STATE OF NEW YORK

7989

2017-2018 Regular Sessions

IN ASSEMBLY

May 24, 2017

Introduced by M. of A. BARNWELL, WEINSTEIN -- (at request of the Department of Law) -- read once and referred to the Committee on Judiciary

AN ACT to amend the state finance law, in relation to adjustment of penalties due to inflation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and intent. The legislature finds that adjustment of the minimum and maximum penalty amounts provided in New York's False Claims Act is necessary in order for New York to maintain compliance with the federal Deficit Reduction Act of 2005, Social Security Act § 1090(a) (the "DRA") by providing for penalty provisions equally effective to the federal False Claims Act. The federal False Claims Act, amended effective August 1, 2016, provides for adjustment of federal civil penalties based on inflation; the New York False Claims Act currently provides only for fixed penalties. When state law is compliant with the DRA, the state is entitled to receive a greater percentage share of recoveries from enforcement actions concerning Medicaid program funds, regardless of the actual amount of penalty imposed. When state law falls out of compliance, the state is at risk of losing tens of millions of dollars annually. It is the legislative intent that this act maintains the state's compliance with federal Deficit Reduction Act and federal False Claims Act penalties without the need for legislation enactments to adjust for inflation.

§ 2. Paragraph (h) of subdivision 1 of section 189 of the state finance law, as amended by section 8 of part A of chapter 56 of the laws of 2013, is amended to read as follows:

(h) knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or a local government, or conspires to do the same; shall be liable to the state or a local government, as applicable, for a civil penalty of not less than six thousand dollars and not more than twelve thousand

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

LBD10852-02-7

dollars, **except that these lower and upper limits on liability shall automatically be adjusted to equal the civil penalty allowed under the federal False Claims Act, 31 U.S.C. sec. 3729, et seq., as amended, if and as the penalties in said federal False Claims Act are adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note; Pub. L. No. 101-410),** plus three times the amount of all damages, including consequential damages, which the state or local government sustains because of the act of that person.

§ 3. This act shall take effect immediately.