFI may receive an award. Original information is defined and means information derived from independent knowledge or analysis and is not otherwise known.

A person who anonymously makes a claim must be represented by counsel and must disclose their identity, and other information, to the securities division before receiving an award.

The award, or awards, must be between 10 percent and 30 percent of the monetary sanctions imposed and collected related to the administrative or judicial action. In determining the amount of the award, the securities administrator must consider certain aspects of the information provided including its significance in the success of a case, the assistance provided by the whistleblower, the programmatic interest of the securities division, and other relevant factors.

An award shall not be given to a whistleblower who is a felon or who provides false information. An award cannot go to a regulator or auditor, a person who directly or indirectly receives information from a regulator or auditor, or another person with a legal duty to report the original information to the securities division or administrator.

The award shall come from the Securities Protection Fund. The balance of the fund is

increased from $350,000 to $1 million for deposits to then be made into the Financial Services Regulation Fund.

The securities administrator at DFI may adopt rules to implement this program as necessary and appropriate.

Retaliation. Employers may not directly or indirectly retaliate against an individual for providing information, or otherwise assisting in providing the information required and protected under federal and state law.

Statute of Limitations. Within six years of the original violation, or within three years after the date of when facts should have been known to the employee, an action for relief may be brought. This may occur in the court of original jurisdiction where the alleged violation occurs, where the individual resides, or where the person whom the action is filed against resides or has a principal place of business.

No action may be brought more than ten years after the date which the violation occurs.

Remedies by the Court. A court may award relief to the prevailing individual:

- a reinstatement with the same compensation, fringe benefits, and seniority status that the individual would have had but for the retaliation;
- two times the amount of back pay otherwise owed, with interest;
- compensation for litigation costs, and other fees;
- actual damages;
- an injunction to restrain a violation; or
- any combination of those certain remedies.

Exempt From Disclosure. Information that could reveal the identity of a whistleblower is exempt from disclosure under the Public Records Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.