

# ASSEMBLY, No. 5584

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 8, 2023

**Sponsored by:**

**Assemblywoman ANGELICA M. JIMENEZ**

**District 32 (Bergen and Hudson)**

**Assemblyman ROY FREIMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Senator GORDON M. JOHNSON**

**District 37 (Bergen)**

**Senator SHIRLEY K. TURNER**

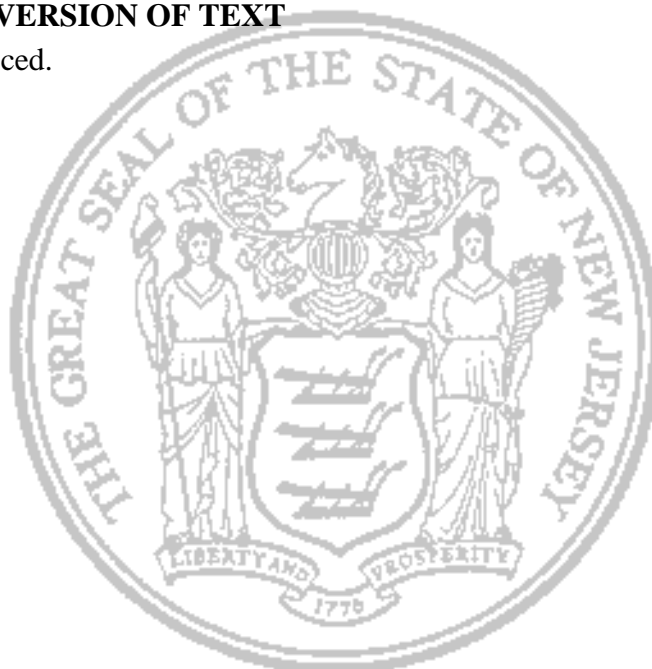
**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Revises New Jersey False Claims Act to comply with federal law for purposes of entitling State to enhanced recovery in Medicaid fraud cases.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/30/2023)

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

3

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

6

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

9 2. As used in this act:

10 "Attorney General" means the Attorney General of the State of  
11 New Jersey, or **[his]** the Attorney General's designee.

12 "Claim" means **[a]** any request or demand, under a contract or  
13 otherwise, for money**[,]** or property, whether or not the State has  
14 title to the money or property, or for services, that is made to any  
15 employee, officer, or agent of the State, or is made to any  
16 contractor, grantee, or other recipient if the money, property, or  
17 service is to be spent or used on the State's behalf or to advance a  
18 State program or interest, if the State provides or has provided any  
19 portion of the money, property, or services requested or  
20 demanded**[,]** or if the State will reimburse the contractor, grantee,  
21 or other recipient for any portion of the money, property, or  
22 services requested or demanded. The term does not include claims,  
23 records, or statements made in connection with State tax laws or  
24 requests or demands for money or property that the State has paid to  
25 an individual as compensation for governmental employment or as  
26 an income subsidy with no restrictions on that individual's use of  
27 the money or property.

28 "Knowing" or "knowingly" means, with respect to information,  
29 that a person:

30 (1) has actual knowledge of the information; or

31 (2) acts in deliberate ignorance of the truth or falsity of the  
32 information; or

33 (3) acts in reckless disregard of the truth or falsity of the  
34 information.

35 No proof of specific intent to defraud is required. Acts occurring  
36 by innocent mistake or as a result of mere negligence shall be a  
37 defense to an action under this act.

38 "Material" means having a natural tendency to influence, or be  
39 capable of influencing, the payment or receipt of money or  
40 property.

41 "Obligation" means an established duty, whether or not fixed,  
42 arising from an express or implied contractual, grantor-grantee, or  
43 licensor-licensee relationship, from a fee-based or similar

**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.

1 relationship, from statute or regulation, or from the retention of any  
2 overpayment.

