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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.

31

32

33

34

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.

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

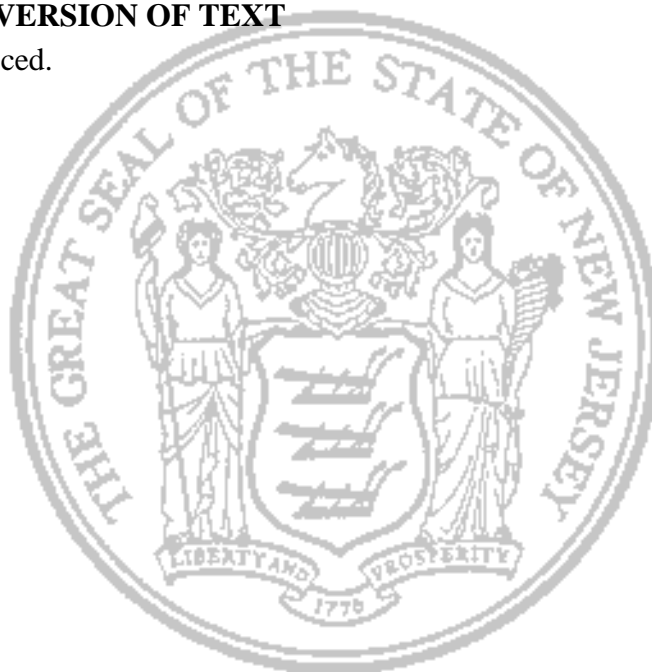
District 15 (Hunterdon and Mercer)

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.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5584

STATE OF NEW JERSEY

DATED: JUNE 27, 2023

The Assembly Budget Committee reports favorably Assembly Bill No. 5584.

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

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

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

INTERVENTION BY ATTORNEY GENERAL; STATUTE OF LIMITATIONS AND FILING DATE. Under current law, a person bringing an action under the NJFCA must serve the Attorney General with a copy of the complaint and disclose material evidence and information. The Attorney General may elect to intervene and proceed with the action on behalf of the State within 60 days after it receives the complaint, material evidence, and information from the person bringing the action. The complaint is required to remain under seal for at least 60 days and will not be served on the defendant until the court orders.

The bill specifies that upon receiving the documents from the

person bringing the action, the Attorney General may then file its own complaint; amend the person's complaint; or supplement the claims in which it is intervening with additional detail or by adding any additional claims. The bill also provides that for purposes of the statute of limitations, any such pleading by the Attorney General would relate back to the filing date of the complaint of the person who originally brought the action.

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

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

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

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

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

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

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that this bill may result in annual revenue gains for the State. This bill revises the New Jersey False Claims Act in order to comply with federal law for purposes of entitling the State to enhanced recovery in Medicaid fraud cases. Federal law provides that complying states receive an increased share of any amounts recovered pursuant to the State's fraudulent claim lawsuit or settlement in Medicaid fraud cases. The OLS does not have any further information to project the potential gain in revenues from compliance with the federal False Claims Act.

The OLS notes that the bill may result in an increased workload for the Office of the Attorney General in the Department of Law and Public Safety.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 5584
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JUNE 30, 2023

SUMMARY

- Synopsis:** Revises New Jersey False Claims Act to comply with federal law for purposes of entitling State to enhanced recovery in Medicaid fraud cases.
- Type of Impact:** Potential annual State expenditure and revenue increases.
- Agencies Affected:** Department of the Treasury; Department of Law and Public Safety

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Increase	Potential increase
State Revenue Increase	Potential increase

- The Office of Legislative Services (OLS) finds that this bill may result in annual revenue gains for the State. This bill revises the New Jersey False Claims Act in order to comply with federal law for purposes of entitling the State to enhanced recovery in Medicaid fraud cases. Federal law provides that complying states receive an increased share of any amounts recovered pursuant to the State’s fraudulent claim lawsuit or settlement in Medicaid fraud cases. The OLS does not have any further information to project the potential gain in revenues from compliance with the federal False Claims Act.
- The OLS notes that the bill may result in an increased workload for the Office of the Attorney General in the Department of Law and Public Safety.

BILL DESCRIPTION

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

The New Jersey False Claims Act imposes civil penalties on any person who submits a claim to the State that the person knows or should know is false. The act is similar to the federal

False Claims Act. The New Jersey False Claims Act authorizes the Office of the Attorney General or a private individual to bring a civil action on behalf of the State to recover funds fraudulently obtained. The State and the individual may be entitled to percentages of any monies collected. Under federal law, a state is entitled to enhanced recovery in Medicaid fraud cases if the Inspector General in the federal Department of Health and Human Services determines that the state has a false claims act that is at least as effective as the federal one in facilitating these whistleblower actions. Presently, the Inspector General has determined that the New Jersey False Claims Act is not at least as effective as the federal one, and has recommended specific revisions. This bill would implement the Inspector General's recommendations.

