

North American Securities Administrators Association Proposes Model State Whistleblower Rewards Legislation

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The [North American Securities Administrators Association](#) (NASAA) announced it released for public comment a proposed [model law](#) to help states incentivize individuals to come forward to report suspected wrongful violations of state securities laws and to protect whistleblowers. According to NASAA President and Chief of the New Jersey Bureau of Securities Christopher W. Gerold, “The intent of this model legislation is to incentivize individuals who have knowledge of potential securities law violations to report it to state regulators in the interest of investor protection . . . [i]nformation from those with knowledge of securities law violations is a valuable enforcement tool to help regulators detect financial fraud and wrongdoing.”

The [SEC whistleblower program](#) that Congress created about 10 years ago in the Dodd-Frank Act has proven effective in combatting securities fraud and protecting investors. Since the inception of the program, the SEC has paid more than \$450 million in awards to whistleblowers. SEC enforcement actions associated with those awards have resulted in sanctions totaling more than \$2 billion. Whistleblower awards can range from [10 percent to 30 percent](#) of the monetary sanctions collected when the sanctions exceed \$1 million.

Proposed Model State Securities Whistleblower Rewards Legislation

The proposed state whistleblower rewards legislation is modeled on the Dodd-Frank Act’s SEC whistleblower rewards provisions. Some of the key features include:

- A whistleblower could obtain 10 to 30% of the monetary sanctions collected in any related administrative or judicial action stemming from original information that the whistleblower voluntarily provides to a state securities regulator.
- Factors that would determine the award percentage include:
 - the significance of the original information provided by the whistleblower to the success of the administrative or judicial action;

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- the degree of assistance provided by the whistleblower in connection with the administrative or judicial action; and
 - the programmatic interest of the [Securities Administrator] in deterring violations of the securities laws by making awards to whistleblowers who provide original information that leads to the successful enforcement of such laws.
- Information that could reasonably be expected to reveal the identity of a whistleblower would be exempt from public disclosure.
 - There are approximately 11 categories of whistleblowers that would be ineligible to receive an award, including (1) a whistleblower convicted of a felony in connection with the administrative or judicial action for which the whistleblower otherwise could receive an award; (2) a whistleblower who acquires the original information through the performance of an audit of financial statements required under the securities laws; (3) a whistleblower who 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 for which the original information was provided; and (4) a whistleblower who has a legal duty to report the original information.

The model legislation also includes a whistleblower protection provision that would prohibit an employer from terminating, discharging, demoting, suspending, threatening, harassing, directly or indirectly, or in any other manner retaliating against, a whistleblower because of any lawful act done by the whistleblower:

- in providing information to the [Securities Division] in accordance with this Act;
- in initiating, testifying in, or assisting in any investigation or administrative or judicial action based upon or related to such information; or
- in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.); the Securities Act of 1933 (15 U.S.C. 77a et seq.); the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); 18 U.S.C. 1513(e); any other law, rule, or regulation subject to the jurisdiction of the Securities and Exchange Commission; or [the Securities Act of this State] or a rule adopted thereunder.

Remedies for a whistleblower prevailing in a retaliation claim include:

- reinstatement with the same compensation, fringe benefits, and seniority status that the individual would have had, but for the retaliation;
- two (2) times the amount of back pay otherwise owed to the individual, with interest;
- compensation for litigation costs, expert witness fees, and reasonable attorneys' fees;
- actual damages; or

- any combination of these remedies.

Role of State Securities Regulators

Although the SEC is the primary securities market regulator and enforces federal securities laws, state securities regulators enforce “blue sky” laws designed to protect investors against fraudulent sales practices and activities that fall outside of the SEC’s jurisdiction, e.g., offerings that are not required to be registered with the SEC. Most of the state securities laws are based on the [Uniform Securities Act](#), which is intended to prevent the fraudulent sale of securities to investors.

Securities law enforcement at the state level plays a vital role in protecting investors. According to the [NASAA's 2018 Enforcement Report](#), in 2017 state securities regulators received 7,988 complaints, took 2,105 enforcement actions, and ordered \$486 million returned to investors. Incentivizing whistleblowers to report securities fraud could significantly enhance the ability of state securities regulators to protect investors.

The proposed model act is open for public comment through June 30, 2020.

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