3 "State" means any of the principal departments in the Executive  
4 Branch of State government, and any division, board, bureau,  
5 office, commission or other instrumentality within or created by  
6 such department; and any independent State authority, commission,  
7 instrumentality or agency.  
8 (cf: P.L.2007, c.265, s.2)

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

12 3. A person shall be jointly and severally liable to the State for  
13 a civil penalty of not less than and not more than the civil penalty  
14 allowed under the federal False Claims Act (31 U.S.C.s.3729 et  
15 seq.), as may be adjusted in accordance with the inflation  
16 adjustment procedures prescribed in the Federal Civil Penalties  
17 Inflation Adjustment Act of 1990, Pub.L.101-410, for each false or  
18 fraudulent claim, plus three times the amount of damages which the  
19 State sustains, if the person commits any of the following acts:

20 a. Knowingly presents or causes to be presented **【to an**  
21 **employee, officer or agent of the State, or to any contractor,**  
22 **grantee, or other recipient of State funds】**, a false or fraudulent  
23 claim for payment or approval;

24 b. Knowingly makes, uses, or causes to be made or used a false  
25 record or statement material to **【get】** a false or fraudulent claim  
26 **【paid or approved by the State】**;

27 c. Conspires to **【defraud the State by getting a false or**  
28 **fraudulent claim allowed or paid by the State】** commit any violation  
29 of subsection a., b., d., e., f., or g. of this section;

30 d. Has possession, custody, or control of public property or  
31 money used or to be used by the State and knowingly delivers or  
32 causes to be delivered less property or money than the amount for  
33 which the person receives a certificate or receipt;

34 e. Is authorized to make or deliver a document certifying  
35 receipt of property used or to be used by the State and, intending to  
36 defraud the entity, makes or delivers a receipt without completely  
37 knowing that the information on the receipt is true;

38 f. Knowingly buys, or receives as a pledge of an obligation or  
39 debt, public property from any person who lawfully may not sell or  
40 pledge the property; or

41 g. Knowingly makes, uses, or causes to be made or used a false  
42 record or statement **【to conceal, avoid, or decrease】** material to an  
43 obligation to pay or transmit money or property to the State, or  
44 knowingly conceals or knowingly and improperly avoids or  
45 decreases an obligation to pay or transmit money or property to the  
46 State.

47 (cf: P.L.2007, c.265, s.3)

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

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

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

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

17       d. A complaint alleging a false claim filed under this act shall  
18 be so designated when filed, in accordance with the Rules  
19 Governing the Courts of the State of New Jersey. **【Immediately**  
20 **upon】** Upon filing of the complaint, the plaintiff shall serve by  
21 registered mail, return receipt requested, the Attorney General with  
22 a copy of the complaint and written disclosure of substantially all  
23 material evidence and information the person possesses. The  
24 Attorney General may elect to intervene and proceed with the action  
25 on behalf of the State within 60 days after it receives both the  
26 complaint and the material evidence and information, and in doing  
27 so may file its own complaint, amend the plaintiff's complaint, or  
28 supplement the claims in which it is intervening with additional  
29 detail or by adding any additional claims with respect to which the  
30 Attorney General contends it is entitled to relief. For statute of  
31 limitations purposes, any such pleading by the Attorney General  
32 pursuant to this subsection shall relate back to the filing date of the  
33 complaint of the person who originally brought the action, to the  
34 extent that the claim of the Attorney General arises out of the  
35 conduct, transactions or occurrences set forth, or attempted to be set  
36 forth, in the prior complaint of that person.

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

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

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

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

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

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

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

11 (cf: P.L.2009, c.265, s.1)

12  
13 4. Section 6 of P.L.2007, c.265 (2A:32C-6) is amended to read as  
14 follows:

15 6. a. If the Attorney General proceeds with the action, the  
16 Attorney General shall have primary responsibility for prosecuting  
17 the action, and shall not be bound by any act of the person bringing  
18 the action. The person bringing the action has the right to continue  
19 as a party to the action, subject to limitations specified in this act.  
20 The person bringing the action **【has an ongoing duty】** shall be  
21 authorized to continue to disclose information related to the action  
22 to the Attorney General.

23 b. The Attorney General may move to dismiss the action for  
24 good cause shown, notwithstanding the objections of the person  
25 bringing the action, provided that the person bringing the action has  
26 been notified by the Attorney General and the court has provided  
27 the person bringing the action with the opportunity for a hearing.

28 c. Nothing in this act shall be construed to limit the authority  
29 of the Attorney General **【or the person bringing the action】** to settle  
30 the action, if the court determines after a hearing that the proposed  
31 settlement is fair, adequate, and reasonable under all the  
32 circumstances. Upon a showing of good cause, the hearing may be  
33 held in camera.