Currently, the New Jersey False Claims Act bars an employee or agent of the State or a political subdivision from bringing an action based on information discovered in a civil, criminal, or administrative investigation or audit that was within the scope of the employee's or agent's duties or job description. The bill deletes this provision, thus allowing employees and agents to bring such actions.

The bill provides specific authority for the Attorney General to make civil investigative demands, issue subpoenas to out-of-State witnesses, and take sworn testimony in relation to New Jersey False Claims Act violations.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that compliance with the federal law may result in increased revenues for the State. According to the Attorney General's 2019 Report to the Legislature concerning the New Jersey False Claims Act, out of the 63 cases filed under the New Jersey False Claims Act, 12 were concerning Medicaid. The State received a total of \$7.5 million in recovery. It is unclear if all the recovery money received was from Medicaid related false claims. According to some estimates, compliance with the federal law will result in an increased share from recovered money for the State, potentially up to 10 percent. Per a more recent FY 2021 report issued by the federal Department of Health and Human Services, Office of Inspector General, the total recovery for New Jersey amounted to \$11.7 million involving cases that included participation by Federal and State Medicaid Fraud Control Units. The OLS has no further information on how much money is actually collected; how the amount is distributed amongst individuals, federal, and State agencies and finally, by how much the State's share will change under the bill.

The OLS finds that under the bill, the Office of Attorney General may experience increased workload due to certain provisions in the bill. For instance, the bill provides specific authority for the office to make civil investigative demands, issue subpoenas to out-of-State witnesses, and take sworn testimony in relation to New Jersey False Claims Act violations.

Section: Judiciary

*Analyst: Anuja Pande Joshi
Senior Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 4018

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 26, 2023

Sponsored by:

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: 6/27/2023)

S4018 JOHNSON, TURNER

2

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
44 relationship, from statute or regulation, or from the retention of any
45 overpayment.

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.

S4018 JOHNSON, TURNER

3

1 "State" means any of the principal departments in the Executive
2 Branch of State government, and any division, board, bureau,
3 office, commission or other instrumentality within or created by
4 such department; and any independent State authority, commission,
5 instrumentality or agency.

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

7

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

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

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

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

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

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

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

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

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

45 (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)

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

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

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

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

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

1 that the licensing authority may take appropriate administrative
2 action.

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

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

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

20

21 11. This act shall take effect immediately.

22

23

24

STATEMENT

25

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

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

46 LANGUAGE CHANGES. The bill would modify the definition of the
47 term “claim” in order to align with the scope of the definition set
48 out in the FFCA, and add new definitions of the terms “material”

1 and “obligation.” The bill also adds clarifying language to better
2 track the remedies available under the FFCA, and the terminology
3 concerning calculation of the State’s share of NJFCA claim
4 proceeds. In addition, the bill incorporates minor language changes
5 suggested by the federal OIG to more closely track terminology
6 used in the FFCA.

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

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

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

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

44 PROTECTION AGAINST EMPLOYER REPRISALS. The bill clarifies
45 that the protections against employer reprisals in the NJFCA apply
46 not only to employees, but also to contractors and agents. The bill
47 provides that a civil action may be brought against an employer if
48 an employee, contractor, or agent is discharged, demoted,

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14

1 suspended, threatened, harassed, or in any other manner
2 discriminated against in the terms and conditions of employment
3 because of lawful acts done by the employee, contractor, agent, or
4 associated others in furtherance of an action under the NJFCA, or in
5 other efforts to stop one or more violations of the NJFCA. The
6 statute of limitations for the civil action would be three years after
7 the date the retaliation occurred.

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

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

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 4018

STATE OF NEW JERSEY

DATED: JUNE 27, 2023

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 4018.

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

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

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

INTERVENTION BY ATTORNEY GENERAL; STATUTE OF LIMITATIONS AND FILING DATE. Under current law, a person bringing an action under the NJFCA must serve the Attorney General with a copy of the complaint and disclose material evidence and information. The Attorney General may elect to intervene and proceed with the action on behalf of the State within 60 days after it receives the complaint, material evidence, and information from the

person bringing the action. The complaint is required to remain under seal for at least 60 days and will not be served on the defendant until the court orders. The bill specifies that upon receiving the documents from the person bringing the action, the Attorney General may then file its own complaint; amend the person's complaint; or supplement the claims in which it is intervening with additional detail or by adding any additional claims. The bill also provides that for purposes of the statute of limitations, any such pleading by the Attorney General would relate back to the filing date of the complaint of the person who originally brought the action.

