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Title 2A.
Chapter 32C.
(New)
False Claims.
§§1-15,17,18 -
C.2A:32C-1 to
2A:32C-17
§19 - Note to
§§1-18

P.L. 2007, CHAPTER 265, *approved January 13, 2008*
Senate Committee Substitute (*Second Reprint*) for
Senate, Nos. 360 and 1829

1 AN ACT establishing the “New Jersey False Claims Act,”
2 supplementing Title 2A of the New Jersey Statutes and amending
3 P.L.1968, c.413.

4

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

7

8 1. (New section) Sections 1 through 15 ¹and sections 17 and
9 18¹ of this act shall be known and may be cited as the “New Jersey
10 False Claims Act.”

11

12 2. (New section) As used in this act:

13 “Attorney General” means the Attorney General of the State of
14 New Jersey, or his designee.

15 “Claim” means a request or demand, under a contract or
16 otherwise, for money, property, or services that is made to any
17 employee, officer, or agent of the State, or to any contractor,
18 grantee, or other recipient if the State provides any portion of the
19 money, property, or services requested or demanded, or if the State
20 will reimburse the contractor, grantee, or other recipient for any
21 portion of the money, property, or services requested or demanded.
22 The term does not include claims, records, or statements made in
23 connection with State tax laws.

24 “Knowing” or “knowingly” means, with respect to information,
25 that a person:

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

27 (2) acts in deliberate ignorance of the truth or falsity of the
28 information; or

29 (3) acts in reckless disregard of the truth or falsity of the
30 information.

31 No proof of specific intent to defraud is required. ¹**[Innocent**
32 **mistake shall be a defense to an action under this act.]** Acts

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted January 3, 2008.

² Senate floor amendments adopted January 7, 2008.

1 occurring by innocent mistake or as a result of mere negligence
2 shall be a defense to an action under this act.

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.¹

8
9 3. (New section) ¹[Any] A¹ person ¹[who commits any of the
10 following acts]¹ 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 ¹or
16 fraudulent¹ claim, plus three times the amount of damages which
17 the State sustains ¹[because of the act of that person] , if the person
18 commits any of the following acts¹:

19 a. Knowingly presents or causes to be presented to an employee,
20 officer or agent of the State, or to any contractor, grantee, or other
21 recipient of State funds, a false ¹or fraudulent¹ claim for payment or
22 approval;

23 b. Knowingly makes, uses, or causes to be made or used a false
24 record or statement to get a false ¹or fraudulent¹ claim paid or
25 approved by the State;

26 c. Conspires to defraud the State by getting a false ¹or
27 fraudulent¹ claim allowed or paid by the State;

28 d. Has possession, custody, or control of public property or
29 money used or to be used by the State and ¹[knowingly]
30 ²[intending to defraud the entity or willfully to conceal the
31 property.¹] knowingly² delivers or causes to be delivered less
32 property than the amount for which the person receives a certificate
33 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
36 ²[knowingly], intending to defraud the entity,² makes or delivers a
37 receipt ¹[that falsely represents the property used or to be used]
38 without completely knowing that the information on the receipt is
39 true¹;

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

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

- 1 4. (New section) The court may reduce the treble damages
2 authorized under section 3 of this act to not less than twice the
3 amount of damages which the State sustains ¹[and may order that
4 no civil penalty be imposed]¹ if the court finds all of the following:
- 5 a. The person committing the violation furnished officials of
6 the State responsible for investigating false claims violations with
7 all information known to such person about the violation within 30
8 days after the date on which the person first obtained the
9 information;
- 10 b. The person fully cooperated with any ¹[official]
11 government¹ investigation of the violation; and
- 12 c. At the time such person furnished the State with information
13 about the violation, no criminal prosecution, civil action, or
14 administrative action had commenced with respect to such
15 violation, and the person did not have actual knowledge of the
16 existence of an investigation into such violation.
17
- 18 5. (New section) a. The Attorney General shall investigate a
19 violation of this act. If the Attorney General finds that a person has
20 violated or is violating this act, the Attorney General may bring a
21 civil action in ¹[Superior Court] State or federal court¹ against the
22 person. ¹The Superior Court shall have jurisdiction over a State
23 action brought pursuant to this act.¹
- 24 b. A person may bring a civil action ¹[in Superior Court]¹ for
25 a violation of this act for the person and for the State. Civil actions
26 instituted under this act shall be brought in the name of the State of
27 New Jersey.
- 28 c. A complaint filed by a person under this act shall remain
29 under seal for ¹[up to] at least¹ 60 days and shall not be served on
30 the defendant until the court so orders. Once filed, the action may
31 be voluntarily dismissed by the person bringing the action if the
32 Attorney General gives written consent to the dismissal along with
33 the reason for consenting, and the court approves the dismissal.
- 34 d. A complaint alleging a false claim filed under this act shall
35 be so designated when filed, in accordance with the Rules
36 Governing the Courts of the State of New Jersey. Immediately
37 upon filing of the complaint, the plaintiff shall serve by registered
38 mail, return receipt requested, the Attorney General with a copy of
39 the complaint and written disclosure of substantially all material
40 evidence and information the person possesses. The Attorney
41 General may elect to intervene and proceed with the action on
42 behalf of the State within 60 days after it receives both the
43 complaint and the material evidence and information.
- 44 e. If a person brings an action under this act and the action is
45 based upon the facts underlying a pending investigation by the
46 Attorney General, the Attorney General may take over the action on
47 behalf of the State. In order to take over the action, the Attorney

1 General shall give the person written notification within 30 days
2 after notice of the action is served on the Attorney General that the
3 Attorney General is conducting an investigation of the facts of the
4 action and will take over the action.

5 f. The Attorney General may, for good cause shown, request
6 that the court extend the time during which the complaint remains
7 under seal. Any such motion may be supported by affidavits or
8 other submissions in camera. ¹ [No more than three motions for an
9 extension, each for a request of no more than a 90-day period, shall
10 be considered.]¹

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

13 (1) file a pleading with the court that he intends to proceed with
14 the action, in which case the action is conducted by the Attorney
15 General and the seal shall be lifted; or

16 (2) file a pleading with the court that he declines to proceed
17 with the action, in which case the seal shall be lifted and the person
18 bringing the action shall have the right to conduct the action.