34 d. Upon a showing by the Attorney General that unrestricted  
35 participation during the course of the litigation by the person  
36 initiating the action would interfere with or unduly delay the  
37 Attorney General's prosecution of the case, or would be repetitious,  
38 irrelevant, or for purposes of harassment, the court may, in its  
39 discretion, impose limitations on the person's participation,  
40 including, but not limited to:

41 (1) Limiting the number of witnesses the person may call;

42 (2) Limiting the length of the testimony of the person's  
43 witnesses;

44 (3) Limiting the person's cross-examination of witnesses; or

45 (4) Otherwise limiting the participation by the person in the  
46 litigation.

47 e. Upon a showing by the defendant that unrestricted  
48 participation during the course of the litigation by the person

1 initiating the action would be for purposes of harassment or would  
2 cause the defendant undue burden or unnecessary expense, the court  
3 may limit the participation by the person in the litigation.

4 f. If the Attorney General decides not to proceed with the  
5 action, the seal **【shall】** may be lifted and the person who initiated  
6 the action shall have the right to conduct the action. The decision of  
7 the Attorney General on whether to proceed with an action shall be  
8 deemed final and shall not be subject to review by any court or  
9 agency. If the Attorney General so requests, the Attorney General  
10 shall be served at the expense of the Attorney General with copies  
11 of all pleadings and motions filed in the action and copies of all  
12 deposition transcripts. When a person proceeds with the action, the  
13 court, without limiting the rights of the person initiating the action,  
14 may permit the Attorney General to intervene and take over the  
15 action on behalf of the State at a later date upon a showing of good  
16 cause.

17 g. Whether or not the Attorney General proceeds with the  
18 action, upon a showing by the Attorney General that certain actions  
19 of discovery by the person initiating the action would interfere with  
20 an investigation by the State or the prosecution of a criminal or civil  
21 matter arising out of the same facts, the court may stay such  
22 discovery for a period of not more than 60 days. Such a showing  
23 shall be conducted in camera. The court may extend the 60-day  
24 period upon a further showing in camera by the Attorney General  
25 that the criminal or civil investigation or proceeding has been  
26 pursued with reasonable diligence and any proposed discovery in  
27 the civil action will interfere with an ongoing criminal or civil  
28 investigation or proceeding.

29 h. The application of one civil remedy under this act shall not  
30 preclude the application of any other remedy, civil, administrative  
31 or criminal, under this act or any other provision of law. **【Civil and**  
32 **administrative】** Such other remedies under this act **【are】** may be  
33 supplemental【,】 and not mutually exclusive to the remedies under  
34 this act, or may be alternate remedies. **【If after the filing of a**  
35 **complaint under section 5 of this act, the】** The Attorney General  
36 **【decides】** may elect to pursue its claim through an alternate  
37 **【administrative recovery action under subsection (e) of section 17**  
38 **of P.L.1968, c.413 (C.30:4D-17)】** remedy, including any  
39 administrative proceeding to determine a civil monetary penalty. If  
40 any such alternate remedy is pursued in another proceeding, the  
41 plaintiff shall have the same rights in **【the administrative recovery**  
42 **action】** that proceeding as the plaintiff would have had if the action  
43 had continued **【in Superior Court】** under this act. Any finding of  
44 fact or conclusion of law made in **【the】** any such proceeding **【under**  
45 **subsection (e) of section 17 of P.L.1968, c.413 (C.30:4D-17)】** that  
46 has become final shall be conclusive on all parties to an action  
47 initiated under section 5 of this act. As used in this subsection, the

1 term "final" means that the finding of fact or conclusion of law has  
2 been finally determined on appeal to the appropriate court, all time  
3 for filing such an appeal with respect to the finding or conclusion  
4 has expired, or the finding or conclusion is not subject to judicial  
5 review.

6 (cf: P.L.2007, c.265, s.6)

7

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

10 7. a. If the Attorney General proceeds with and prevails in an  
11 action brought by a person under this act, except as provided in  
12 subsection b., the court shall order the distribution to the person of  
13 at least 15% but not more than 25% of the proceeds recovered under  
14 any judgment obtained by the Attorney General under this act or of  
15 the proceeds of any settlement of the claim, depending upon the  
16 extent to which the person substantially contributed to the  
17 prosecution of the action.

