

SENATE, No. 772

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Makes provisions of the “New Jersey False Claims Act” retroactive under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning false claims and amending P.L.2007, c.265.

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

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6 1. Section 11 of P.L.2007, c.265 (C.2A:32C-11) is amended to
7 read as follows:

8 11. a. A civil action under **[this act]** P.L.2007, c.265
9 (C.2A:32C-1 et seq.) may not be brought:

10 **[a.]** (1) More than six years after the date on which the
11 violation of the act is committed; or

12 **[b.]** (2) More than three years after the date when facts
13 material to the right of action are known or reasonably should have
14 been known by the State official charged with responsibility to act
15 in the circumstances, but in no event more than 10 years after the
16 date on which the violation is committed, whichever occurs last.

17 b. P.L.2007, c.265 (C.2A:32C-1 et seq.) shall apply to all
18 violations committed before March 13, 2008 provided that:

19 (1) the civil action filed pursuant to the “New Jersey False
20 Claims Act,” P.L.2007, c.265 (C.2A:32C-1 et seq.) is brought
21 within the applicable statute of limitations set out in subsection a. of
22 this section;

23 (2) the violation that is the basis of the claim was not previously
24 the subject of an action involving the “New Jersey Medical
25 Assistance and Health Services Act,” P.L.1968, c.413 (C.30:4D-1 et
26 seq.), filed by the same claimant under the “New Jersey False
27 Claims Act,” P.L.2007, c.265 (C.2A:32C-1 et seq.) or the federal
28 False Claims Act, 31 U.S.C. s.3729 et seq., prior to the enactment
29 of P.L. , c. (pending before the Legislature as this bill); and

30 (3) the civil action was initially submitted to the Attorney
31 General pursuant to subsection d. of section 5 of P.L.2007, c.265
32 (C.2A:32C-5) prior to October 11, 2011.

33 c. Any civil action that was filed within the statute of
34 limitations set out in subsection a. of this section and was initially
35 submitted to the Attorney General prior to October 11, 2011 may be
36 amended after that date to assert any additional allegations that
37 relate to violations that occurred within six years of March 13, 2008
38 or thereafter.

39 (cf: P.L.2007, c.265, s.11)

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41 2. This act shall take effect immediately.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

STATEMENT

The “New Jersey False Claims Act,” P.L.2007, c.265 (C.2A:32C-1 et seq.), imposes civil penalties on any person who submits a claim to the State for money, property, or services that he knows or should know is false. The False Claims Act allows the Attorney General or a private individual to bring a civil action to recover any funds fraudulently obtained and to receive a percentage of any monies collected. This bill would apply to certain violations of the False Claims Act (i.e., certain false claims) that occurred before the effective date of the act, March 13, 2008.

Under current law, a civil action under the False Claims Act must be brought within six years after the date on which the violation of the act is committed, 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 State official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

Under the bill, an action could be brought under the False Claims Act where false claims were submitted to the State before March 13, 2008 under the following circumstances:

(1) the civil action concerning the false claim was brought within the statute of limitations of the New Jersey False Claims Act (i.e., within six years of the violation of the act, or three years after the date when facts material to the right of action are known or reasonably should have been known, but in no event more than 10 years after the violation occurred);

(2) the false claim was not previously the subject of an action involving the “New Jersey Medical Assistance and Health Services Act,” P.L.1968, c.413 (C.30:4D-1 et seq.), filed by the same claimant under the “New Jersey False Claims Act” or the federal False Claims Act, 31 U.S.C. s.3729 et seq.; and

(3) the civil action concerning the false claim was initially submitted to the Attorney General prior to October 11, 2011.

October 11, 2011 was the date the Appellate Division ruled that the New Jersey False Claims Act is not retroactive and applies only prospectively; thus, under the ruling, the False Claims Act only encompasses civil actions based on violations that occurred after March 13, 2008. The court’s decision was based on its finding that the Legislature did not intend the act to be retroactive. State ex re. Hayling v. Correctional Medical Services, Inc., 422 N.J. Super.363 (App. Div. 2011). However, it is the view of the sponsor that the Legislature did intend the New Jersey False Claims Act to be retroactive. The intent of this bill is to encompass certain civil actions for false claims made prior to the 2008 effective date: specifically, where the civil actions were filed after the effective date but before the October 11, 2011 Appellate Division ruling, and

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1 where the civil actions were in compliance with the False Claims
2 Act's statute of limitations.

3 The bill also provides that any civil action filed within the statute
4 of limitations that was initially submitted to the Attorney General
5 prior to October 11, 2011 may be amended after that date to assert
6 any additional allegations that relate to acts that occurred within six
7 years of March 13, 2008 or thereafter.