

P.L. 2023, CHAPTER 73, *approved June 30, 2023*
Assembly, No. 5584

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 demand~~[,]~~ 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.

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 “Obligation” means an established duty, whether or not fixed,
2 arising from an express or implied contractual, grantor-grantee, or
3 licensor-licensee relationship, from a fee-based or similar
4 relationship, from statute or regulation, or from the retention of any
5 overpayment.

6 "State" means any of the principal departments in the Executive
7 Branch of State government, and any division, board, bureau,
8 office, commission or other instrumentality within or created by
9 such department; and any independent State authority, commission,
10 instrumentality or agency.

11 (cf: P.L.2007, c.265, s.2)

12

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

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

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

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

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

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

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

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

44 g. Knowingly makes, uses, or causes to be made or used a false
45 record or statement **【to conceal, avoid, or decrease】** material to an
46 obligation to pay or transmit money or property to the State, or

1 knowingly conceals or knowingly and improperly avoids or
2 decreases an obligation to pay or transmit money or property to the
3 State.

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

5

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

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

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

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

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

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

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

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

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

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

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

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

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

17

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

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

28 b. The Attorney General may move to dismiss the action for
29 good cause shown, notwithstanding the objections of the person
30 bringing the action, provided that the person bringing the action has
31 been notified by the Attorney General and the court has provided
32 the person bringing the action with the opportunity for a hearing.

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

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

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

- 1 (2) Limiting the length of the testimony of the person's
2 witnesses;
- 3 (3) Limiting the person's cross-examination of witnesses; or
- 4 (4) Otherwise limiting the participation by the person in the
5 litigation.
- 6 e. Upon a showing by the defendant that unrestricted
7 participation during the course of the litigation by the person
8 initiating the action would be for purposes of harassment or would
9 cause the defendant undue burden or unnecessary expense, the court
10 may limit the participation by the person in the litigation.
- 11 f. If the Attorney General decides not to proceed with the
12 action, the seal **【shall】** may be lifted and the person who initiated
13 the action shall have the right to conduct the action. The decision of
14 the Attorney General on whether to proceed with an action shall be
15 deemed final and shall not be subject to review by any court or
16 agency. If the Attorney General so requests, the Attorney General
17 shall be served at the expense of the Attorney General with copies
18 of all pleadings and motions filed in the action and copies of all
19 deposition transcripts. When a person proceeds with the action, the
20 court, without limiting the rights of the person initiating the action,
21 may permit the Attorney General to intervene and take over the
22 action on behalf of the State at a later date upon a showing of good
23 cause.
- 24 g. Whether or not the Attorney General proceeds with the
25 action, upon a showing by the Attorney General that certain actions
26 of discovery by the person initiating the action would interfere with
27 an investigation by the State or the prosecution of a criminal or civil
28 matter arising out of the same facts, the court may stay such
29 discovery for a period of not more than 60 days. Such a showing
30 shall be conducted in camera. The court may extend the 60-day
31 period upon a further showing in camera by the Attorney General
32 that the criminal or civil investigation or proceeding has been
33 pursued with reasonable diligence and any proposed discovery in
34 the civil action will interfere with an ongoing criminal or civil
35 investigation or proceeding.
- 36 h. The application of one civil remedy under this act shall not
37 preclude the application of any other remedy, civil, administrative
38 or criminal, under this act or any other provision of law. **【Civil and**
39 **administrative】** Such other remedies under this act **【are】** may be
40 supplemental【,】 and not mutually exclusive to the remedies under
41 this act, or may be alternate remedies. **【If after the filing of a**
42 **complaint under section 5 of this act, the】** The Attorney General
43 **【decides】** may elect to pursue its claim through an alternate
44 **【administrative recovery action under subsection (e) of section 17**
45 **of P.L.1968, c.413 (C.30:4D-17)】** remedy, including any
46 administrative proceeding to determine a civil monetary penalty. If

1 any such alternate remedy is pursued in another proceeding, the
2 plaintiff shall have the same rights in **【the administrative recovery**
3 **action】** that proceeding as the plaintiff would have had if the action
4 had continued **【in Superior Court】** under this act. Any finding of
5 fact or conclusion of law made in **【the】** any such proceeding **【under**
6 **subsection (e) of section 17 of P.L.1968, c.413 (C.30:4D-17)】** that
7 has become final shall be conclusive on all parties to an action
8 initiated under section 5 of this act. As used in this subsection, the
9 term "final" means that the finding of fact or conclusion of law has
10 been finally determined on appeal to the appropriate court, all time
11 for filing such an appeal with respect to the finding or conclusion
12 has expired, or the finding or conclusion is not subject to judicial
13 review.