18 b. If the Attorney General proceeds with an action which the  
19 court finds to be based primarily on disclosures of specific  
20 information, other than that provided by the person bringing the  
21 action, relating to allegations or transactions in a criminal, civil, or  
22 administrative hearing; a legislative, administrative, or inspector  
23 general report, hearing, audit, or investigation; or from the news  
24 media, the court may award such sums as it considers appropriate,  
25 taking into account the significance of the information and the role  
26 of the person bringing the action in advancing the case to litigation.

27 c. The Attorney General shall receive from the State's share of  
28 the proceeds recovered under any judgment under this act or  
29 settlement of the claim in an action brought by a person under this  
30 act a fixed 10% of the proceeds [in any action or settlement of the  
31 claim that it brings] calculated based on the entire amount of the  
32 proceeds including the amount ordered distributed under subsection  
33 a. of this section, which shall be deposited in the "False Claims  
34 Prosecution Fund" established in section 13 of this act and shall  
35 only be used to support its ongoing investigation and prosecution of  
36 false claims pursuant to the provisions of this act.

37 d. If the Attorney General does not proceed with an action  
38 under this section, the person bringing the action or settling the  
39 claim shall receive an amount which the court decides is reasonable  
40 for collecting the civil penalty and damages. The amount shall be  
41 not less than 25% and not more than 30% of the proceeds of the  
42 action or settlement of a claim under this act.

43 e. Following any distributions under subsection a., b., c. or d.  
44 of this section the State entity injured by the submission of a false  
45 claim shall be awarded an amount not to exceed its compensatory  
46 damages. Any remaining proceeds, including civil penalties  
47 awarded under this act, shall be deposited in the General Fund.

1 f. Any payment under this section to the person bringing the  
2 action shall be paid only out of the proceeds recovered from the  
3 defendant.

4 g. Whether or not the Attorney General proceeds with the  
5 action, if the court finds that the action was brought by a person  
6 who knowingly planned and initiated the violation of this act upon  
7 which the action was brought, the court may, to the extent the court  
8 considers appropriate, reduce the share of the proceeds of the action  
9 which the person would otherwise receive under this section, taking  
10 into account the role of the person in advancing the case to  
11 litigation and any relevant circumstances pertaining to the violation.  
12 If the person bringing the action is convicted of criminal conduct  
13 arising from his role in the violation of this act the person shall be  
14 dismissed from the civil action and shall not receive any share of  
15 the proceeds of the action. Such dismissal shall not prejudice the  
16 right of the Attorney General to continue the action.

17 (cf: P.L.2007, c.265, s.7)

18  
19 6. Section 9 of P.L.2007, c.265 (C.2A:32C-9) is amended to read  
20 as follows:

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

30 b. A person may not bring an action under this act based upon  
31 allegations or transactions that are the subject of a **[**pending action**]**  
32 civil suit or administrative civil monetary penalty proceeding to  
33 which the State is already a party.

34 c. **[**No action brought under this act shall be based upon the  
35 public disclosure of allegations or transactions**]** The court shall  
36 dismiss an action or claim under this act, unless opposed by the  
37 Attorney General, if substantially the same allegations or  
38 transactions as alleged in the action or claim were publicly  
39 disclosed in a criminal, civil, or administrative hearing in which the  
40 State or an agent of the State is a party, in an investigation, report,  
41 hearing or audit conducted by **[**or at the request of**]** the Legislature  
42 or by the news media, unless the action is brought by the Attorney  
43 General, or unless the person bringing the action is an original  
44 source of the information. For purposes of this subsection, the term  
45 "original source" means an individual who either (1) prior to a  
46 public disclosure as described in this paragraph has voluntarily  
47 disclosed to the State the information on which allegations or



1 transactions in a claim are based, or (2) has **【direct and**  
2 **independent】** knowledge **【of the information on which the**  
3 **allegations are based】** that is independent of and materially adds to  
4 the publicly disclosed allegations or transactions, and who has  
5 voluntarily provided the information to the State before filing an  
6 action under this act **【based on the information】**.

