

7169--B

I N S E N A T E

March 18, 2010

Introduced by Sens. SCHNEIDERMAN, ADAMS, DILAN, ONORATO, PARKER, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to establishing the New York fraud, enforcement and recovery act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known as the New York Fraud, Enforcement
2 and Recovery Act ("FERA").

3 S 2. Section 188 of the state finance law, as added by section 39 of
4 part C of chapter 58 of the laws of 2007, is amended to read as follows:

5 S 188. Definitions. As used in this article, the following terms shall
6 mean:

7 1. "Claim" (A) means any request or demand, whether under a contract
8 or otherwise, for money or property [which is made to any employee,
9 officer, or agent of the state or a local government, or to any contrac-
10 tor, grantee or other recipient, if the state or a local government
11 provides any portion of the money or property which is requested or
12 demanded or will reimburse such contractor, grantee, or other recipient
13 for any portion of the money or property which is requested or demanded]

14 THAT:

15 (I) IS PRESENTED TO AN OFFICER, EMPLOYEE OR AGENT OF THE STATE OR A
16 LOCAL GOVERNMENT; OR

17 (II) IS MADE TO A CONTRACTOR, GRANTEE, OR OTHER RECIPIENT, IF THE
18 MONEY OR PROPERTY IS TO BE SPENT OR USED ON THE STATE OR A LOCAL GOVERN-
19 MENT'S BEHALF OR TO ADVANCE A STATE OR LOCAL GOVERNMENT PROGRAM OR
20 INTEREST, AND IF THE STATE OR LOCAL GOVERNMENT (A) PROVIDES OR HAS
21 PROVIDED ANY PORTION OF THE MONEY OR PROPERTY REQUESTED OR DEMANDED; OR

22 (B) WILL REIMBURSE SUCH CONTRACTOR, GRANTEE, OR OTHER RECIPIENT FOR ANY
23 PORTION OF THE MONEY OR PROPERTY WHICH IS REQUESTED OR DEMANDED;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (B) DOES NOT INCLUDE REQUESTS OR DEMANDS FOR MONEY OR PROPERTY THAT
2 THE STATE OR A LOCAL GOVERNMENT HAS ALREADY PAID TO AN INDIVIDUAL AS
3 COMPENSATION FOR GOVERNMENT EMPLOYMENT OR AS AN INCOME SUBSIDY WITH NO
4 RESTRICTIONS ON THAT INDIVIDUAL'S USE OF THE MONEY OR PROPERTY.

5 2. "False claim" means any claim which is, either in whole or part,
6 false or fraudulent.

7 3. "Knowing and knowingly" (A) means that [with respect to a claim, or
8 information relating to a claim,] a person, WITH RESPECT TO INFORMATION:

9 [(a)] (I) has actual knowledge of [such claim or] THE information;

10 [(b)] (II) acts in deliberate ignorance of the truth or falsity of
11 [such claim or] THE information; or

12 [(c)] (III) acts in reckless disregard of the truth or falsity of
13 [such claim or] THE information[.]; AND

14 [Proof] (B) REQUIRE NO PROOF of specific intent to defraud [is not
15 required, provided, however that acts occurring by mistake or as a
16 result of mere negligence are not covered by this article].

17 4. "OBLIGATION" MEANS AN ESTABLISHED DUTY, WHETHER OR NOT FIXED, ARIS-
18 ING FROM AN EXPRESS OR IMPLIED CONTRACTUAL, GRANTOR-GRANTEE, OR LICEN-
19 SOR-LICENSEE RELATIONSHIP, FROM A FEE-BASED OR SIMILAR RELATIONSHIP,
20 FROM STATUTE OR REGULATION, OR FROM THE RETENTION OF ANY OVERPAYMENT.

21 5. "MATERIAL" MEANS HAVING A NATURAL TENDENCY TO INFLUENCE, OR BE
22 CAPABLE OF INFLUENCING THE PAYMENT OR RECEIPT OF MONEY OR PROPERTY.

23 [4.] 6. "Local government" means any county, city, town, village,
24 school district, board of cooperative educational services, local public
25 benefit corporation or other municipal corporation or political subdivi-
26 sion OF SUCH LOCAL GOVERNMENT, OR of the state.

