

CHAPTER 265

AN ACT concerning the New Jersey False Claims Act and amending and supplementing P.L.2007, c.265.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 5 of P.L.2007, c.265 (C.2A:32C-5) is amended to read as follows:

C.2A:32C-5 Investigation of violation; civil actions.

5. a. The Attorney General shall investigate a violation of this act. If the Attorney General finds that a person has violated or is violating this act, the Attorney General may bring a civil action in State or federal court against the person. The Superior Court shall have jurisdiction over a State action brought pursuant to this act.

b. A person may bring a civil action for a violation of this act for the person and for the State. Civil actions instituted under this act shall be brought in the name of the State of New Jersey.

c. A complaint filed by a person under this act shall remain under seal for at least 60 days and shall not be served on the defendant until the court so orders. Once filed, the action may be voluntarily dismissed by the person bringing the action if the Attorney General gives written consent to the dismissal along with the reason for consenting, and the court approves the dismissal.

d. A complaint alleging a false claim filed under this act shall be so designated when filed, in accordance with the Rules Governing the Courts of the State of New Jersey. Immediately upon filing of the complaint, the plaintiff shall serve by registered mail, return receipt requested, the Attorney General with a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses. The Attorney General may elect to intervene and proceed with the action on behalf of the State within 60 days after it receives both the complaint and the material evidence and information.

e. (Deleted by amendment, P.L.2009, c.265)

f. The Attorney General may, for good cause shown, request that the court extend the time during which the complaint remains under seal. Any such motion may be supported by affidavits or other submissions in camera.

g. Before the expiration of the 60-day period or any extensions obtained under subsection f., the Attorney General shall:

(1) file a pleading with the court that he intends to proceed with the action, in which case the action is conducted by the Attorney General and the seal shall be lifted; or

(2) file a pleading with the court that he declines to proceed with the action, in which case the seal shall be lifted and the person bringing the action shall have the right to conduct the action.

h. The defendant's answer to any complaint filed under this act shall be filed in accordance with the Rules Governing the Courts of the State of New Jersey after the complaint is unsealed and served upon the defendant.

i. When a person files an action under this act, no other person except the State may intervene or bring a related action based on the facts underlying the pending action.

2. Section 8 of P.L.2007, c.265 (C.2A:32C-8) is amended to read as follows:

C.2A:32C-8 Awarding of attorney's fees, expenses and costs.

8. a. If the Attorney General initiates an action under this act or assumes control of an action brought by a person under this act, the Attorney General shall be awarded reasonable attorney's fees, expenses, and costs. All such expenses, fees, and costs shall be awarded against the defendant.

b. If the court awards proceeds to the person bringing the action under this act, the person shall also be awarded an amount for reasonable attorney's fees, expenses, and costs. All such expenses, fees, and costs shall be awarded against the defendant.

c. If the Attorney General does not proceed with an action under this act and the defendant is the prevailing party, the court may award the defendant reasonable attorney's fees, expenses, and costs against the person bringing the action if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

d. No liability shall be incurred by the State or the Attorney General for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this act.

3. Section 9 of P.L.2007, c.265 (C.2A:32C-9) is amended to read as follows:

C.2A:32C-9 Immunity from civil liability; limitations on bringing an action.

9. a. No member of the Legislature, a member of the Judiciary, a senior Executive branch official, or a member of a county or municipal governing body may be civilly liable if the basis for an action is premised on evidence or information known to the State when the action was brought. For purposes of this subsection, the term "senior Executive branch official" means any person employed in the Executive branch of government holding a position having substantial managerial, policy-influencing or policy-executing responsibilities.

b. A person may not bring an action under this act based upon allegations or transactions that are the subject of a pending action or administrative proceeding to which the State is already a party.

c. No action brought under this act shall be based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing or audit conducted by or at the request of the Legislature or by the news media, unless the action is brought by the Attorney General, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this act based on the information.

d. No action may be brought under this act by a present or former employee or agent of the State or any political subdivision thereof when the action is based upon information discovered in any civil, criminal or administrative investigation or audit which investigation or audit was within the scope of the employee's or agent's duties or job description.

C.2A:32C-18 Report to Legislature.

4. On the 30th day after the effective date of P.L.2009, c.265 (C.2A:32C-18 et al.) and annually on the anniversary of the effective date of P.L.2009, c.265 (C.2A:32C-18 et al.), the Attorney General, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), shall submit to the Legislature, a report containing the following information:

a. The number of cases the Attorney General filed during the previous calendar year under the “New Jersey False Claims Act,” P.L.2007, c.265 (C.2A:32C-1 et seq.);

b. The number of cases private individuals filed under the “New Jersey False Claims Act,” P.L.2007, c.265 (C.2A:32C-1 et seq.) during the previous calendar year, including those cases that remain under seal, and specifying for those cases no longer under seal:

(1) the State or federal courts in which those cases were filed and the number in each court;

(2) the State program or agency that is involved in each case; and

(3) where the information is available, the number of cases filed by private individuals who previously had filed an action based on the same or similar transactions or allegations under the federal False Claims Act or the False Claims Act of another state;

c. The amount that was recovered by the State under the “New Jersey False Claims Act,” P.L.2007, c.265 (C.2A:32C-1 et seq.) in settlement, in damages, penalties, and litigation costs, if known, and specifying for each the following:

(1) the case number and parties for each case in which there was a recovery;

(2) the separate amounts of any funds recovered for damages, penalties, and litigation costs; and

(3) the percentage of the recovery and the amount awarded to any private person who brought the action.

5. This act shall take effect immediately.

Approved January 17, 2010.