7 d. **【No action may be brought under this act by a present or**  
8 **former employee or agent of the State or any political subdivision**  
9 **thereof when the action is based upon information discovered in any**  
10 **civil, criminal or administrative investigation or audit which**  
11 **investigation or audit was within the scope of the employee's or**  
12 **agent's duties or job description.】** (Deleted by amendment, P.L. ,  
13 c. ) (pending before the Legislature as this bill)  
14 (cf: P.L. 2009, c.265, s.3)

15  
16 7. Section 10 of P.L.2007, c.265 (C.2A:32C-10) is amended to  
17 read as follows:

18 10. a. No employer shall make, adopt, or enforce any rule,  
19 regulation, or policy preventing an employee, contractor, or agent  
20 from disclosing information to a State or law enforcement agency or  
21 from acting to further a false claims action, including investigating,  
22 initiating, testifying, or assisting in an action filed or to be filed  
23 under this act.

24 b. **【No employer shall discharge, demote, suspend, threaten,**  
25 **harass, deny promotion to, or in any other manner discriminate**  
26 **against an employee】** Any employee, contractor, or agent shall be  
27 entitled to all relief necessary to make that employee, contractor, or  
28 agent whole, if that employee, contractor, or agent is discharged,  
29 demoted, suspended, threatened, harassed, or in any other manner  
30 discriminated against in the terms and conditions of employment  
31 because of lawful acts done by **【the employee on behalf of】** the  
32 employee, contractor, agent, or associated others in **【disclosing**  
33 **information to a State or law enforcement agency or in furthering a**  
34 **false claims】** furtherance of an action【, including investigation for,  
35 initiation of, testimony for, or assistance in an action filed or to be  
36 filed**】** under this act, or in other efforts to stop one or more  
37 violations of this act .

38 c. **【An employer who violates】** Relief under subsection b. of  
39 this section shall **【be liable for all relief necessary to make the**  
40 **employee whole, including】** include reinstatement with the same  
41 seniority status such employee, contractor, or agent would have had  
42 but for the discrimination, two times the amount of back pay,  
43 interest on the back pay, compensation for any special **【damage】**  
44 damages sustained as a result of the discrimination, and, where  
45 appropriate, punitive damages. In addition, the defendant shall be  
46 required to pay litigation costs and reasonable attorney's fees

1 associated with an action brought under this section. An [employee  
2 may bring an] action may be brought in the Superior Court for the  
3 relief provided in this subsection.

4 d. [An employee who is discharged, demoted, suspended,  
5 harassed, denied promotion, or in any other manner discriminated  
6 against in the terms and conditions of employment by his employer  
7 because of participation in conduct which directly or indirectly  
8 resulted in a false claim being submitted to the State shall be  
9 entitled to the remedies under subsection c. of this section if, and  
10 only if, both of the following occurred:

11 (1) The employee voluntarily disclosed information to a State or  
12 law enforcement agency or acts in furtherance of a false claims  
13 action, including investigation for, initiation of, testimony for, or  
14 assistance in an action filed or to be filed.

15 (2) The employee had been harassed, threatened with  
16 termination or demotion, or otherwise coerced by the employer or  
17 its management into engaging in the fraudulent activity in the first  
18 place.] (Deleted by amendment, P.L. , c. ) (pending before the  
19 Legislature as this bill)

20 e. A civil action under this subsection may not be brought more  
21 than 3 years after the date when the retaliation occurred.

22 (cf: P.L.2007, c.265, s.10)

23  
24 8. Section 13 of P.L.2007, c.265 (C.2A:32C-13) is amended to  
25 read as follows:

26 13. a. There is established in the General Fund the "False Claims  
27 Prosecution Fund" as a nonlapsing revolving fund in the  
28 Department of the Treasury. Monies deposited in the fund shall be  
29 utilized by the Attorney General for the exclusive purpose of  
30 investigating and prosecuting false claims. The State Treasurer  
31 shall deposit 10% of the proceeds recovered by the Attorney  
32 General pursuant to subsection c. of section 7 of P.L.2007, c.265  
33 (C.2A:32C-7) in the False Claims Prosecution Fund.

34 b. The State Treasurer shall deposit 25% of the State share of  
35 monies recovered from actions related to false or fraudulent  
36 Medicaid claims brought pursuant to this act in the "Medicaid Fraud  
37 Control Fund" established by section 10 of P.L.2007, c.58  
38 (C.30:4D-62).

39 c. Except as provided in subsections a. and b. of this section,  
40 the State share of moneys recovered by the Attorney General in  
41 accordance with the provisions of this act, other than the awarded  
42 amount provided to the State entity injured by the submission of a  
43 false claim, shall be deposited in the General Fund.

