

# New Consequences for Fraudulent Dealings

*with the State of New Jersey*

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## I. Introduction

New Jersey's recently enacted False Claims Act, P.L. 2007, c. 265 (the "Act"), is reason for any party dealing with the State of New Jersey to be extra careful when submitting claims for payment and other documentation related to a contract. The New Jersey State Legislature enacted the Act to deter anyone from submitting false or fraudulent claims to the State of New Jersey or its contracting agencies, and to encourage the public's assistance in reporting false claims submitted by others. The Act is modeled after the Federal False Claims Act (31 U.S.C. 3729 *et. seq.*) and establishes civil penalties for violations of the Act while providing whistleblower incentives for private citizens to bring their own lawsuits in court.

## II. False Claims Act Provisions

The key provision of the Act generally provides that a person shall be liable to the State for knowingly causing the State to pay a false claim. The Act broadly defines a "claim" as "a request or demand, under a contract or otherwise, for money, property, or services that is made to any employee, officer, or agent of the State, or to any contractor, grantee, or other recipient if the State provides any portion of the money, property, or services requested or demanded, or if the State will reimburse the contractor, grantee, or other recipient for any portion of the money, property, or services requested or demanded. The term does not include claims, records, or statements made in connection with State tax laws." The foregoing definition provides the Act with wide-ranging application.

Anyone found to have violated the Act may be charged a civil penalty of not less than nor more than the civil penalty allowed under the Federal False Claims Act (generally, from \$5,500 to \$11,000) for each false claim, plus an amount equal to three (3) times the amount of damages which the State sustains or would have sustained as a result of the false claim. The guilty party would also have to pay attorneys fees, expenses and the litigation costs of a successful plaintiff. The Act additionally establishes penalties for retaliation by an employer against an employee who has disclosed information relating to a false or fraudulent claim. Additionally, if a licensed professional, an owner or employee of a licensed professional, or any person licensed or certified by the State of New



Jersey is found to have violated the Act, the attorney general is directed by the Act to notify the appropriate licensing authority of the violation so that the licensing authority may take action.

In order to establish liability, a plaintiff must prove that the defendant “knowingly” caused the State to pay a false claim. The Act defines “knowingly” such that, in respect of information relating to the claim, a person

1. has actual knowledge of the information; or
2. acts in deliberate ignorance of the truth or falsity of the information; or
3. acts in reckless disregard of the truth or falsity of the information.

It should be noted that a plaintiff does not need to prove a specific intent to defraud. Nevertheless, acts occurring by innocent mistake or resulting from negligence will not render a person liable under the Act. Indeed, the Act explicitly states that a defendant may argue that the false claim was caused by mistake or negligence as a defense.

Specifically, anyone submitting claims to the State or a contracting agency of the State may be in danger of violating the Act for

1. knowingly presenting to an employee or officer of the State or recipient of State funds, a false or fraudulent claim for payment or approval;
2. knowingly making use of a false record or statement to get a false or fraudulent claim paid or approved by the State;
3. having possession or control of public property or money used by the State and knowingly delivering less property than the amount for which the person receives a certificate or receipt;
4. intending to defraud the State and making or delivering a receipt without completely knowing that the information in the receipt is true;



*The Act encourages private individuals to report information regarding false claims by offering whistleblowers a portion of the proceeds paid to the State to satisfy judgments or settlements of cases.*

5. knowingly buying public property from any person who may not lawfully sell the property; or
6. knowingly making or using a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State.

The Act encourages private individuals to report information regarding false claims by offering whistleblowers a portion of the proceeds paid to the State to satisfy judgments or settlements of cases. An individual is entitled to 15 percent to 25 percent of the proceeds due to the State if the attorney general prosecutes the case based on information supplied by the individual, and 25 percent to 30 percent of the proceeds if the individual successfully prosecutes the case himself.

Actions may be commenced under the Act up to six (6) years from the date on which the violation of the Act was committed, or three (3) years from the date when material facts related to rights under the Act become known or should reasonably have been known

by the State, whichever occurs last. However, in no event shall a case be commenced under the Act more than ten (10) years after the violation is committed.

### III. Conclusion

The Act creates an extensive framework for prosecuting and penalizing contractors believed to have defrauded the State. As noted above, the definition of “claim” is quite broad, and could include a wide variety of documents and correspondence handled by a contractor or its subcontractors. Accordingly, contractors must use additional prudence when submitting paperwork in connection with public projects or face burdensome liability. ■

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