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

15

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

18 7. a. If the Attorney General proceeds with and prevails in an
19 action brought by a person under this act, except as provided in
20 subsection b., the court shall order the distribution to the person of
21 at least 15% but not more than 25% of the proceeds recovered under
22 any judgment obtained by the Attorney General under this act or of
23 the proceeds of any settlement of the claim, depending upon the
24 extent to which the person substantially contributed to the
25 prosecution of the action.

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

35 c. The Attorney General shall receive from the State's share of
36 the proceeds recovered under any judgment under this act or
37 settlement of the claim in an action brought by a person under this
38 act a fixed 10% of the proceeds **【in any action or settlement of the**
39 **claim that it brings】** calculated based on the entire amount of the
40 proceeds including the amount ordered distributed under subsection
41 a. of this section, which shall be deposited in the "False Claims
42 Prosecution Fund" established in section 13 of this act and shall
43 only be used to support its ongoing investigation and prosecution of
44 false claims pursuant to the provisions of this act.

45 d. If the Attorney General does not proceed with an action
46 under this section, the person bringing the action or settling the

1 claim shall receive an amount which the court decides is reasonable
2 for collecting the civil penalty and damages. The amount shall be
3 not less than 25% and not more than 30% of the proceeds of the
4 action or settlement of a claim under this act.

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

10 f. Any payment under this section to the person bringing the
11 action shall be paid only out of the proceeds recovered from the
12 defendant.

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

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

27
28 6. Section 9 of P.L.2007, c.265 (C.2A:32C-9) is amended to read
29 as follows:

30 9. a. No member of the Legislature, **[a]** member of the Judiciary,
31 **[a]** or senior Executive branch official**],** or a member of a county
32 or municipal governing body**]** may be civilly liable if the basis for
33 an action is premised on evidence or information known to the State
34 when the action was brought. **[**For purposes of this subsection, the
35 term "senior Executive branch official" means any person employed
36 in the Executive branch of government holding a position having
37 substantial managerial, policy-influencing or policy-executing
38 responsibilities.**]**

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

43 c. **[**No action brought under this act shall be based upon the
44 public disclosure of allegations or transactions**]** The court shall
45 dismiss an action or claim under this act, unless opposed by the
46 Attorney General, if substantially the same allegations or

1 transactions as alleged in the action or claim were publicly
2 disclosed in a criminal, civil, or administrative hearing in which the
3 State or an agent of the State is a party, in an investigation, report,
4 hearing or audit conducted by **【or at the request of】** the Legislature
5 or by the news media, unless the action is brought by the Attorney
6 General, or unless the person bringing the action is an original
7 source of the information. For purposes of this subsection, the term
8 "original source" means an individual who either (1) prior to a
9 public disclosure as described in this paragraph has voluntarily
10 disclosed to the State the information on which allegations or
11 transactions in a claim are based, or (2) has 【direct and
12 independent】 knowledge 【of the information on which the
13 allegations are based】 that is independent of and materially adds to
14 the publicly disclosed allegations or transactions, and who has
15 voluntarily provided the information to the State before filing an
16 action under this act 【based on the information】.

17 d. **【No action may be brought under this act by a present or**
18 **former employee or agent of the State or any political subdivision**
19 **thereof when the action is based upon information discovered in any**
20 **civil, criminal or administrative investigation or audit which**
21 **investigation or audit was within the scope of the employee's or**
22 **agent's duties or job description.】** (Deleted by amendment, P.L. ____,
23 c. __) (pending before the Legislature as this bill)
24 (cf: P.L. 2009, c.265, s.3)

25
26 7. Section 10 of P.L.2007, c.265 (C.2A:32C-10) is amended to
27 read as follows:

28 10. a. No employer shall make, adopt, or enforce any rule,
29 regulation, or policy preventing an employee, contractor, or agent
30 from disclosing information to a State or law enforcement agency or
31 from acting to further a false claims action, including investigating,
32 initiating, testifying, or assisting in an action filed or to be filed
33 under this act.