44 (cf: P.L.2007, c.265, s.13)

45  
46 9. Section 14 of P.L.2007, c.265 (C.2A:32C-14) is amended to  
47 read as follows:

1       14. a. If the Attorney General has reason to believe that a person  
2 within or outside of this State has engaged in, or is engaging in, an  
3 act or practice which violates this act, or any other relevant statute  
4 or regulation, the Attorney General or the Attorney General's  
5 designee may administer oaths and affirmations, and request or  
6 compel the attendance of witnesses or the production of documents.  
7 The Attorney General may make a civil investigative demand  
8 requiring a party to answer in writing written interrogatories with  
9 respect to such documentary material or information. The Attorney  
10 General may issue, or designate another to issue, subpoenas to  
11 compel the attendance of witnesses and the production of books,  
12 records, accounts, papers and documents. Witnesses shall be put on  
13 oath or affirmation and their testimony shall be taken  
14 stenographically and shall be transcribed. Witnesses shall be  
15 entitled to receive the same fees and mileage as persons summoned  
16 to testify in the courts of the State.

17       If a person subpoenaed pursuant to this section shall neglect or  
18 refuse to obey the command of the subpoena, a judge of the  
19 Superior Court may, on proof by affidavit of service of the  
20 subpoena, of payment or tender of the fees required and of refusal  
21 or neglect by the person to obey the command of the subpoena,  
22 issue a warrant for the arrest of said person to bring that person  
23 before the judge, who is authorized to proceed against the person as  
24 for a contempt of court.

25       b. If the matter that the Attorney General seeks to obtain by  
26 request is located outside the State, the person so required may  
27 provide the matter or otherwise make it available to the Attorney  
28 General or the Attorney General's representative to examine the  
29 matter at the place where it is located. The Attorney General shall  
30 have the authority to issue subpoenas to compel witnesses located  
31 outside the State to attend investigative interviews pursuant to this  
32 act, and such witnesses may make themselves available to the  
33 Attorney General or the Attorney General's representative to be  
34 interviewed at the place where the witness is located. The Attorney  
35 General may designate representatives, including officials of the  
36 state in which the matter is located, to inspect the matter on behalf  
37 of the Attorney General, and the Attorney General may respond to  
38 similar requests from officials of other states.

39       c. If a licensed professional or an owner, administrator or  
40 employee of a licensed professional, including but not limited to an  
41 owner, administrator or employee of any hospital, an insurance  
42 company, an insurance producer, solicitor or adjuster, or any other  
43 person licensed or certified by a licensing authority of this State, or  
44 an agent, representative or employee of any of them is found to  
45 have violated any provision of this section, the Attorney General  
46 shall notify the appropriate licensing authority of the violation so  
47 that the licensing authority may take appropriate administrative  
48 action.

1 d. State investigators shall not be subject to subpoena in civil  
2 actions by any court of this State to testify concerning any matter of  
3 which they have knowledge pursuant to a pending false claims  
4 investigation by the State, or a pending claim for civil penalties  
5 initiated by the State.

6 (cf: P.L.2007, c.265, s.14)

7  
8 10. (New section) Notwithstanding any other provision of law,  
9 the State or federal Rules of Criminal Procedure, or the State or  
10 federal Rules of Evidence, a final judgment rendered in favor of the  
11 State or of the United States in any criminal proceeding charging  
12 fraud or false statements, whether upon a verdict after trial or upon  
13 a plea of guilty or nolo contendere, shall estop the defendant from  
14 denying the essential elements of the offense in any action which  
15 involves the same transaction as in the criminal proceeding and  
16 which is brought under subsection a. or b. of section 5 of P.L.2007,  
17 c.265 (C.2A:32C-5).

18  
19 11. This act shall take effect immediately.

20  
21  
22 STATEMENT

23  
24 The bill revises the New Jersey False Claims Act in order to  
25 comply with certain provisions in federal law. Compliance would  
26 make the State eligible for greater recoveries in Medicaid fraud  
27 cases.