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

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

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

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

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

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

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 4018
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JULY 5, 2023

SUMMARY

- Synopsis:** Revises New Jersey False Claims Act to comply with federal law for purposes of entitling State to enhanced recovery in Medicaid fraud cases.
- Type of Impact:** Potential annual State expenditure and revenue increases.
- Agencies Affected:** Department of the Treasury; Department of Law and Public Safety

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Increase	Potential increase
State Revenue Increase	Potential increase

- The Office of Legislative Services (OLS) finds that this bill may result in annual revenue gains for the State. This bill revises the New Jersey False Claims Act in order to comply with federal law for purposes of entitling the State to enhanced recovery in Medicaid fraud cases. Federal law provides that complying states receive an increased share of any amounts recovered pursuant to the State’s fraudulent claim lawsuit or settlement in Medicaid fraud cases. The OLS does not have any further information to project the potential gain in revenues from compliance with the federal False Claims Act.
- The OLS notes that the bill may result in an increased workload for the Office of the Attorney General in the Department of Law and Public Safety.

BILL DESCRIPTION

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

The New Jersey False Claims Act imposes civil penalties on any person who submits a claim to the State that the person knows or should know is false. The act is similar to the federal

False Claims Act. The New Jersey False Claims Act authorizes the Office of the Attorney General or a private individual to bring a civil action on behalf of the State to recover funds fraudulently obtained. The State and the individual may be entitled to percentages of any monies collected. Under federal law, a state is entitled to enhanced recovery in Medicaid fraud cases if the Inspector General in the federal Department of Health and Human Services determines that the state has a false claims act that is at least as effective as the federal one in facilitating these whistleblower actions. Presently, the Inspector General has determined that the New Jersey False Claims Act is not at least as effective as the federal one, and has recommended specific revisions. This bill would implement the Inspector General's recommendations.

Currently, the New Jersey False Claims Act bars an employee or agent of the State or a political subdivision from bringing an action based on information discovered in a civil, criminal, or administrative investigation or audit that was within the scope of the employee's or agent's duties or job description. The bill deletes this provision, thus allowing employees and agents to bring such actions.

The bill provides specific authority for the Attorney General to make civil investigative demands, issue subpoenas to out-of-State witnesses, and take sworn testimony in relation to New Jersey False Claims Act violations.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that compliance with the federal law may result in increased revenues for the State. According to the Attorney General's 2019 Report to the Legislature concerning the New Jersey False Claims Act, out of the 63 cases filed under the New Jersey False Claims Act, 12 were concerning Medicaid. The State received a total of \$7.5 million in recovery. It is unclear if all the recovery money received was from Medicaid related false claims. According to some estimates, compliance with the federal law will result in an increased share from recovered money for the State, potentially up to 10 percent. Per a more recent FY 2021 report issued by the federal Department of Health and Human Services, Office of Inspector General, the total recovery for New Jersey amounted to \$11.7 million involving cases that included participation by Federal and State Medicaid Fraud Control Units. The OLS has no further information on how much money is actually collected; how the amount is distributed amongst individuals, federal, and State agencies and finally, by how much the State's share will change under the bill.

The OLS finds that under the bill, the Office of Attorney General may experience increased workload due to certain provisions in the bill. For instance, the bill provides specific authority for the office to make civil investigative demands, issue subpoenas to out-of-State witnesses, and take sworn testimony in relation to New Jersey False Claims Act violations.

Section: Judiciary

*Analyst: Anuja Pande Joshi
Senior Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Signs Fiscal Year 2024 Budget into Law

06/30/2023

*Budget Provides Historic Levels of Property Tax Relief, Another Record Investment in School Funding
Increases Investments in Affordable Housing, Higher Education, and Economic Growth
Continues Path of Fiscal Responsibility with Another Full Pension Payment of \$7.1 Billion and Surplus of over \$8 Billion*

TRENTON – Governor Phil Murphy signed the Fiscal Year 2024 Appropriations Act into Law on Friday, building on the historic progress made over the last five years with new investments centered around increasing affordability, promoting fiscal responsibility, and creating world-class opportunities for everyone to succeed.

The budget approved by the Legislature earlier in the day provides record levels of direct property tax relief with additional aid for seniors and renters while once again providing the highest level of school funding in history; making a third consecutive full pension payment; and supporting significant investments in the economy, workforce development, and affordable housing.