19 h. The defendant's answer to any complaint filed under this act
20 shall be filed in accordance with the Rules Governing the courts of
21 the State of New Jersey after the complaint is unsealed and served
22 upon the defendant.

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

26
27 6. (New section) a. If the Attorney General proceeds with the
28 action, the Attorney General shall have primary responsibility for
29 prosecuting the action, and shall not be bound by any act of the
30 person bringing the action. The person bringing the action has the
31 right to continue as a party to the action, subject to limitations
32 specified in this act. ¹The person bringing the action has an ongoing
33 duty to disclose information related to the action to the Attorney
34 General.¹

35 b. The Attorney General may move to dismiss the action ¹[for
36 good cause shown,]¹ ²for good cause shown.² notwithstanding the
37 objections of the person bringing the action, provided that the
38 person bringing the action has been notified by the Attorney
39 General and the court has provided the person bringing the action
40 with the opportunity for a hearing.

41 c. Nothing in this act shall be construed to limit the authority
42 of the Attorney General or the person bringing the action to settle
43 the action, if the court determines after a hearing that the proposed
44 settlement is fair, adequate, and reasonable under all the
45 circumstances. Upon a showing of good cause, the hearing may be
46 held in camera.

47 d. Upon a showing by the Attorney General that unrestricted

1 participation during the course of the litigation by the person
2 initiating the action would interfere with or unduly delay the
3 Attorney General's prosecution of the case, or would be repetitious,
4 irrelevant, or for purposes of harassment, the court may, in its
5 discretion, impose limitations on the person's participation,
6 including, but not limited to:

- 7 (1) Limiting the number of witnesses the person may call;
8 (2) Limiting the length of the testimony of the person's
9 witnesses;
10 (3) Limiting the person's cross-examination of witnesses; or
11 (4) Otherwise limiting the participation by the person in the
12 litigation.

13 e. Upon a showing by the defendant that unrestricted
14 participation during the course of the litigation by the person
15 initiating the action would be for purposes of harassment or would
16 cause the defendant undue burden or unnecessary expense, the court
17 may limit the participation by the person in the litigation.

18 f. If the Attorney General decides not to proceed with the
19 action, the seal shall be lifted and the person who initiated the
20 action shall have the right to conduct the action. 'The decision of
21 the Attorney General on whether to proceed with an action shall be
22 deemed final and shall not be subject to review by any court or
23 agency.'¹ If the Attorney General so requests, the Attorney General
24 shall be served at the expense of the Attorney General with copies
25 of all pleadings and motions filed in the action and copies of all
26 deposition transcripts. When a person proceeds with the action, the
27 court, without limiting the rights of the person initiating the action,
28 may permit the Attorney General to intervene and take over the
29 action on behalf of the State at a later date upon 'a' showing of
30 good cause.

31 g. Whether or not the Attorney General proceeds with the
32 action, upon a showing by the Attorney General that certain actions
33 of discovery by the person initiating the action would interfere with
34 an investigation by the State or the prosecution of a criminal or civil
35 matter arising out of the same facts, the court may stay such
36 discovery for a period of not more than 60 days. Such a showing
37 shall be conducted in camera. The court may extend the 60-day
38 period upon a further showing in camera by the Attorney General
39 that the criminal or civil investigation or proceeding has been
40 pursued with reasonable diligence and any proposed discovery in
41 the civil action will interfere with an ongoing criminal or civil
42 investigation or proceeding.

43 h. The application of one civil remedy under this act shall not
44 preclude the application of any other remedy, civil, administrative
45 or criminal, under this act or any other provision of law. Civil and
46 administrative remedies under this act are supplemental, not
47 mutually exclusive. If after the filing of a complaint under section

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

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

24 b. If the Attorney General proceeds with an action which the
25 court finds to be based primarily on disclosures of specific
26 information, other than that provided by the person bringing the
27 action, relating to allegations or transactions in a criminal, civil, or
28 administrative hearing; a legislative, administrative, or inspector
29 general report, hearing, audit, or investigation; or from the news
30 media, the court may award such sums as it considers appropriate
31 ¹[, but in no case more than 10% of the proceeds recovered under a
32 judgment or received in settlement of a claim under this act]¹,
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 a fixed 10% of the
36 proceeds in any action or settlement of the claim that it brings,
37 which shall ¹be deposited in the “False Claims Prosecution Fund”
38 established in section 13 of this act and shall¹ only be used to
39 support its ongoing investigation and prosecution of false claims
40 pursuant to the provisions of this act.

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

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

6 f. Any payment under this section to the person bringing the
7 action shall be paid only out of the proceeds recovered from the
8 defendant.

9 g. Whether or not the Attorney General proceeds with the
10 action, if the court finds that the action was brought by a person
11 who knowingly planned and initiated the violation of this act upon
12 which the action was brought, the court may, to the extent the court
13 considers appropriate, reduce the share of the proceeds of the action
14 which the person would otherwise receive under this section **'[to no**
15 **more than 10%]'**, taking into account the role of the person in
16 advancing the case to litigation and any relevant circumstances
17 pertaining to the violation. If the person bringing the action is
18 convicted of criminal conduct arising from his role in the violation
19 of this act the person shall be dismissed from the civil action and
20 shall not receive any share of the proceeds of the action. Such
21 dismissal shall not prejudice the right of the Attorney General to
22 continue the action.

23

24 8. (New section) a. If the Attorney General initiates an action
25 under this act or assumes control of an action brought by a person
26 under this act, the Attorney General shall be awarded **'[its]'**
27 reasonable attorney's fees, expenses, and costs.

28 b. If the court awards proceeds to the person bringing the
29 action under this act, the person shall also be awarded an amount
30 for reasonable attorney's fees, expenses, and costs. Payment for
31 reasonable attorney's fees, expenses, and costs shall be made from
32 the recovered proceeds before the distribution of any award.

33 c. If the Attorney General does not proceed with an action
34 under this act and the defendant is the prevailing party, the court
35 may award the defendant reasonable attorney's fees, expenses, and
36 costs against the person bringing the action if the court finds that
37 the claim of the person bringing the action was clearly frivolous,
38 clearly vexatious, or brought primarily for purposes of harassment.

39 d. No liability shall be incurred by the State or the Attorney
40 General for any expenses, attorney's fees, or other costs incurred by
41 any person in bringing or defending an action under this act.