27 [5.] 7. "Original source" means a person who has direct and independ-
28 ent knowledge of the information on which allegations are based, and has
29 voluntarily provided the information to the state or a local government
30 before OR SIMULTANEOUS WITH filing an action under this article which is
31 based on the information.

32 [6.] 8. "Person" means any natural person, partnership, corporation,
33 association or any other legal entity or individual, other than the
34 state or a local government.

35 [7.] 9. "State" means the state of New York and any state department,
36 board, bureau, division, commission, committee, public benefit corpo-
37 ration, public authority, council, office or other governmental entity
38 performing a governmental or proprietary function for the state.

39 S 3. Subdivision 1 of section 189 of the state finance law, as added
40 by section 39 of part C of chapter 58 of the laws of 2007, is amended to
41 read as follows:

42 1. Subject to the provisions of subdivision two of this section, any
43 person who:

44 (a) knowingly presents, or causes to be presented[, to any employee,
45 officer or agent of the state or a local government,] a false or fraudu-
46 lent claim for payment or approval;

47 (b) knowingly makes, uses, or causes to be made or used, a false
48 record or statement MATERIAL to [get] a false or fraudulent claim [paid
49 or approved by the state or a local government];

50 (c) conspires to [defraud the state or a local government by getting a
51 false or fraudulent claim allowed or paid] COMMIT A VIOLATION OF PARA-
52 GRAPH (A), (B), (D), (E), (F) OR (G) OF THIS SUBDIVISION;

53 (d) has possession, custody, or control of property or money used, or
54 to be used, by the state or a local government and[, intending to
55 defraud the state or a local government or willfully to conceal the
56 property or money,] KNOWINGLY delivers, or causes to be delivered, less

1 [property or money] than [the amount for which the person receives a
2 certificate or receipt] ALL OF THAT MONEY OR PROPERTY;

3 (e) is authorized to make or deliver a document certifying receipt of
4 property used, or to be used, by the state or a local government and,
5 intending to defraud the state or a local government, makes or delivers
6 the receipt without completely knowing that the information on the
7 receipt is true;

8 (f) knowingly buys, or receives as a pledge of an obligation or debt,
9 public property from an officer or employee of the state or a local
10 government [knowing that the officer or employee lawfully may not sell
11 or pledge the property] WHO VIOLATES A PROVISION OF LAW WHEN SELLING OR
12 PLEDGING SUCH PROPERTY; or

13 (g) knowingly makes, uses, or causes to be made or used, a false
14 record or statement MATERIAL to [conceal, avoid, or decrease] an obli-
15 gation to pay or transmit money or property to the state or a local
16 government[;] shall be liable[: (i)] to the state OR A LOCAL GOVERNMENT
17 for a civil penalty of not less than six thousand dollars and not more
18 than twelve thousand dollars, plus three times the amount of damages,
19 INCLUDING CONSEQUENTIAL DAMAGES, which the state OR LOCAL GOVERNMENT
20 sustains because of the act of that person[; and (ii) to any local
21 government for three times the amount of damages sustained by such local
22 government because of the act of that person]. THE CIVIL PENALTIES SHALL
23 BE PAID TO THE STATE IN ANY ACTION INVOLVING DAMAGES TO THE STATE OR IN
24 ANY QUI TAM CIVIL ACTION. THE CIVIL PENALTIES SHALL BE PAID TO A LOCAL
25 GOVERNMENT ONLY IF BOTH (I) THE ACTION INVOLVES DAMAGES SUSTAINED BY A
26 LOCAL GOVERNMENT BUT NOT THE STATE; AND (II) THE STATE PLAYED NO ROLE IN
27 THE INVESTIGATION OR PROSECUTION OF THE ACTION.

28 S 4. Subdivision 1 of section 190 of the state finance law, as added
29 by section 39 of part C of chapter 58 of the laws of 2007, is amended to
30 read as follows:

31 1. Civil enforcement actions. The attorney general shall have the
32 authority to investigate violations under section one hundred eighty-
33 nine of this article. If the attorney general believes that a person has
34 violated or is violating such section, then the attorney general may
35 bring a civil action on behalf of the people of the state of New York or
36 on behalf of a local government against such person. A local government
37 also shall have the authority to investigate violations that may have
38 resulted in damages to such local government under section one hundred
39 eighty-nine of this article, and may bring a civil action on its own
40 behalf [to recover damages sustained by such local government as a
41 result of such violations] OR ON THE BEHALF OF ANY SUBDIVISION OF SUCH
42 LOCAL GOVERNMENT. No action may be filed pursuant to this subdivision
43 against the federal government, the state or a local government, or any
44 officer or employee thereof acting in his or her official capacity. The
45 attorney general shall consult with the office of medicaid inspector
46 general prior to filing any action related to the medicaid program.