The Governor signed the budget in the rotunda of the newly renovated New Jersey State House where he was joined by Senate President Nicholas Scutari, Assembly Speaker Craig Coughlin, Senate Majority Leader M. Teresa Ruiz, Assembly Majority Leader Louis D. Greenwald, Senate Budget Chair Paul Sarlo, Assembly Budget Chair Eliana Pintor Marin, and State Treasurer Elizabeth Maher Muoio.

“When I first proposed this budget, I said it was a budget designed with a singular purpose – to continue building an economy where every family can afford to make their America Dream come true. Today we are delivering on that promise,” said **Governor Murphy**. “Over the last two years we have committed over \$6 billion in direct property tax relief, tackling of the single greatest and longest standing affordability challenges our state faces. This budget will also lower prescription-drug costs for seniors, help hardworking families by expanding free pre-K for kids, create good-paying jobs and fight climate change by building a green economy, expand mental health services for our kids, build and preserve affordable housing so everyone has a place they can call home, help first-generation homebuyers achieve the safety and security of owning a home, and so much more. We are accomplishing all of this in a fiscally responsible way. This budget continues to fully deliver on our commitments to our pension payments and school funding, while also maintaining a healthy surplus.”

“The budget signed into law today will help make New Jersey more affordable for hardworking residents and families by boosting tax relief and investing in affordable housing, social services, and education,” said **Lt. Governor Sheila Y. Oliver, who serves as Commissioner of the Department of Community Affairs**. “This budget demonstrates that we remain steadfast in our commitment to providing New Jerseyans of all walks of life the opportunity and resources to thrive.”

“This is a great budget for the people of New Jersey. It will help make their lives more affordable with an historic amount of property tax relief, including increased rebates, an expansion of Senior Freeze and a down payment on StayNJ, which will provide additional tax relief for senior citizens,” said **Senate President Nicholas Scutari**. “We are also distributing \$150 million in energy tax receipts to municipalities to further hold down property taxes. This is a fiscally-responsible spending plan that includes a record level of school funding, a full pension payment and a surplus of more than \$10 billion. This budget will help improve the lives and livelihoods of New Jersey’s residents in meaningful ways.”

“This budget ensures our state will be more affordable for everyone,” said **Assembly Speaker Craig Coughlin**. “It also meets our obligations with yet another full pension payment, increases in school aid, support for our most vulnerable neighbors, and a healthy surplus for any future economic uncertainty. I am especially proud of what we’ve done for New Jersey seniors, with the StayNJ program set to deliver historic property tax relief. I proposed StayNJ because seniors deserve the dignity of remaining in their homes, enjoying their later years near their families. Thanks to Governor Murphy, Senate President Scutari, and all our partners in the legislature for their work on this. We have demonstrated that we can do big, bold things for New Jersey while being fiscally responsible.”

“The budget signed today represents the culmination of months of long meetings and thoughtful deliberations and includes significant investments in our communities, our families and our future,” said **Senate Majority Leader M. Teresa Ruiz**. “We are doubling the child tax credit, continuing on the pathway towards universal Pre-K and once again increasing social funding. We are continuing to fund the postpartum home visitation program and lifesaving mental health initiatives. This budget represents our continued effort to make New Jersey more affordable for all of our residents while making lasting investments in our children and the institutions and programs which will nourish their growth and success.”

“The FY24 State Budget reflects our shared priorities, spending on programs that will make a difference in the lives of New Jersey residents while maintaining a healthy surplus,” said **Assembly Majority Leader Louis D. Greenwald**. “New Jersey residents will benefit from new and expanded property tax relief programs and an expanded child tax credit. We are funding programs to support education, affordable housing and healthcare, which will have a meaningful impact.”

“This is a responsive and responsible budget that meets the economic challenges of our time,” said **Senate Budget Committee Chairman Paul Sarlo**. “It will provide significant tax relief, install economic safeguards and help fuel economic growth. It addresses our top priority of making the lives of New Jersey’s residents more affordable. It includes a full pension payment, a record amount of school aid, a robust surplus to protect against economic uncertainty and a debt defeasance fund to drive down debt. We need to continue to be fiscally responsible with the use of our resources at the same time we expand economic opportunities that build a better future for New Jersey and our residents.”

“This budget highlights the priorities of a New Jersey that values its residents, promotes inclusivity, and invests in our future,” said **Assembly Budget Committee Chairwoman Eliana Pintor Marin**. “Together, we are ensuring that hardworking families receive the retirement security they deserve, access to safe and affordable homes, relief from property taxes, and quality education that empowers our children to thrive.”