42

43 9. (New section) a. No member of the Legislature, a member
44 of the Judiciary, a senior Executive branch official, or a member of
45 a county or municipal governing body may be civilly liable if the
46 basis for an action is premised on evidence or information known to
47 the State when the action was brought. For purposes of this

1 subsection, the term “senior Executive branch official” means any
2 person employed in the Executive branch of government holding a
3 position having substantial managerial, policy-influencing or
4 policy-executing responsibilities.

5 b. A person may not bring an action under this act based upon
6 allegations or transactions that are the subject of a pending action or
7 administrative proceeding in the State.

8 c. No action brought under this act shall be based upon the
9 public disclosure of allegations or transactions in a criminal, civil,
10 or administrative hearing, in an investigation, report, hearing or
11 audit conducted by or at the request of the Legislature or by the
12 news media, unless the action is brought by the Attorney General,
13 or unless the person bringing the action is an original source of the
14 information. For purposes of this subsection, the term “original
15 source” means an individual who has direct and independent
16 knowledge of the information on which the allegations are based
17 and has voluntarily provided the information to the State before
18 filing an action under this act based on the information.

19 ¹d. No action may be brought under this act by a present or
20 former employee or agent of the State or any political subdivision
21 thereof when the action is based upon information discovered in any
22 civil, criminal or administrative investigation or audit which
23 investigation or audit was within the scope of the employee’s or
24 agent’s duties or job description.

25 ²[e. Unless a person is an original source, a person may not
26 bring an action under this act that is based on allegations or
27 transactions that the person knew or had reason to know were
28 known to the Attorney General or other law enforcement officials
29 prior to that person filing the action or serving the disclosure of
30 material evidence. For the purposes of this subsection, the term
31 “original source” means an individual who has direct and
32 independent knowledge of the information on which the allegations
33 are based and has voluntarily provided the information to the State
34 before filing an action under this act based on this information.¹ **]**²

35
36 10. (New section) a. No employer shall make, adopt, or enforce
37 any rule, regulation, or policy preventing an employee from
38 disclosing information to a State or law enforcement agency or from
39 acting to further a false claims action, including investigating,
40 initiating, testifying, or assisting in an action filed or to be filed
41 under this act.

42 b. No employer shall discharge, demote, suspend, threaten,
43 harass, deny promotion to, or in any other manner discriminate
44 against an employee in the terms and conditions of employment
45 because of lawful acts done by the employee on behalf of the
46 employee or others in disclosing information to a State or law
47 enforcement agency or in furthering a false claims action, including

1 investigation for, initiation of, testimony for, or assistance in an
2 action filed or to be filed under this act.

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

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

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

25 (2) The employee had been harassed, threatened with
26 termination or demotion, or otherwise coerced by the employer or
27 its management into engaging in the fraudulent activity in the first
28 place.

29
30 11. (New section) A civil action under this act may not be
31 brought:

32 a. More than six years after the date on which the violation of
33 the act is committed; or

34 b. More than three years after the date when facts material to
35 the right of action are known or reasonably should have been
36 known by the State official charged with responsibility to act in the
37 circumstances, but in no event more than 10 years after the date on
38 which the violation is committed, whichever occurs last.

39
40 12. (New section) In any action brought under this act, the State
41 or the person bringing the action shall be required to prove all
42 essential elements of the cause of action, including damages, by a
43 preponderance of the evidence.

44
45 13. (New section) ¹[All] a. There is established in the General
46 Fund the "False Claims Prosecution Fund" as a nonlapsing
47 revolving fund in the Department of the Treasury. Monies

1 deposited in the fund shall be utilized by the Attorney General for
2 the exclusive purpose of investigating and prosecuting false claims.
3 The State Treasurer shall deposit 10% of the proceeds recovered by
4 the Attorney General pursuant to subsection c. of section 7 of
5 P.L. , c. (C.)(pending before the Legislature as this bill) in
6 the False Claims Prosecution Fund.

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

12 c. Except as provided in subsections a. and b. of this section, the
13 State share of¹ moneys recovered by the Attorney General in
14 accordance with the provisions of this act shall be deposited in the
15 General Fund.

16

17 14. (New section) a. If the Attorney General has reason to
18 believe that a person has engaged in, or is engaging in, an act or
19 practice which violates this act, or any other relevant statute or
20 regulation, the Attorney General or the Attorney General's designee
21 may administer oaths and affirmations, and request or compel the
22 attendance of witnesses or the production of documents. The
23 Attorney General may issue, or designate another to issue,
24 subpoenas to compel the attendance of witnesses and the production
25 of books, records, accounts, papers and documents. Witnesses shall
26 be entitled to receive the same fees and mileage as persons
27 summoned to testify in the courts of the State.

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

36 b. If the matter that the Attorney General seeks to obtain by
37 request is located outside the State, the person so required may
38 make it available to the Attorney General or the Attorney General's
39 representative to examine the matter at the place where it is located.
40 The Attorney General may designate representatives, including
41 officials of the state in which the matter is located, to inspect the
42 matter on behalf of the Attorney General, and the Attorney General
43 may respond to similar requests from officials of other states.

44 c. If a licensed professional ¹[**,**] or¹ an owner, administrator or
45 employee of ¹a¹ licensed professional, ¹[**included**] including¹ but
46 not limited to an owner, administrator or employee of any hospital,
47 an insurance company, ¹[**agent, broker,**] an insurance producer,¹

1 solicitor or adjuster, or any other person licensed or certified by a
2 licensing authority of this State, or an agent, representative or
3 employee of any of them is found to have violated any provision of
4 this section, the Attorney General shall notify the appropriate
5 licensing authority of the violation so that the licensing authority
6 may take appropriate administrative action.

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

12

13 15. (New section) This act shall not be construed as waiving the
14 sovereign immunity of the State and its officers and employees as
15 otherwise provided by law.

16

17 16. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to
18 read as follows:

19 17. (a) Any person who willfully obtains benefits under this act
20 to which he is not entitled or in a greater amount than that to which
21 he is entitled and any provider who willfully receives medical
22 assistance payments to which he is not entitled or in a greater
23 amount than that to which he is entitled is guilty of a high
24 misdemeanor and, upon conviction thereof, shall be liable to a
25 penalty of not more than \$10,000.00 or to imprisonment for not
26 more than 3 years or both.