47 S 5. Paragraphs (a) and (b) of subdivision 2 of section 190 of the
48 state finance law, as added by section 39 of part C of chapter 58 of the
49 laws of 2007, are amended to read as follows:

50 (a) Any person may bring a qui tam civil action for a violation of
51 section one hundred eighty-nine of this article on behalf of the PERSON,
52 THE people of the state of New York, or a local government. No action
53 may be filed pursuant to this subdivision against the federal govern-
54 ment, the state or a local government, or any officer or employee there-
55 of acting in his or her official capacity.

1 (b) A copy of the complaint and written disclosure of substantially
2 all material evidence and information the person possesses shall be
3 served on the state pursuant to subdivision one of section three hundred
4 seven of the civil practice law and rules. [The] ANY complaint FILED IN
5 A COURT OF THE STATE OF NEW YORK shall be filed in supreme court in
6 camera, shall remain under seal for at least sixty days, and shall not
7 be served on the defendant until the court so orders. THE SEAL SHALL NOT
8 PRECLUDE THE ATTORNEY GENERAL, A LOCAL GOVERNMENT, OR THE QUI TAM PLAIN-
9 TIFF FROM SERVING THE COMPLAINT, ANY OTHER PLEADINGS, OR THE WRITTEN
10 DISCLOSURE OF SUBSTANTIALLY ALL MATERIAL EVIDENCE AND INFORMATION
11 POSSESSED BY THE PERSON BRINGING THE ACTION, ON RELEVANT STATE OR LOCAL
12 GOVERNMENT AGENCIES, OR ON LAW ENFORCEMENT AUTHORITIES OF THE STATE, A
13 LOCAL GOVERNMENT, OR OTHER JURISDICTIONS, SO THAT THE ACTIONS MAY BE
14 INVESTIGATED OR PROSECUTED, EXCEPT THAT SUCH SEAL APPLIES TO THE AGEN-
15 CIES OR AUTHORITIES SO SERVED TO THE SAME EXTENT AS THE SEAL APPLIES TO
16 OTHER PARTIES IN THE ACTION. If the allegations in the complaint allege
17 a violation of section one hundred eighty-nine of this article involving
18 damages to a local government, then the attorney general may at any time
19 provide a copy of such complaint and written disclosure to the attorney
20 for such local government; provided, however, that if the allegations in
21 the complaint involve damages only to a city with a population of one
22 million or more, or only to the state and such a city, then the attorney
23 general shall provide such complaint and written disclosure to the
24 corporation counsel of such city within thirty days. The state may elect
25 to supersede or intervene and proceed with the action, or to authorize a
26 local government that may have sustained damages to supersede or inter-
27 vene, within sixty days after it receives both the complaint and the
28 material evidence and information; provided, however, that if the alle-
29 gations in the complaint involve damages only to a city with a popu-
30 lation of one million or more, then the attorney general may not super-
31 sede or intervene in such action without the consent of the corporation
32 counsel of such city. The attorney general shall consult with the office
33 of the medicaid inspector general prior to superseding or intervening in
34 any action related to the medicaid program. The attorney general may,
35 for good cause shown, move the court for extensions of the time during
36 which the complaint remains under seal under this subdivision. Any such
37 motions may be supported by affidavits or other submissions in camera.