28 BACKGROUND. The New Jersey False Claims Act (NJFCA)  
29 imposes civil penalties on any person who submits a claim to the  
30 State that the person knows or should know is false. The NJFCA is  
31 similar to the federal False Claims Act (FFCA). The NJFCA  
32 authorizes the Attorney General or a private individual to bring a  
33 civil action on behalf of the State to recover funds fraudulently  
34 obtained. The State and the individual may be entitled to  
35 percentages of any monies collected. Under federal law, a state is  
36 entitled to enhanced recovery in Medicaid fraud cases if the  
37 Inspector General in the federal Department of Health and Human  
38 Services determines that the state has a False Claims Act that is “at  
39 least as effective” as the FFCA in facilitating these whistleblower  
40 actions. Presently, the Inspector General has determined that the  
41 NJFCA is not “at least as effective” as the FFCA, and has  
42 recommended specific revisions. This bill would implement the  
43 Inspector General’s recommendations.

44 LANGUAGE CHANGES. The bill would modify the definition of  
45 the term “claim” in order to align with the scope of the definition  
46 set out in the FFCA, and add new definitions of the terms  
47 “material” and “obligation.” The bill also adds clarifying language  
48 to better track the remedies available under the FFCA, and the

1 terminology concerning calculation of the State's share of NJFCA  
2 claim proceeds. In addition, the bill incorporates minor language  
3 changes suggested by the federal OIG to more closely track  
4 terminology used in the FFCA.

5 INTERVENTION BY ATTORNEY GENERAL; STATUTE OF  
6 LIMITATIONS AND FILING DATE. Under current law, a person  
7 bringing an action under the NJFCA must serve the Attorney  
8 General with a copy of the complaint and disclose material evidence  
9 and information. The Attorney General may elect to intervene and  
10 proceed with the action on behalf of the State within 60 days after it  
11 receives the complaint, material evidence, and information from the  
12 person bringing the action. The complaint is required to remain  
13 under seal for at least 60 days and will not be served on the  
14 defendant until the court orders. The bill specifies that upon  
15 receiving the documents from the person bringing the action, the  
16 Attorney General may then file its own complaint; amend the  
17 person's complaint; or supplement the claims in which it is  
18 intervening with additional detail or by adding any additional  
19 claims. The bill also provides that for purposes of the statute of  
20 limitations, any such pleading by the Attorney General would relate  
21 back to the filing date of the complaint of the person who originally  
22 brought the action.

23 LIFTING OF SEAL. Under current law, if the Attorney General  
24 decides not to proceed with the action, the court is required to lift  
25 the seal on the complaint and the person who initiated the action has  
26 the right to conduct the action. Under the bill, if the Attorney  
27 General decides not to proceed, the court has discretion whether to  
28 lift the seal and allow the person who initiated the action the right to  
29 continue the action.

30 DISCLOSURE TO ATTORNEY GENERAL. The bill provides that the  
31 person bringing the action would be authorized to continue to  
32 disclose information related to the action to the Attorney General.  
33 Current law provides that the person has an ongoing duty to  
34 disclose the information.

35 INFORMATION DISCOVERED IN COURSE OF EMPLOYEE'S DUTIES.  
36 Currently, the NJFCA bars an employee or agent of the State or a  
37 political subdivision from bringing an action based on information  
38 discovered in a civil, criminal, or administrative investigation or  
39 audit that was within the scope of the employee's or agent's duties  
40 or job description. The bill deletes this provision, thus allowing  
41 employees and agents to bring such actions.

42 PROTECTION AGAINST EMPLOYER REPRISALS. The bill clarifies  
43 that the protections against employer reprisals in the NJFCA apply  
44 not only to employees, but also to contractors and agents. The bill  
45 provides that a civil action may be brought against an employer if  
46 an employee, contractor, or agent is discharged, demoted,  
47 suspended, threatened, harassed, or in any other manner  
48 discriminated against in the terms and conditions of employment

1 because of lawful acts done by the employee, contractor, agent, or  
2 associated others in furtherance of an action under the NJFCA, or in  
3 other efforts to stop one or more violations of the NJFCA. The  
4 statute of limitations for the civil action would be three years after  
5 the date the retaliation occurred.

6 CRIMINAL DEFENDANT ESTOPPED FROM DENYING ELEMENTS OF  
7 THE OFFENSE. The draft would add a new provision, similar to that  
8 in the FFCA, that estops a criminal defendant convicted of fraud or  
9 false statements from denying essential elements of the offense in  
10 an action brought under the NJFCA.

11 AUTHORITY OF ATTORNEY GENERAL. The bill provides specific  
12 authority for the Attorney General to make civil investigative  
13 demands, issue subpoenas to out-of-State witnesses, and take sworn  
14 testimony in relation to NJFCA violations.