27 (b) Any provider, or any person, firm, partnership, corporation
28 or entity, who:

29 (1) Knowingly and willfully makes or causes to be made any
30 false statement or representation of a material fact in any cost study,
31 claim form, or any document necessary to apply for or receive any
32 benefit or payment under this act; or

33 (2) At any time knowingly and willfully makes or causes to be
34 made any false statement, written or oral, of a material fact for use
35 in determining rights to such benefit or payment under this act; or

36 (3) Conceals or fails to disclose the occurrence of an event
37 which

38 (i) affects his initial or continued right to any such benefit or
39 payment, or

40 (ii) affects the initial or continued right to any such benefit or
41 payment of any provider or any person, firm, partnership,
42 corporation or other entity in whose behalf he has applied for or is
43 receiving such benefit or payment

44 with an intent to fraudulently secure benefits or payments not
45 authorized under this act or in greater amount than that which is
46 authorized under this act; or

47 (4) Knowingly and willfully converts benefits or payments or
48 any part thereof received for the use and benefit of any provider or

1 any person, firm, partnership, corporation or other entity to a use
2 other than the use and benefit of such provider or such person, firm,
3 partnership, corporation or entity; is guilty of a high misdemeanor
4 and, upon conviction thereof, shall be liable to a penalty of not
5 more than \$10,000.00 for the first and each subsequent offense or to
6 imprisonment for not more than three years or both.

7 (c) Any provider, or any person, firm, partnership, corporation
8 or entity who solicits, offers, or receives any kickback, rebate or
9 bribe in connection with:

10 (1) The furnishing of items or services for which payment is or
11 may be made in whole or in part under this act; or

12 (2) The furnishing of items or services whose cost is or may be
13 reported in whole or in part in order to obtain benefits or payments
14 under this act; or

15 (3) The receipt of any benefit or payment under this act, is
16 guilty of a high misdemeanor and, upon conviction thereof, shall be
17 liable to a penalty of not more than \$10,000.00 or to imprisonment
18 for not more than 3 years or both.

19 This subsection shall not apply to (A) a discount or other
20 reduction in price under this act if the reduction in price is properly
21 disclosed and appropriately reflected in the costs claimed or charges
22 made under this act; and (B) any amount paid by an employer to an
23 employee who has a bona fide employment relationship with such
24 employer for employment in the provision of covered items or
25 services.

26 (d) Whoever knowingly and willfully makes or causes to be
27 made or induces or seeks to induce the making of any false
28 statement or representation of a material fact with respect to the
29 conditions or operations of any institution or facility in order that
30 such institution or facility may qualify either upon initial
31 certification or recertification as a hospital, skilled nursing facility,
32 intermediate care facility, or health agency, thereby entitling them
33 to receive payments under this act, shall be guilty of a high
34 misdemeanor and shall be liable to a penalty of not more than
35 \$3,000.00 or imprisonment for not more than 1 year or both.

36 (e) Any person, firm, corporation, partnership, or other legal
37 entity who violates the provisions of any of the foregoing
38 subsections of this section or any provisions of section 3 of P.L. ,
39 c. (C.) (pending before the Legislature as this bill), shall, in
40 addition to any other penalties provided by law, be liable to civil
41 penalties of (1) payment of interest on the amount of the excess
42 benefits or payments at the maximum legal rate in effect on the date
43 the payment was made to said person, firm, corporation, partnership
44 or other legal entity for the period from the date upon which
45 payment was made to the date upon which repayment is made to the
46 State, (2) payment of an amount not to exceed three-fold the amount
47 of such excess benefits or payments, and (3) payment in the sum of

1 [\$2,000.00] not less than and not more than the civil penalty
2 allowed under the federal False Claims Act (31 U.S.C. s.3729 et
3 seq.), as it may be adjusted for inflation pursuant to the federal
4 Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410
5 for each excessive claim for assistance, benefits or payments.

6 (f) Any person, firm, corporation, partnership or other legal
7 entity, other than an individual recipient of medical services
8 reimbursable by the Division of Medical Assistance and Health
9 Services, who, without intent to violate this act, obtains medical
10 assistance or other benefits or payments under this act in excess of
11 the amount to which he is entitled, shall be liable to a civil penalty
12 of payment of interest on the amount of the excess benefits or
13 payments at the maximum legal rate in effect on the date the benefit
14 or payment was made to said person, firm, corporation, partnership,
15 or other legal entity for the period from September 15, 1976 or the
16 date upon which payment was made, whichever is later, to the date
17 upon which repayment is made to the State, provided, however,
18 that no such person, firm, corporation, partnership or other legal
19 entity shall be liable to such civil penalty when excess medical
20 assistance or other benefits or payments under this act are obtained
21 by such person, firm, corporation, partnership or other legal entity
22 as a result of error made by the Division of Medical Assistance and
23 Health Services, as determined by said division; provided, further,
24 that if preliminary notification of an overpayment is not given to a
25 provider by the division within 180 days after completion of the
26 field audit as defined by regulation, no interest shall accrue during
27 the period beginning 180 days after completion of the field audit
28 and ending on the date preliminary notification is given to the
29 provider.

30 (g) All interest and civil penalties provided for in this act and all
31 medical assistance and other benefits to which a person, firm,
32 corporation, partnership, or other legal entity was not entitled shall
33 be recovered in an administrative procedure held pursuant to the
34 "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1, et
35 seq.), except that recovery actions against minors or incompetents
36 shall be initiated in a court of competent jurisdiction.

37 (h) Upon the failure of any person, firm, corporation,
38 partnership or other legal entity to comply within 10 days after
39 service of any order of the director or his designee directing
40 payment of any amount found to be due pursuant to subsection (g)
41 of this section, or at any time prior to any final agency adjudication
42 not involving a recipient or former recipient of benefits under this
43 act, the director may issue a certificate to the clerk of the superior
44 court that such person, firm, corporation, partnership or other legal
45 entity is indebted to the State for the payment of such amount. A
46 copy of such certificate shall be served upon the person, firm,
47 corporation, partnership or other legal entity against whom the

1 order was entered. Thereupon the clerk shall immediately enter
2 upon his record of docketed judgments the name of the person,
3 firm, corporation, partnership or other legal entity so indebted, and
4 of the State, a designation of the statute under which such amount is
5 found to be due, the amount due, and the date of the certification.
6 Such entry shall have the same force and effect as the entry of a
7 docketed judgment in the Superior Court. Such entry, however,
8 shall be without prejudice to the right of appeal to the Appellate
9 Division of the Superior Court from the final order of the director or
10 his designee.