34 b. **【No employer shall discharge, demote, suspend, threaten,**
35 **harass, deny promotion to, or in any other manner discriminate**
36 **against an employee】** Any employee, contractor, or agent shall be
37 entitled to all relief necessary to make that employee, contractor, or
38 agent whole, if that employee, contractor, or agent is discharged,
39 demoted, suspended, threatened, harassed, or in any other manner
40 discriminated against in the terms and conditions of employment
41 because of lawful acts done by **【the employee on behalf of】** the
42 employee, contractor, agent, or associated others in 【disclosing
43 information to a State or law enforcement agency or in furthering a
44 false claims】 furtherance of an action【, including investigation for,
45 initiation of, testimony for, or assistance in an action filed or to be

1 filed] under this act, or in other efforts to stop one or more
2 violations of this act .

3 c. [An employer who violates] Relief under subsection b. of
4 this section shall [be liable for all relief necessary to make the
5 employee whole, including] include reinstatement with the same
6 seniority status such employee, contractor, or agent would have had
7 but for the discrimination, two times the amount of back pay,
8 interest on the back pay, compensation for any special [damage]
9 damages sustained as a result of the discrimination, and, where
10 appropriate, punitive damages. In addition, the defendant shall be
11 required to pay litigation costs and reasonable attorney's fees
12 associated with an action brought under this section. An [employee
13 may bring an] action may be brought in the Superior Court for the
14 relief provided in this subsection.

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

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

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

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

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

34
35 8. Section 13 of P.L.2007, c.265 (C.2A:32C-13) is amended to
36 read as follows:

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

45 b. The State Treasurer shall deposit 25% of the State share of
46 monies recovered from actions related to false or fraudulent

1 Medicaid claims brought pursuant to this act in the "Medicaid Fraud
2 Control Fund" established by section 10 of P.L.2007, c.58
3 (C.30:4D-62).

4 c. Except as provided in subsections a. and b. of this section,
5 the State share of moneys recovered by the Attorney General in
6 accordance with the provisions of this act, other than the awarded
7 amount provided to the State entity injured by the submission of a
8 false claim, shall be deposited in the General Fund.
9 (cf: P.L.2007, c.265, s.13)

10

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

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

29 If a person subpoenaed pursuant to this section shall neglect or
30 refuse to obey the command of the subpoena, a judge of the
31 Superior Court may, on proof by affidavit of service of the
32 subpoena, of payment or tender of the fees required and of refusal
33 or neglect by the person to obey the command of the subpoena,
34 issue a warrant for the arrest of said person to bring that person
35 before the judge, who is authorized to proceed against the person as
36 for a contempt of court.

37 b. If the matter that the Attorney General seeks to obtain by
38 request is located outside the State, the person so required may
39 provide the matter or otherwise make it available to the Attorney
40 General or the Attorney General's representative to examine the
41 matter at the place where it is located. The Attorney General shall
42 have the authority to issue subpoenas to compel witnesses located
43 outside the State to attend investigative interviews pursuant to this
44 act, and such witnesses may make themselves available to the
45 Attorney General or the Attorney General's representative to be
46 interviewed at the place where the witness is located. The Attorney
47 General may designate representatives, including officials of the

1 state in which the matter is located, to inspect the matter on behalf
2 of the Attorney General, and the Attorney General may respond to
3 similar requests from officials of other states.

4 c. If a licensed professional or an owner, administrator or
5 employee of a licensed professional, including but not limited to an
6 owner, administrator or employee of any hospital, an insurance
7 company, an insurance producer, solicitor or adjuster, or any other
8 person licensed or certified by a licensing authority of this State, or
9 an agent, representative or employee of any of them is found to
10 have violated any provision of this section, the Attorney General
11 shall notify the appropriate licensing authority of the violation so
12 that the licensing authority may take appropriate administrative
13 action.

14 d. State investigators shall not be subject to subpoena in civil
15 actions by any court of this State to testify concerning any matter of
16 which they have knowledge pursuant to a pending false claims
17 investigation by the State, or a pending claim for civil penalties
18 initiated by the State.