38 S 6. Subdivision 2 of section 190 of the state finance law is amended
39 by adding a new paragraph (b-1) to read as follows:

40 (B-1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION,
41 THE WRITTEN DISCLOSURE OF MATERIAL EVIDENCE PREPARED BY A QUI TAM
42 PLAINTIFF'S COUNSEL AND SERVED ON THE STATE PURSUANT TO PARAGRAPH (B) OF
43 THIS SUBDIVISION SHALL NOT BE DISCOVERABLE ABSENT A SHOWING OF EXTRAOR-
44 DINARY NEED. NEITHER THE STATE, A LOCAL GOVERNMENT, A QUI TAM PLAINTIFF
45 NOR THE QUI TAM PLAINTIFF'S COUNSEL SHALL BE DEEMED TO HAVE WAIVED ANY
46 OTHERWISE APPLICABLE PRIVILEGE BECAUSE OF COMMUNICATIONS BETWEEN OR
47 AMONG THE FEDERAL GOVERNMENT, THE STATE, ANY LOCAL GOVERNMENTS ON WHOSE
48 BEHALF THE ACTION IS BROUGHT, RELEVANT GOVERNMENT AGENCIES RELATED TO
49 THE ALLEGATIONS, OTHER LAW ENFORCEMENT AGENCIES, THE QUI TAM PLAINTIFF,
50 AND THE QUI TAM PLAINTIFF'S COUNSEL.

51 S 7. Paragraph (d) of subdivision 2 of section 190 of the state
52 finance law, as added by section 39 of part C of chapter 58 of the laws
53 of 2007, is amended to read as follows:

54 (d) If the state notifies the court that it intends to file a
55 complaint against the defendant and thereby be substituted as the plain-
56 tiff in the action, or to permit a local government to do so, such

1 complaint must be filed within thirty days after the notification to the
2 court. FOR STATUTE OF LIMITATIONS PURPOSES, ANY SUCH COMPLAINT FILED BY
3 THE STATE OR A LOCAL GOVERNMENT SHALL RELATE BACK TO THE FILING DATE OF
4 THE COMPLAINT OF THE QUI TAM PLAINTIFF, TO THE EXTENT THAT THE CAUSE OF
5 ACTION OF THE STATE OR LOCAL GOVERNMENT ARISES OUT OF THE CONDUCT, TRAN-
6 SACTIONS, OR OCCURRENCES SET FORTH, OR ATTEMPTED TO BE SET FORTH, IN THE
7 PRIOR COMPLAINT OF THE QUI TAM PLAINTIFF.

8 S 8. Paragraph (f) of subdivision 2 of section 190 of the state
9 finance law is amended by adding two new subparagraphs (i) and (ii) to
10 read as follows:

11 (I) THE QUI TAM PLAINTIFF SHALL PROVIDE THE STATE OR ANY APPLICABLE
12 LOCAL GOVERNMENT WITH A COPY OF ANY DOCUMENT FILED WITH THE COURT ON OR
13 ABOUT THE DATE IT IS FILED, OR ANY ORDER ISSUED BY THE COURT ON OR ABOUT
14 THE DAY IT IS ISSUED. THE QUI TAM PLAINTIFF SHALL PROVIDE THE STATE OR
15 ANY APPLICABLE LOCAL GOVERNMENT WITH ANY OTHER INFORMATION RELATING TO
16 THE ACTION UPON REQUEST. A QUI TAM PLAINTIFF SHALL NOTIFY THE STATE OR
17 ANY APPLICABLE LOCAL GOVERNMENT WITHIN FIVE DAYS OF ANY DECISION, ORDER
18 OR VERDICT RESULTING IN JUDGMENT IN FAVOR OF THE STATE OR LOCAL GOVERN-
19 MENT.

20 (II) THE QUI TAM PLAINTIFF MAY NOT SETTLE OR DISMISS THE ACTION, IN
21 WHOLE OR IN PART, WITHOUT THE CONSENT OF EITHER THE STATE, OR A LOCAL
22 GOVERNMENT ON WHOSE BEHALF THE ACTION WAS BROUGHT.

23 S 9. Paragraphs (a) and (b) of subdivision 6 of section 190 of the
24 state finance law, as added by section 39 of part C of chapter 58 of the
25 laws of 2007, are amended to read as follows:

26 (a) If the attorney general elects to convert the qui tam civil action
27 into an attorney general enforcement action, or to permit a local
28 government to convert the action into a civil enforcement action by such
29 local government, or if the attorney general or a local government
30 elects to intervene in the qui tam civil action, then the person or
31 persons who initiated the qui tam civil action collectively shall be
32 entitled IN ANY ACTION RELATED TO THE MEDICAID PROGRAM to receive
33 between fifteen and twenty-five percent of the proceeds recovered in the
34 action or in settlement of the action, AND SHALL BE ENTITLED TO RECEIVE
35 BETWEEN FIFTEEN AND THIRTY-THREE PERCENT OF SUCH PROCEEDS IN ANY OTHER
36 ACTION. The court shall determine the percentage of the proceeds to
37 which a person commencing a qui tam civil action is entitled, by consid-
38 ering the extent to which the plaintiff substantially contributed to the
39 prosecution of the action. Where the court finds that the action was
40 based primarily on disclosures of specific information (other than
41 information provided by the person bringing the action) relating to
42 allegations or transactions in a criminal, civil or administrative hear-
43 ing, in a legislative or administrative report, hearing, audit or inves-
44 tigation, or from the news media, the court may award such sums as it
45 considers appropriate, but in no case more than ten percent of the
46 proceeds, taking into account the significance of the information and
47 the role of the person or persons bringing the action in advancing the
48 case to litigation.

49 (b) If the attorney general or a local government does not elect to
50 intervene or convert the action, and the action is successful, then the
51 person or persons who initiated the qui tam action which obtains
52 proceeds shall be entitled IN ANY ACTION RELATED TO THE MEDICAID PROGRAM
53 to receive between twenty-five and thirty percent of the proceeds recov-
54 ered in the action or settlement of the action, AND SHALL BE ENTITLED TO
55 RECEIVE BETWEEN TWENTY-FIVE AND FIFTY PERCENT OF SUCH PROCEEDS IN ANY
56 OTHER ACTION. The court shall determine the percentage of the proceeds

1 to which a person commencing a qui tam civil action is entitled, by
2 considering the extent to which the plaintiff substantially contributed
3 to the prosecution of the action.

4 S 10. Subdivision 6 of section 190 of the state finance law is amended
5 by adding a new paragraph (d) to read as follows:

6 (D) FOR PURPOSES OF SECTION ONE HUNDRED FIVE OF THE CIVIL PRACTICE LAW
7 AND RULES, THE PROPER PARTY UPON THE DEATH OF THE QUI TAM PLAINTIFF IS
8 THE QUI TAM PLAINTIFF'S ESTATE, WHO SHALL HAVE ALL THE RIGHTS AND INTER-
9 ESTS OF THE DECEASED QUI TAM PLAINTIFF. IN ONGOING CASES WHERE THE
10 GOVERNMENT HAS DECLINED TO INTERVENE, THE QUI TAM PLAINTIFF'S COUNSEL
11 SHALL WITHIN FIVE DAYS OF LEARNING OF THE DEATH OF THE QUI TAM PLAINTIFF
12 NOTIFY THE COURT AND THE STATE OR LOCAL GOVERNMENTS OF ON WHOSE BEHALF
13 THE ACTION WAS BROUGHT.

14 S 11. Subdivision 9 of section 190 of the state finance law, as added
15 by section 39 of part C of chapter 58 of the laws of 2007, is amended to
16 read as follows:

17 9. Certain actions barred. [No court shall have jurisdiction over a
18 qui tam civil action brought pursuant to subdivision two of this
19 section:] THE COURT SHALL CAUSE A QUI TAM CIVIL ACTION TO BE DISMISSED:

20 (A) UNDER THE CONDITIONS SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH
21 (B) OF THIS SUBDIVISION UPON MOTION MADE BY THE ATTORNEY GENERAL, OR BY
22 ANY PARTY TO THE ACTION WHO FIRST HAS OBTAINED THE APPROVAL OF THE
23 ATTORNEY GENERAL TO MAKE SUCH MOTION AND OF THE CONTENTS OF SUCH MOTION;
24 PROVIDED THAT SUCH APPROVAL SHALL NOT BE DEEMED TO BE A STATEMENT IN
25 SUPPORT OF THE MERITS OF SUCH MOTION UNLESS OTHERWISE STATED BY THE
26 ATTORNEY GENERAL; OR

27 (B) UNDER THE CONDITIONS SET FORTH IN SUBPARAGRAPH (I), (III), OR (IV)
28 OF THIS PARAGRAPH UPON MOTION MADE BY ANY PARTY TO THE ACTION, IF THE
29 QUI TAM CIVIL ACTION IS:

30 [(a)] (I) based on allegations or transactions which are the subject
31 of a pending civil action or an administrative action in which the state
32 or a local government is already a party;