11 (i) In order to satisfy any recovery claim asserted against a
12 provider under this section, whether or not that claim has been the
13 subject of final agency adjudication, the division or its fiscal agents
14 is authorized to withhold funds otherwise payable under this act to
15 the provider.

16 (j) The Attorney General may, when requested by the
17 commissioner or his agent, apply ex parte to the Superior Court to
18 compel any party to comply forthwith with a subpoena issued under
19 this act. Any party who, having been served with a subpoena issued
20 pursuant to the provisions of this act, fails either to attend any
21 hearing, or to appear or be examined, to answer any question or to
22 produce any books, records, accounts, papers or documents, shall
23 be liable to a penalty of \$500.00 for each such failure, to be
24 recovered in the name of the State in a summary civil proceeding to
25 be initiated in the Superior Court. The Attorney General shall
26 prosecute the actions for the recovery of the penalty prescribed in
27 this section when requested to do so by the commissioner or his
28 agent and when, in the judgment of the Attorney General, the facts
29 and law warrant such prosecution. Such failure on the part of the
30 party shall be punishable as contempt of court by the court in the
31 same manner as like failure is punishable in an action pending in
32 the court when the matter is brought before the court by motion
33 filed by the Attorney General and supported by affidavit stating the
34 circumstances.

35 (cf: P.L.1979, c.365, s.16)

36
37 ¹17. (New section) This act shall not abrogate or modify any
38 existing statutory or common law privileges or immunities.¹

39
40 ¹18. (New section) This act shall be liberally construed to
41 effectuate its remedial and deterrent purposes. If any provision of
42 this act or its application to any particular person or circumstance is
43 held invalid, that provision or its application is severable and does
44 not affect the validity of other provisions or applications of this
45 act.¹

1 '【17.】 19.' This act shall take effect on the 60th day after
2 enactment.

3

4

5

6

7

Establishes the "New Jersey False Claims Act."

SENATE, No. 360

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Establishes the "New Jersey False Claims Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/19/2006)

1 AN ACT concerning false claims and supplementing Title 2A of the
2 New Jersey Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey
8 False Claims Act."

9

10 2. Definitions.

11 As used in this act:

12 a. "Claim" includes any request or demand, under a contract or
13 otherwise, for money, property, or services, which is made to any
14 employee, officer or agent of a public entity, or to any contractor,
15 grantee or other recipient if the public entity provides any portion
16 of the money or property requested or demanded, or if the public
17 entity will reimburse the contractor, grantee or other recipient for
18 any portion of the money or property requested or demanded.

19 b. "Knowing" or "knowingly" means, with respect to
20 information, that a person:

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

22 (2) acts in deliberate ignorance of the truth or falsity of the
23 information; or

24 (3) acts in reckless disregard of the truth or falsity of the
25 information.

26 No proof of specific intent to defraud is required. Innocent
27 mistake shall be a defense to an action under this act.

28 c. "Public entity" includes the State, and any county,
29 municipality, district, public authority, public agency, and any other
30 political subdivision or public body in the State.

31 d. "Attorney General" means the Attorney General of the State
32 of New Jersey, or his designee.

33

34 3. Liability for Certain Acts.

35 Any person who commits any of the following acts shall be
36 jointly and severally liable to the public entity for a civil penalty of
37 not less than \$5,000 and not more than \$10,000 for each false claim,
38 plus three times the amount of damages which the public entity
39 sustains because of the act of that person:

40 a. Knowingly presents or causes to be presented to an officer or
41 employee of the public entity a false claim for payment or approval;

42 b. Knowingly makes, uses, or causes to be made or used a false
43 record or statement to get a false claim paid or approved by the
44 public entity;

45 c. Conspires to defraud the public entity by getting a false claim
46 allowed or paid by the public entity;

47 d. Has possession, custody, or control of public property or
48 money used or to be used by the public entity and knowingly

- 1 delivers or causes to be delivered less property than the amount for
2 which the person receives a certificate or receipt;
- 3 e. Is authorized to make or deliver a document certifying receipt
4 of property used or to be used by the public entity and knowingly
5 makes or delivers a receipt that falsely represents the property used
6 or to be used;
- 7 f. Knowingly buys, or receives as a pledge of an obligation or
8 debt, public property from any person who lawfully may not sell or
9 pledge the property;
- 10 g. Knowingly makes, uses, or causes to be made or used a false
11 record or statement to conceal, avoid, or decrease an obligation to
12 pay or transmit money or property to the public entity; or
- 13 h. Is a beneficiary of an inadvertent submission of a false claim
14 to the State government, subsequently discovers the falsity of the
15 claim, and fails to disclose the false claim to the public entity prior
16 to the filing of an action under this act.

17

18 4. Reduction of Liability for Certain Acts.

19 The court may reduce the treble damages authorized under
20 section 3 of P.L. , c. (C.)(now pending before the
21 Legislature as section 3 of this bill) to not less than twice the
22 amount of damages which the public entity sustains because of the
23 act of the person, and may order that no civil penalty be imposed, if
24 the court finds all of the following:

- 25 a. The person committing the violation furnished officials of the
26 public entity responsible for investigating false claims violations
27 with all information known to such person about the violation
28 within 30 days after the date on which the person first obtained the
29 information;
- 30 b. The person fully cooperated with any official investigation of
31 the violation; and
- 32 c. At the time such person furnished the public entity with
33 information about the violation, no criminal prosecution, civil
34 action, or administrative action had commenced with respect to
35 such violation, and the person did not have actual knowledge of the
36 existence of an investigation into such violation.

37

38 5. Civil Actions for False Claims.

- 39 a. The Attorney General shall investigate a violation of P.L. , c.
40 (C.)(now pending before the Legislature as this bill). If the
41 Attorney General finds that a person has violated or is violating
42 P.L. , c. (C.)(now pending before the Legislature as this bill),
43 the Attorney General may bring a civil action under this act against
44 the person.
- 45 b. A person may bring a civil action for a violation of P.L. , c.
46 (C.) (now pending before the Legislature as this bill) for the
47 person and for the affected public entity . Civil actions instituted
48 under P.L. , c. (C.)(now pending before the Legislature as

1 this bill) shall be brought in the name of the State of New Jersey.