“I would like to thank my staff at the Department of the Treasury, particularly the hardworking folks at the Office of Management and Budget and the Office of Revenue and Economic Analysis for their tireless dedication and professionalism. The budget signed by the governor today continues our commitment to making the state a more affordable place to live, raise a family, and retire,” said **State Treasurer Elizabeth Maher Muoio**. “With unprecedented tax relief for our seniors and middle-class families, a third full pension payment in as many years, record funding of our best-in-the-nation schools and a budget surplus of approximately 15 percent, this budget maintains sound fiscal management that helps prepare for the Next New Jersey.”

The \$54.5 billion budget for Fiscal Year (FY2024) includes a historic surplus of \$8.3 billion, which is more than 15 percent of budgeted appropriations, dwarfing the surplus inherited from previous years ago.

Increasing Affordability

With the FY2024 budget, a total of 20 tax cuts for working and middle-class families and seniors have been enacted under the Murphy Administration, including more than \$2 billion in direct property tax relief for the second year of the ANCHOR property tax relief program. As the State begins to phase-in the newly enacted StayNJ property tax relief program championed by Assembly Speaker Coughlin, ANCHOR will provide a \$250 boost in relief for senior homeowners and renters this year. Eligible senior tenants will now see their relief boosted by more than 55 percent to \$700 in the coming year and homeowners will receive \$1,250 or \$1,750, depending on their income.

The StayNJ senior property tax credit affordability program expands income limits and modifies ownership requirements with the aim of cutting property taxes in half for many eligible New Jersey seniors by providing a direct credit of up to \$6,500 on property tax bills when fully implemented.

Additional relief for seniors was also enacted alongside the budget, which will expand eligibility for the Senior Freeze property tax relief program next year for those with incomes up to \$150,000, up from roughly \$100,000. To further help boost affordability for seniors, the budget and legislation signed alongside it (S3/A3), sponsored by Senator Joseph Vitale and Assemblyman Chris Tully, also increases eligibility for the State’s senior prescription drug and hearing aid programs to help make New Jersey more affordable for individuals of all ages.

In addition to raising the income eligibility limits for the Pharmaceutical Assistance to the Aged and Disabled Program (PAAD) to benefit more seniors, the new law includes a number of directives to encourage enrollment in both PAAD and the Senior Gold Prescription Program, including establishing a grant program in the Department of Human Services to support

hiring and training of Senior Save Navigators to assist residents in applying for programs such as PAAD and Senior Gold.

For working- and middle-class families, the budget delivers significant relief by including the Governor's proposal to double the Child Tax Credit that was enacted last year. The program will now provide up to \$1,000 per child under age six for families earning under \$30,000.

For the second year in a row, the budget includes a back-to-school sales tax holiday and waives the fee for entrance into all State parks for another year, including Island Beach State Park. To help boost the ranks of teachers in New Jersey the budget also waives the fee for teacher certification, as proposed by the Governor this year.

For the sixth straight year, the Governor has also promised no fare increases for NJ TRANSIT commuters.

Additionally, the budget continues to increase indirect property tax relief by providing \$150 million in Energy Tax Receipts-related payments to extend the Municipal Relief Fund for an additional year, doubling last year's funding, which is designed to offset the burden on local property taxpayers by providing additional aid to municipalities.

Expanding Educational Opportunity

The budget also supports the Governor's commitment to supporting New Jersey's best-in-the-nation public education system by providing another record total of \$11 billion in direct aid for public schools, including an increase of \$832 million, as well as \$103 million in supplemental stabilization aid enacted in April for school districts adjusting to changes in enrollment. With this latest budget, the State has now increased overall K-12 support to New Jersey's public schools by more than \$2.6 billion over six years, a more than 20 percent increase, all of which helps offset local property taxes.

Advancing the Governor's goal of universal pre-K, the budget includes an additional \$116 million for pre-school education aid, \$40 million of which will go towards expanding programs in new districts as well as other critical needs for further expansion.

Additionally, the Governor is working to shore up the ranks of teachers, budgeting over \$20 million in new investments and other supports to help ensure New Jersey has the trained and dedicated workforce to provide a top-quality education for public school students years into the future. This includes \$10 million for student teacher stipends to help future educators meet the costs of living while working and studying for their credentials, \$5 million to waive teacher certification fees, \$2 million for Culture and Climate Innovation Grants to help improve educator quality of life, \$1 million for the Teachers Loan Redemption Program, \$1 million to develop local partnerships for para-professional training, \$800,000 for a teaching apprenticeship program, and \$500,000 to expand the Teacher Leader Network. The proposed budget also maintains funding for Men of Color Hope Achievers (MOCHA) and the Mid-Career Teacher Development Programs to support a diverse educator workforce.