33 [(b)] (II) derived from public disclosure of allegations or trans-
34 actions in a criminal, civil, or administrative hearing, in a legisla-
35 tive or administrative report, hearing, audit or investigation, or from
36 the news media, unless the person who initiated the action is an
37 original source of the information; PROVIDED THAT FOR PURPOSES OF THIS
38 SUBPARAGRAPH:

39 (A) A PERSON DOES NOT CREATE A "PUBLIC DISCLOSURE" BY OBTAINING INFOR-
40 MATION PURSUANT TO A REQUEST MADE UNDER ARTICLE SIX OF THE PUBLIC OFFI-
41 CERS LAW, OR UNDER ANY OTHER FEDERAL, STATE OR LOCAL LAW, RULE OR
42 PROGRAM ENABLING THE PUBLIC TO REQUEST, RECEIVE OR VIEW DOCUMENTS OR
43 INFORMATION IN THE POSSESSION OF PUBLIC OFFICIALS OR PUBLIC AGENCIES;

44 (B) A "PUBLIC DISCLOSURE" IN A CRIMINAL, CIVIL, OR ADMINISTRATIVE
45 HEARING, OR IN A LEGISLATIVE OR ADMINISTRATIVE REPORT, HEARING, AUDIT OR
46 INVESTIGATION, INCLUDES ONLY THOSE DISCLOSURES THAT ARE MADE ON THE
47 PUBLIC RECORD, OR THAT HAVE OTHERWISE BEEN DISSEMINATED BROADLY TO THE
48 GENERAL PUBLIC;

49 (C) A "PUBLIC DISCLOSURE" SHALL NOT BE DEEMED TO HAVE BEEN MADE IN THE
50 "NEWS MEDIA" MERELY BECAUSE INFORMATION OF ALLEGATIONS OR TRANSACTIONS
51 HAS BEEN POSTED ON THE INTERNET OR ON A COMPUTER NETWORK; AND

52 (D) AN ACTION IS "DERIVED FROM" THE PUBLIC DISCLOSURE OF ALLEGATIONS
53 OR TRANSACTIONS ONLY IF THE QUI TAM PLAINTIFF DERIVED KNOWLEDGE OF ALL
54 OF THE ESSENTIAL ELEMENTS OF LIABILITY FROM THE PUBLIC DISCLOSURE;

55 [(c)] (III) if the agency has reached a binding settlement or other
56 agreement with the person who [submitted such false claims] VIOLATED

1 SECTION ONE HUNDRED EIGHTY-NINE OF THIS ARTICLE resolving the matter and
2 such agreement has been approved in writing by the attorney general, or
3 by the local government attorney if the matter involves allegations of
4 false claims submitted to a local government[; or

5 (d) against a member of the legislature, a member of the judiciary, or
6 a senior executive branch official if the action is based on evidence or
7 information known to the state when the action was brought].

8 S 12. Section 191 of the state finance law, as added by section 39 of
9 part C of chapter 58 of the laws of 2007, is amended to read as follows:

10 S 191. [Remedies of employees] ANTI-RETALIATION AND ANTI-BLACKLISTING
11 PROTECTIONS. 1. Any CURRENT OR FORMER employee, CONTRACTOR, OR AGENT of
12 any private or public employer who is discharged, demoted, suspended,
13 threatened, harassed or in any other manner discriminated against in the
14 terms and conditions of employment [by his or her employer] OR OTHERWISE
15 HARMED OR PENALIZED BY AN EMPLOYER, OR A PROSPECTIVE EMPLOYER, because
16 of lawful acts done by the employee [on behalf of the employer],
17 CONTRACTOR, AGENT, or ASSOCIATED others in furtherance of an action
18 brought under this article[, including the investigation for, initiation
19 of, testimony for, or assistance in an action filed or to be filed under
20 this section] OR OTHER EFFORTS TO STOP ONE OR MORE VIOLATIONS OF THIS
21 ARTICLE, shall be entitled to all relief necessary to make the employee,
22 CONTRACTOR OR AGENT whole. Such relief shall include but not be limited
23 to:

24 (a) an injunction to restrain continued discrimination;
25 (b) INSTALLMENT OR reinstatement to the position such employee would
26 have had but for the discrimination or to an equivalent position;
27 (c) reinstatement of full fringe benefits and seniority rights;
28 (d) payment of two times back pay, plus interest; and
29 (e) compensation for any special damages sustained as a result of the
30 discrimination, including litigation costs and reasonable attorneys'
31 fees.