2 c. A complaint filed by a person under this act may remain
3 under seal for up to 60 days and shall not be served on the
4 defendant until the court so orders. Once filed, the action may be
5 voluntarily dismissed by the person bringing the action if the
6 Attorney General gives written consent to the dismissal and its
7 reason for the consent.

8 d. The complaint shall be identified on its face as a qui tam
9 action when filed. Immediately upon filing of the complaint, the qui
10 tam plaintiff shall serve by registered mail, return receipt
11 requested, the Attorney General with a copy of the complaint and
12 written disclosure of substantially all material evidence and
13 information the person possesses. The Attorney General may elect
14 to intervene and proceed with the action, on behalf of the public
15 entity, within 60 days after it receives both the complaint and the
16 material evidence and information.

17 e. If a person brings an action under this act and the action is
18 based upon the facts underlying a pending investigation by the
19 Attorney General, the Attorney General may take over the action on
20 behalf of the State. In order to take over the action, the Attorney
21 General shall give the person written notification within 20 days
22 after the action is filed that the Attorney General is conducting an
23 investigation of the facts of the action and that the Attorney General
24 will take over the action filed under this act.

25 f. The Attorney General may, for good cause shown, request the
26 court to extend the time during which the complaint remains under
27 seal. Any such motion may be supported by affidavits or other
28 submissions in camera.

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

31 (1) notify the court that he intends to proceed with the action, in
32 which case the action is conducted by the Attorney General and the
33 seal shall be lifted; or

34 (2) notify the court that he declines to proceed with the action,
35 in which case the seal shall be lifted and the person bringing the
36 action shall have the right to conduct the action.

37 h. The defendant shall not be required to respond to any
38 complaint filed under P.L. , c. (C.)(now pending before the
39 Legislature as this bill) until 30 days after the complaint is unsealed
40 and served upon the defendant in accordance with P.L. , c.
41 (C.) (now pending before the Legislature as this bill).

42 i. When a person files an action under P.L. , c. (C.)(now
43 pending before the Legislature as this bill) no other person may
44 intervene or bring a related action based on the facts underlying the
45 pending action.

46

47 6. Responsibilities of the Attorney General and Rights of
48 Parties.

- 1 a. If the Attorney General, on behalf of the public entity,
2 proceeds with the action, he has the primary responsibility for
3 prosecuting the action, and shall not be bound by any act of the
4 person bringing the action. The person bringing the action has the
5 right to continue as a party to the action, subject to the limitations
6 specified in P.L. , c. (C.)(now pending before the Legislature
7 as this bill).
- 8 b. The Attorney General may move to dismiss the action for
9 good cause shown, notwithstanding the objections of the person
10 bringing the action, provided that the person bringing the action
11 has been notified by the Attorney General and the court has
12 provided the person bringing the action with the opportunity to
13 oppose the motion at a hearing.
- 14 c. Nothing in P.L. , c. (C.)(now pending before the
15 Legislature as this bill) shall be construed to limit the authority of
16 the Attorney General or the person bringing the action to settle the
17 action, if the court determines after a hearing that the proposed
18 settlement is fair, adequate, and reasonable under all the
19 circumstances.
- 20 d. Upon a showing by the Attorney General that unrestricted
21 participation during the course of the litigation by the person
22 initiating the action would interfere with or unduly delay the
23 Attorney General's prosecution of the case, or would be repetitious,
24 irrelevant, or for purposes of harassment, the court may, in its
25 discretion, impose limitations on the person's participation,
26 including, but not limited to:
- 27 (1) Limiting the number of witnesses the person may call;
28 (2) Limiting the length of the testimony of the person's
29 witnesses;
30 (3) Limiting the person's cross-examination of witnesses; or
31 (4) Otherwise limiting the participation by the person in the
32 litigation.
- 33 e. Upon a showing by the defendant that unrestricted
34 participation during the course of the litigation by the person
35 initiating the action would be for purposes of harassment or would
36 cause the defendant undue burden or unnecessary expense, the court
37 may limit the participation by the person in the litigation.
- 38 f. If the Attorney General decides not to proceed with the action,
39 the seal shall be lifted and the person who initiated the action shall
40 have the right to conduct the action. If the Attorney General
41 requests he shall be served at his expense with copies of all
42 pleadings and motions filed in the action and copies of all
43 deposition transcripts. When a person proceeds with the action, the
44 court, without limiting the rights of the person initiating the action,
45 may permit the Attorney General to intervene and take over the
46 action on behalf of the public entity at a later date upon showing of
47 good cause.
- 48 g. Whether or not the Attorney General proceeds with the

1 action, upon a showing by the Attorney General that certain actions
2 of discovery by the person initiating the action would interfere with
3 an investigation by the State or the prosecution of a criminal or civil
4 matter arising out of the same facts, the court may stay such
5 discovery for a period of not more than 60 days. Such a showing
6 shall be conducted in camera. The court may extend the 60-day
7 period upon a further showing in camera by the Attorney General
8 that the criminal or civil investigation or proceeding has been
9 pursued with reasonable diligence and any proposed discovery in
10 the civil action will interfere with an ongoing criminal or civil
11 investigation or proceeding.

12 h. The application of one civil remedy under this act does not
13 preclude the application of any other remedy, civil or criminal,
14 under this act or any other provision of law. Civil remedies under
15 this act are supplemental, not mutually exclusive. Any finding of
16 fact or conclusion of law made in such other proceeding that has
17 become final shall be conclusive on all parties to an action under
18 this section. As used in this subsection, the term "final" means not
19 subject to judicial review.

20

21 7. Awards to parties bringing the action.

22 a. If the Attorney General proceeds with and prevails in an
23 action brought by a person under P.L. , c. (C.)(now pending
24 before the Legislature as this bill), except as provided in subsection
25 b., the court shall order the distribution to the person of at least 15%
26 but not more than 25% of the proceeds recovered under any
27 judgment obtained by the Attorney General under this act or of the
28 proceeds of any settlement of the claim, depending upon the extent
29 to which the person substantially contributed to the prosecution of
30 the action.

31 b. If the Attorney General proceeds with an action which the
32 court finds to be based primarily on disclosures of specific
33 information, other than that provided by the person bringing the
34 action, relating to allegations or transactions in a criminal, civil, or
35 administrative hearing; a legislative, administrative, or auditor
36 general report, hearing, audit, or investigation; or from the news
37 media, the court may award such sums as it considers appropriate,
38 but in no case more than 10% of the proceeds recovered under a
39 judgment or received in settlement of a claim under this act, taking
40 into account the significance of the information and the role of the
41 person bringing the action in advancing the case to litigation.