To accelerate learning outcomes, the State will also dedicate nearly \$55 million this year in federal funds for learning acceleration and other recovery programs, as proposed by the Governor.

The budget also strengthens the Governor's "College Promise" programs by increasing the eligibility threshold for both the Community College Opportunity Grant and the Garden State Guarantee so that students with family incomes up to \$100,000 can benefit. Additionally, the budget increases the value of Tuition Aid Grants for over 20,000 students and expands the Some College, No Degree program, so that former students with some credit receive the support they need to complete school.

The budget also provides over \$150 million in the Outcomes-Based Allocation this year for State colleges and universities, compared to \$55 million in FY2023, to help keep tuition affordable and support the next generation of New Jersey's educated workforce. Additionally, it includes \$70 million to help cover fringe benefit costs at public research universities, an additional \$20 million for community colleges, and an additional \$5 million for independent colleges and universities.

Promoting Fiscal Responsibility

In addition to a record projected ending surplus of \$8.3 billion – 20 times larger than the surplus the Murphy Administration inherited – the FY2024 budget also makes good on the Administration's commitment to public sector employees by including the third consecutive full pension payment. The \$7.1 billion payment, which includes contributions from the State Lottery, brings the total contribution to the pension fund under the Murphy Administration to \$32.6 billion, nearly triple the \$12.2 billion paid under the previous six administrations combined. The FY2024 payment will mark the first time in a quarter of a century that the State has contributed 100 percent of the Actuarially Determined Contribution three years in a row.

The budget also puts additional money in the Debt Defeasance and Prevention Fund, bringing the current available balance to \$2 billion to support important State infrastructure projects and avoid incurring new debt in the future. The FY2024 deposit brings the total allocation to the fund to \$9.25 billion over the last two years, which has been used to retire existing debt while setting aside money to pay for upcoming projects that might otherwise be bonded. Over a two-year period, \$3.5 billion from the fund has already been used to defease \$4.7 billion in State debt service through FY2042, saving the State's taxpayers \$1.2 billion.

The continued commitment by the Governor and the Legislature to bolster the pension system, reduce debt, and build up the State's surplus has saved taxpayers money and garnered a total of seven credit rating upgrades from the four major rating agencies over the last 16 months.

The budget also includes substantial funding to continue upgrading the State's service-based infrastructure to ensure a more efficient delivery of essential services to taxpayers, including more than \$40 million to continue improving the unemployment insurance system, digitizing more services at the Motor Vehicle Commission, and expanding the Division of Taxation's property tax relief call center.

Expanding Opportunity and Promoting Economic Growth

The budget also places a concerted focus on expanding opportunities for every New Jersey resident in tandem with supporting economic growth, a hallmark of Governor Murphy's time in office.

An \$80 million allocation of federal American Rescue Plan (ARP) funds will be used to create an Urban Investment Fund and Atlantic City Economic Foundations Fund to work alongside current and proposed business incentive programs. The funds will aid in the revitalization of urban areas and catalyze new economic and community activity where shifting patterns of work and commuting since the pandemic have reduced foot traffic and created ongoing challenges to community vitality.

Grants from the fund would be flexible and responsive to the needs of cities and could include funding to reimagine the use of now-underutilized office space, support capital construction projects that renovate or restore vacant buildings, or build new destinations and spaces for urban communities. As proposed by the Governor in February, the budget includes a specific set-aside for Atlantic City to improve public safety, rebuild distressed housing, and diversify economic development in the city.

The FY2024 budget also allocates \$50 million in continued support for the Main Street Recovery Program, which funds multiple financial assistance products aimed at supporting the growth and success of small businesses in New Jersey.

The budget continues to expand job opportunities for New Jerseyans, increasing the allocation for the Workforce Development Partnership Fund (WDPF) by \$5 million, to \$27.5 million to invest in apprenticeships, pre-apprenticeships, on-the-job training, and other programs that develop skills while bringing more women and minorities into job training opportunities. The State has invested a total of \$50 million through grant programs since the Governor took office to create and develop work-based learning, pre-apprenticeship and apprenticeship programs across the state.

The budget also includes significant investments to grow New Jersey's green economy and combat climate change, including \$12 million more for the Clean Energy Program, which previously went to NJ TRANSIT, a \$40 million Green Fund to leverage both private capital and federal funds, \$20 million for the Resilience and Stormwater Planning and Infrastructure program, and an additional \$10 million to support the continued installation of EV charging infrastructure throughout the State.

Additionally, the budget agreement includes \$20 million to support the creation of a Social Impact Investment Fund, an innovative new financing tool to provide below-market loans

socially conscious projects in distressed municipalities.