32 2. FOR PURPOSES OF THIS SECTION, A "LAWFUL ACT" SHALL INCLUDE OBTAIN-
33 ING OR TRANSMITTING TO THE STATE, A LOCAL GOVERNMENT, A QUI TAM PLAIN-
34 TIFF, OR PRIVATE COUNSEL SOLELY EMPLOYED TO INVESTIGATE, POTENTIALLY
35 FILE, OR FILE A CAUSE OF ACTION UNDER THIS ARTICLE, DOCUMENTS, DATA,
36 CORRESPONDENCE, ELECTRONIC MAIL, OR ANY OTHER INFORMATION, EVEN THOUGH
37 SUCH ACT MAY VIOLATE A CONTRACT, EMPLOYMENT TERM, OR DUTY OWED TO THE
38 EMPLOYER OR CONTRACTOR, SO LONG AS THE POSSESSION AND TRANSMISSION OF
39 SUCH DOCUMENTS ARE FOR THE SOLE PURPOSE TO FURTHER EFFORTS TO STOP ONE
40 OR MORE VIOLATIONS OF THIS ARTICLE. NOTHING IN THIS SUBDIVISION SHALL
41 BE INTERPRETED TO PREVENT ANY LAW ENFORCEMENT AUTHORITY FROM BRINGING A
42 CIVIL OR CRIMINAL ACTION AGAINST ANY PERSON FOR VIOLATING ANY PROVISION
43 OF LAW.

44 [2.] 3. An employee, CONTRACTOR OR AGENT described in subdivision one
45 of this section may bring an action in the appropriate supreme court for
46 the relief provided in this section.

47 S 13. Subdivision 1 of section 192 of the state finance law, as added
48 by section 39 of part C of chapter 58 of the laws of 2007, is amended to
49 read as follows:

50 1. A civil action under this article shall be commenced no later
51 than[:

52 (a) six years after the date on which the violation of section one
53 hundred eighty-nine of this article is committed; or

54 (b) three years after the date when facts material to the right of
55 action are known or reasonably should have been known by the official of
56 the state or local government charged with responsibility to act in the

1 circumstances, but in no event more than] ten years after the date on
2 which the violation is committed[, whichever occurs last]. Notwith-
3 standing any other provision of law, for the purposes of this article,
4 an action under this article is commenced by the filing of the complaint
5 [in the supreme court].

6 S 14. Section 192 of the state finance law is amended by adding a new
7 subdivision 1-a to read as follows:

8 1-A. FOR PURPOSES OF APPLYING RULE THREE THOUSAND SIXTEEN OF THE CIVIL
9 PRACTICE LAW AND RULES, IN PLEADING AN ACTION BROUGHT UNDER THIS SUBDI-
10 VISION THE QUI TAM PLAINTIFF SHALL NOT BE REQUIRED TO IDENTIFY SPECIFIC
11 CLAIMS THAT RESULT FROM AN ALLEGED COURSE OF MISCONDUCT, OR ANY SPECIFIC
12 RECORDS OR STATEMENTS USED, IF THE FACTS ALLEGED IN THE COMPLAINT, IF
13 ULTIMATELY PROVEN TRUE, WOULD PROVIDE A REASONABLE INDICATION THAT ONE
14 OR MORE VIOLATIONS OF SECTION ONE HUNDRED EIGHTY-NINE OF THIS ARTICLE
15 ARE LIKELY TO HAVE OCCURRED, AND IF THE ALLEGATIONS IN THE PLEADING
16 PROVIDE ADEQUATE NOTICE OF THE SPECIFIC NATURE OF THE ALLEGED MISCONDUCT
17 TO PERMIT THE STATE OR A LOCAL GOVERNMENT EFFECTIVELY TO INVESTIGATE AND
18 DEFENDANTS FAIRLY TO DEFEND THE ALLEGATIONS MADE.

19 S 15. This act shall take effect immediately and shall apply to
20 claims, records or statements filed or made prior to, on or after April
21 1, 2007; provided, however, that section nine of this act shall not
22 apply to any cause of action filed under article 13 of the state finance
23 law prior to the effective date of this act.