42 c. The Attorney General shall receive a fixed 10% of the
43 proceeds in any action or settlement of the claim that it brings,
44 which shall only be used to support its ongoing investigation and
45 prosecution of false claims pursuant to the provisions of P.L. , c.
46 (C.)(now pending before the Legislature as this bill).

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

1 shall receive an amount which the court decides is reasonable for
2 collecting the civil penalty and damages. The amount shall be not
3 less than 25% and not more than 33% of the proceeds of the action
4 or settlement of a claim under this act.

5 e. Following any distributions under subsections a., b., c. or d.
6 of this section the public 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 planned and initiated the violation of this act upon which the
16 action was brought, the court may, to the extent the court considers
17 appropriate, reduce the share of the proceeds of the action which the
18 person would otherwise receive under this section, taking into
19 account the role of the person in advancing the case to litigation and
20 any relevant circumstances pertaining to the violation. If the person
21 bringing the action is convicted of criminal conduct arising from his
22 role in the violation of this act the person shall be dismissed from
23 the civil action and shall not receive any share of the proceeds of
24 the action. Such dismissal shall not prejudice the right of the
25 Attorney General to continue the action.

26

27 8. Expenses; Attorney's fees and costs.

28 a. If the Attorney General initiates an action under this act or
29 assumes control of an action brought by a person under this act, the
30 Attorney General shall be awarded its reasonable attorney's fees,
31 expenses, and costs.

32 b. If the court awards the person bringing the action proceeds
33 under this act, the person shall also be awarded an amount for
34 reasonable attorney's fees and costs. Payment for reasonable
35 attorney's fees and costs shall be made from the recovered proceeds
36 before the distribution of any award.

37 c. If the Attorney General does not proceed with an action under
38 this act and the defendant is the prevailing party, the court shall
39 award the defendant reasonable attorney's fees and costs against the
40 person bringing the action.

41 d. No liability shall be incurred by the public entity or the
42 Attorney General for any expenses, attorney's fees, or other costs
43 incurred by any person in bringing or defending an action under this
44 act.

45

46 9. Exemptions to Civil Actions.

47 a. No court shall have jurisdiction over an action brought under
48 this act against a member of the Legislature, a member of the

1 Judiciary, a senior executive branch official or a member of a
2 county or municipal governing body if the action is based on
3 evidence or information known to the public entity when the action
4 was brought. For purposes of this subsection, the term "senior
5 executive branch official" means any person employed in the
6 executive branch of government holding a position having
7 substantial managerial, policy influencing or policy executing
8 responsibilities.

9 b. A person may not bring an action under this act based upon
10 allegations or transactions that are the subject of a civil action or an
11 administrative proceeding in which the public entity is already a
12 party.

13 c. No court shall have jurisdiction over an action brought under
14 this act based upon the public disclosure of allegations or
15 transactions in a criminal, civil, or administrative hearing, in a
16 investigation, report, hearing or audit conducted by or at the
17 request of the Legislature or by the news media, unless the action is
18 brought by the Attorney General, or unless the person bringing the
19 action is an original source of the information. For purposes of this
20 subsection, the term "original source" means an individual who has
21 direct and independent knowledge of the information on which the
22 allegations are based and has voluntarily provided the information
23 to the department before filing an action under this act based on the
24 information.

25 d. No court shall have jurisdiction over an action brought under
26 this act based upon information discovered by a present or former
27 employee of the public entity during the course of his employment
28 unless the employee first, in good faith, exhausted existing internal
29 procedures for reporting and seeking recovery of the falsely claimed
30 sums through official channels and unless the public entity failed to
31 act on the information provided within a reasonable period of time.

32 e. No court shall have jurisdiction over an action where the
33 person bringing the action under this act obtained the information
34 from an employee or former employee of the public entity who was
35 not acting in the course or scope of government employment.

36

37 10. Protection for Participating Employees.

38 a. No employer shall make, adopt, or enforce any rule,
39 regulation, or policy preventing an employee from disclosing
40 information to a public entity or law enforcement agency or from
41 acting to further a false claims action, including investigating,
42 initiating, testifying, or assisting in an action filed or to be filed
43 under P.L. , c. (C.)(now pending before the Legislature as of
44 this bill).

45 b. No employer shall discharge, demote, suspend, threaten,
46 harass, deny promotion to, or in any other manner discriminate
47 against an employee in the terms and conditions of employment
48 because of lawful acts done by the employee on behalf of the

1 employee or others in disclosing information to a public entity or
2 law enforcement agency or in furthering a false claims action,
3 including investigation for, initiation of, testimony for, or assistance
4 in an action filed or to be filed under P.L. , c. (C.)(now
5 pending before the Legislature as this bill).

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

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

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

27 (2) The employee had been harassed, threatened with termination
28 or demotion, or otherwise coerced by the employer or its
29 management into engaging in the fraudulent activity in the first
30 place.

31

32 11. Limitation of actions.

33 A civil action under this act may not be brought:

34 a. More than five years after the date on which the violation of
35 the act is committed; or

36 b. More than three years after the date when facts material to the
37 right of action are known or reasonably should have been known by
38 the State official charged with responsibility to act in the
39 circumstances, but in no event more than seven years after the date
40 on which the violation is committed, whichever occurs last.

41

42 12. Burden of proof.

43 In any action brought under this act, the public entity or the
44 person bringing the action shall be required to prove all essential
45 elements of the cause of action, including damages, by a
46 preponderance of the evidence.

47

48 13. Construction and severability of provisions.

1 This act shall be liberally construed to effectuate its remedial and
2 deterrent purposes.

3 If any provision of this act or its application to any particular
4 person or circumstance is held invalid, that provision or its
5 application is severable and does not affect the validity of other
6 provisions or applications of this act.

7

8 14. Deposit of recovered moneys.

9 All moneys recovered by the Attorney General in accordance
10 with the provisions of "New Jersey False Claims Act" P.L. ,c.
11 (C.) (now pending before the Legislature as this bill) shall be
12 deposited in the General Fund.

13

14 15. This act shall take effect on the 30th day after enactment.