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

20
21 10. (New section) Notwithstanding any other provision of law,
22 the State or federal Rules of Criminal Procedure, or the State or
23 federal Rules of Evidence, a final judgment rendered in favor of the
24 State or of the United States in any criminal proceeding charging
25 fraud or false statements, whether upon a verdict after trial or upon
26 a plea of guilty or nolo contendere, shall estop the defendant from
27 denying the essential elements of the offense in any action which
28 involves the same transaction as in the criminal proceeding and
29 which is brought under subsection a. or b. of section 5 of P.L.2007,
30 c.265 (C.2A:32C-5).

31
32 11. This act shall take effect immediately.

33 34 35 STATEMENT

36
37 The bill revises the New Jersey False Claims Act in order to
38 comply with certain provisions in federal law. Compliance would
39 make the State eligible for greater recoveries in Medicaid fraud
40 cases.

41 BACKGROUND. The New Jersey False Claims Act (NJFCA)
42 imposes civil penalties on any person who submits a claim to the
43 State that the person knows or should know is false. The NJFCA is
44 similar to the federal False Claims Act (FFCA). The NJFCA
45 authorizes the Attorney General or a private individual to bring a
46 civil action on behalf of the State to recover funds fraudulently
47 obtained. The State and the individual may be entitled to

1 percentages of any monies collected. Under federal law, a state is
2 entitled to enhanced recovery in Medicaid fraud cases if the
3 Inspector General in the federal Department of Health and Human
4 Services determines that the state has a False Claims Act that is “at
5 least as effective” as the FFCA in facilitating these whistleblower
6 actions. Presently, the Inspector General has determined that the
7 NJFCA is not “at least as effective” as the FFCA, and has
8 recommended specific revisions. This bill would implement the
9 Inspector General’s recommendations.

10 LANGUAGE CHANGES. The bill would modify the definition of
11 the term “claim” in order to align with the scope of the definition
12 set out in the FFCA, and add new definitions of the terms
13 “material” and “obligation.” The bill also adds clarifying language
14 to better track the remedies available under the FFCA, and the
15 terminology concerning calculation of the State’s share of NJFCA
16 claim proceeds. In addition, the bill incorporates minor language
17 changes suggested by the federal OIG to more closely track
18 terminology used in the FFCA.

19 INTERVENTION BY ATTORNEY GENERAL; STATUTE OF
20 LIMITATIONS AND FILING DATE. Under current law, a person
21 bringing an action under the NJFCA must serve the Attorney
22 General with a copy of the complaint and disclose material evidence
23 and information. The Attorney General may elect to intervene and
24 proceed with the action on behalf of the State within 60 days after it
25 receives the complaint, material evidence, and information from the
26 person bringing the action. The complaint is required to remain
27 under seal for at least 60 days and will not be served on the
28 defendant until the court orders. The bill specifies that upon
29 receiving the documents from the person bringing the action, the
30 Attorney General may then file its own complaint; amend the
31 person’s complaint; or supplement the claims in which it is
32 intervening with additional detail or by adding any additional
33 claims. The bill also provides that for purposes of the statute of
34 limitations, any such pleading by the Attorney General would relate
35 back to the filing date of the complaint of the person who originally
36 brought the action.

37 LIFTING OF SEAL. Under current law, if the Attorney General
38 decides not to proceed with the action, the court is required to lift
39 the seal on the complaint and the person who initiated the action has
40 the right to conduct the action. Under the bill, if the Attorney
41 General decides not to proceed, the court has discretion whether to
42 lift the seal and allow the person who initiated the action the right to
43 continue the action.

44 DISCLOSURE TO ATTORNEY GENERAL. The bill provides that the
45 person bringing the action would be authorized to continue to
46 disclose information related to the action to the Attorney General.

1 Current law provides that the person has an ongoing duty to
2 disclose the information.

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

10 PROTECTION AGAINST EMPLOYER REPRISALS. The bill clarifies
11 that the protections against employer reprisals in the NJFCA apply
12 not only to employees, but also to contractors and agents. The bill
13 provides that a civil action may be brought against an employer if
14 an employee, contractor, or agent is discharged, demoted,
15 suspended, threatened, harassed, or in any other manner
16 discriminated against in the terms and conditions of employment
17 because of lawful acts done by the employee, contractor, agent, or
18 associated others in furtherance of an action under the NJFCA, or in
19 other efforts to stop one or more violations of the NJFCA. The
20 statute of limitations for the civil action would be three years after
21 the date the retaliation occurred.

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

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

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