The budget agreement also includes the \$100 million Boardwalk Fund Governor Murphy initially proposed in February, which will support repairs and renovations to boardwalks up down the Jersey shore that support the State's tourism industry and provide a crucial economic engine.

The budget also includes an additional \$20 million for continued development of the ambitious, new, nine-mile Greenway that will convert a former rail line into a new State park connecting eight Essex and Hudson County communities.

The budget agreement not only reduces NJ TRANSIT's capital-to-operating transfer to its lowest level in 21 years, it also includes \$137 million in new funding from the Debt Defeasance and Prevention Fund to match federal funding earmarked for transportation-related capital investments. Additionally, the budget will expand the Department of Transportation's innovative Simple Fix Safety program.

The FY2024 budget also funds substantial investments to improve public health and social outcomes and reduce long-standing disparities.

To that end, the budget includes nearly \$300 million for a host of housing affordability initiatives, including over \$100 million in federal ARP funds to build upon last year's \$300 million landmark creation of the Affordable Housing Production Fund. A new Urban Preservation Fund will provide \$80 million to maintain affordability of existing units in New Jersey cities and additional funds will be used to develop new workforce housing units to improve affordability in transit-served areas, enhance urban vitality, and launch a Resilient Homes Construction Pilot program to expand building stock and affordable homeownership across the state. All told, the Murphy Administration will have committed over \$1.3 billion in federal ARP funds to housing programs over the last three fiscal years.

Drawing on the work of the Wealth Disparity Task Force, the budget also includes an additional \$15 million to enhance the existing [Down Payment Assistance Program](#) to provide changing assistance for first-generation homebuyers and help families who have been excluded from homeownership for generations.

The budget also includes over \$300 million more than last year in ARP and State funding to support hospital capital investments to bolster New Jersey's public health infrastructure. This includes \$30 million to create the City of Newark Access to Health Care Partnership, and \$60 million in additional funding for University Hospital to expand and improve its emergency and maternity departments.

Additionally, the budget includes \$86 million that was initially proposed by the Governor in February to support a one-time program through the Department of Human Services to subsidize training and recruitment for mental health, substance use, and developmental disabilities service providers to help address what has become a national crisis.

As part of Governor Murphy's national leadership on youth mental health, the budget also includes \$43 million to launch the New Jersey Statewide Student Support Services (NJ4S) network, which will deliver wellness and prevention supports from regional hubs. An additional \$40 million will support providers across multiple divisions in the Department of Children and Families, including the Children's System of Care.

The budget also continues to invest in improving maternal and infant health and mortality rates throughout New Jersey. As part of First Lady Tammy Murphy's Nurture NJ initiative proposed budget includes new funds for a maternal health data center and to train community health workers and doulas. Additionally, \$15.6 million in State funding will support the continued expansion of the landmark, statewide Universal Newborn Home Nurse Visitation Program, putting New Jersey further along the path to being one of the first states in the nation to provide this critical care for all mothers and newborns within the first two weeks of birth.

The budget also continues to provide crucial investments to make health care more affordable and accessible for every New Jerseyan, leveraging State and federal funding through Get Covered New Jersey exchange, while also supporting [Cover All Kids](#) and funding a \$10 million pilot program to eliminate personal medical debt.

To address the disparate, long-term impact that many justice system fees and fines can have on people of limited means, the budget includes Governor Murphy's proposal to eliminate public defender fees, which are currently assessed on indigent clients regardless of whether they are ultimately found guilty. Additionally, the budget provides funding for the Parol Revocation Defense Unit and to increase the rates paid to attorneys assisting the Office of the Public Defender to help ensure that residents of limited means have access to an effective legal defense.

The budget also includes the Governor's proposal to provide over \$8 million in increased State funds to support the first-in-the-nation statewide expansion of the ARRIVE Together program, which stands for Alternative Responses to Reduce Instances of Violence and Escalation and pairs police officers and State Troopers with mental health professionals when responding to a person who is experiencing a mental health crisis.

To ensure that the State's first responders and law enforcement professionals receive the training and equipment necessary to protect and serve New Jersey's nine million residents, the budget funds the Governor's proposed doubling of the successful Firefighters Grant Program, bringing the total to \$20 million. The budget also makes significant investments to strengthen the ranks of the New Jersey State Police, allocating \$120 million to begin building a new training center for the next generation of New Jersey State Police and including an additional \$5 million for the 166th State Trooper recruit class.

An additional one-page policy summary on the central commitments of the FY2024 budget can be found online [here](#).

In addition to the Appropriations Act, Governor Murphy also signed the following bills into law today:

A-1/S-1 (Coughlin, Greenwald, Freiman, Swain, Moriarty, Wimberly, Lopez, Tully/Scutari, Gopal, Lagana) - Establishes Stay NJ senior property tax credit affordability program; expands income limit and modifies ownership requirement for eligibility to receive homestead property tax reimbursement; appropriates not more than \$300 million

S-3980/A-5673 (Sarfo/Freiman) - Credits \$400 million to "New Jersey Debt Defeasance and Prevention Fund"; appropriates \$371 million to DOC, DLPS, South Jersey Port Corporation and DOT; establishes process for authorizing future appropriations for debt defeasance and capital projects

A-5668/S-3978 (Pintor Marin/Sarfo) - Makes FY 2023 supplemental appropriations of \$158,525,000 and modifies certain language provisions

A-5590/S-3941 (Lampitt, Carter, Jasey/Gopal) - Waives certain certification and credentialing fees for teachers for one year

S-3940/A-5672 (Ruiz, Singleton/Reynolds-Jackson, Speight, Spearman) - Increases child tax credit under gross income tax

A-3/S-3 (Tully, Moriarty, McKnight, Freiman, Quijano, Mukherji, Swain, Carter/Vitale, Lagana, Zwicker) - Revises income eligibility criteria for, and provides for promotion of, PAAD Senior Gold Prescription Discount Program; establishes "Senior Save Navigator Grant Program" to assist applicants with NJ Save applications.

A-590/S-405 (Spearman, McKnight, Haider/Johnson, Singer) - Codifies, and increases under certain circumstances, current minimum Medicaid per diem reimbursement rates for assisted living residences, comprehensive personal care homes, and assisted living programs; makes appropriation

A-5082/S-3587 (Greenwald, Mukherji, McKnight/Lagana, Gopal) - Establishes Medicaid per diem rate for pediatric medical day care services delivered by provider offering on-site services; appropriates \$3.6 million to DHS

A-5173/S-2362 (McKnight, Speight, Tully/Beach, Madden) - Requires hourly reimbursement rate for home health aide services provided through Statewide Respite Care Program Jersey Assistance for Community Caregiving Program to be no less than Medicaid fee-for-service rate for personal care services; makes appropriation

A-4674/S-3278 (Moriarty, Danielsen, McKnight/Stanfield, Bucco) - Concerns eligibility for senior freeze reimbursement if eligible claimant exceeds income limit

S-2857/A-4167 (Gopal, Ruiz/Benson, Sumter, Verrelli) - Establishes "Sustainable New Jersey Fund" in DEP to support certain sustainability initiatives; appropriates \$1 million

A-5209/S-3615 (Freiman/Sarlo, Zwicker) - Establishes Agritourism Fund; requires annual appropriation of \$2.5 million from General Fund; appropriates \$2.5 million

S-4052/A-5654 (Smith/Freiman, Reynolds-Jackson, Quijano) - Appropriates \$9,184,427 to DEP from constitutionally dedicated CBT revenues for grants to certain nonprofit entities to acquire or develop lands for recreation and conservation purposes, and for certain administrative expenses.

S-4018/A-5584 (Johnson, Turner/Jimenez, Freiman, Moriarty) - Revises New Jersey False Claims Act to comply with federal law for purposes of entitling State to enhanced recovery of Medicaid fraud cases

A-2190/S-3075 (Caputo, Chaparro, Greenwald/Beach, Polistina) - Extends authorization for Internet gaming law to 2028

A-5606/S-3953 (Haider, Moen/Sarlo) - Appropriates unexpended funds from "1999 Statewide Transportation and Local Bridge Fund"
[Revenue Certification](#)

S-2024/A-5669 (Sarlo/Pintor Marin) - LINE ITEM VETO - Appropriates \$54,357,547,000 in State funds and \$26,144,171,463 in federal funds for the State budget for fiscal year 2024.

[Line Item Veto Statement](#)

[Line Item Veto Message](#)

The Governor also conditionally vetoed the following bills earlier today and signed them later in the day upon concurrence by the Legislature:

A-4701/S-3144 (Pintor Marin, Speight, Schaer/Gopal, Ruiz, Singer) - Supplemental appropriation of \$3.6 million to DHS to increase adult medical day care Medicaid per diem rate from \$86.10 to \$89.54

[Conditional Veto Message](#)

S-4053/A-5655 (Greenstein, Turner/Sumter, Tully) - Appropriates \$87,783,515 from constitutionally dedicated CBT revenues and various Green Acres funds to DEP for local government open space acquisition and park development projects, and for certain administrative expenses.

[Conditional Veto Message](#)