15

16

17

STATEMENT

18

19 This bill would establish the "New Jersey False Claim Act,"
20 which would authorize a person to bring an action against any
21 other person who knowingly causes the State to pay a false claim.
22 Any person who knowingly presents a false claim and deceives a
23 public entity for the purposes of getting a false claim paid would be
24 subject to a civil penalty of not less than \$5,000 and not more than
25 \$10,000 for each false claim, plus three times the amount of
26 damages which the public entity sustains because of the act or
27 omission.

28 Under the provisions of the bill, any person may bring an action
29 on behalf of a public entity. A complaint filed pursuant to the
30 provisions of this act would be identified as a "qui tam" action. A
31 copy of the complaint and a written disclosure of substantially all
32 material evidence and information the person possesses would be
33 served on the Attorney General. The complaint may be sealed and
34 would not be served on the defendant until the court so orders.

35 Once the Attorney General receives the complaint, he has 60
36 days, barring any extensions, to notify the court that he either
37 intends to proceed with the action at which time the seal is lifted, or
38 declines to take over the action, in which case the seal would be
39 lifted and the person bringing the action may proceed with the
40 action. If the Attorney General proceeds with the case he would
41 have primary responsibility for prosecuting the action but the
42 person bringing the action would have the right to continue as a
43 party to the action. The Attorney General may move to dismiss the
44 action, provided the person bringing the action has been notified
45 and given an opportunity to oppose the motion.

46 If the Attorney General proceeds with the action and prevails, the
47 person bringing this action would be entitled to at least 15% but not
48 more than 25% of the proceeds recovered under the judgment,

1 depending upon the extent to which the person substantially
2 contributed to the prosecution of the action. If the Attorney General
3 does not proceed with the case, the person bringing the action
4 would receive an amount which the court decides is reasonable for
5 collecting the penalty and damages. The amount would not be less
6 than 25% and not more than 33% of proceeds recovered under the
7 judgment. The governmental agency injured by the submission of
8 the false claim would receive an award not to exceed the
9 compensatory damages. The Attorney General would receive a
10 fixed 10% of the proceeds in any action or settlement of the claim
11 that it brings, which would only be used to support its ongoing
12 investigation and prosecution of false claims.

13 Any remaining proceeds would be deposited in the General
14 Fund.

15 Members of the Judiciary and Legislative branches, senior
16 executive branch officials would be exempt from the provisions of
17 this bill.

18 This bill provides that a civil action under the act may not be
19 brought more than five years after the date the violation of the act
20 was committed or more than three years after the date when facts
21 material to the right of action are known or reasonably should have
22 been known by the State official charged with responsibility to act
23 in the circumstances, but in no event more than seven years after
24 the date on which the violation is committed, whichever occurs last.
25 In addition the bill provides that the public entity or the person
26 bringing the action would have the burden of proof.

SENATE, No. 1829

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 8, 2006

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

SYNOPSIS

Establishes “New Jersey Medicaid False Claims Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/19/2006)

1 AN ACT establishing the “New Jersey Medicaid False Claims Act”
2 and supplementing Title 30 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the “New Jersey
8 Medicaid False Claims Act.”

9

10 2. Definitions.

11 As used in this act:

12 “Attorney General” means the Attorney General of the State of
13 New Jersey, or his designee.

14 “Claim” means a request or demand related in any way to the
15 New Jersey Medical Assistance and Health Services Program
16 (Medicaid), established pursuant to P.L.1968, c.413 (C.30:4D-1 et
17 seq.), under a contract or otherwise, for money, property or services
18 that is made to any employee, officer or agent of the State, or to any
19 contractor, grantee, or other recipient if the State provides any
20 portion of the money or property requested or demanded, or if the
21 State will reimburse the contractor, grantee, or other recipient for
22 any portion of the money or property requested or demanded. The
23 term does not include claims, records, or statements made in
24 connection with State tax laws.

25 “False” means contains or is based upon a materially incorrect
26 fact, statement, representation, or record.

27 “Knowing” or “knowingly” means, with respect to information,
28 that a person: has actual knowledge of the information; acts in
29 deliberate ignorance of the truth or falsity of the information; or
30 acts in reckless disregard of the truth or falsity of the information.
31 No proof of specific intent to defraud is required. Innocent mistake
32 shall be a defense to an action under this act.

33 “Qui tam” means an action brought under a statute that allows a
34 private person to sue for a recovery, part of which the State shall
35 receive.

36

37 3. Any person who commits any of the following acts shall be
38 jointly and severally liable to the State for a civil penalty in an
39 amount that is not less than and not more than the civil penalty
40 allowed under the federal False Claims Act (31 U.S.C. s.3729 et
41 seq.) for each false claim, plus three times the amount of damages
42 which the State sustains because of the act of that person:

43 a. Knowingly presents or causes to be presented to any
44 employee, officer or agent of the State, or to any contractor, grantee
45 or other recipient of State funds, a false claim for payment or
46 approval;

47 b. Knowingly makes, uses, or causes to be made or used a false
48 record or statement to get a false claim paid or approved;

- 1 c. Conspires to defraud the State by getting a false claim
2 allowed or paid by the State;
- 3 d. Has possession, custody, or control of public property or
4 money used or to be used by the State and knowingly delivers or
5 causes to be delivered less property than the amount for which the
6 person receives a certificate or receipt;
- 7 e. Is authorized to make or deliver a document certifying receipt
8 of property used or to be used by the State and knowingly makes or
9 delivers a receipt that falsely represents the property used or to be
10 used;
- 11 f. Knowingly buys, or receives as a pledge of an obligation or
12 debt, public property from any person who lawfully may not sell or
13 pledge the property;
- 14 g. Knowingly makes, uses, or causes to be made or used a false
15 record or statement to conceal, avoid, or decrease an obligation to
16 pay or transmit money or property to the State; or
- 17 h. Is a beneficiary of an inadvertent submission of a false claim
18 to any employee, officer or agent of the State, or to any contractor,
19 grantee or other recipient of State funds, subsequently discovers the
20 falsity of the claim and fails to disclose the false claim to the State
21 within a reasonable time after discovery of the false claim.
22
- 23 4. The court may reduce the treble damages authorized under
24 section 3 of this act to not less than twice the amount of damages
25 which the State sustains and may order that no civil penalty be
26 imposed if the court finds all of the following:
- 27 a. The person committing the violation furnished officials of the
28 State responsible for investigating false claims violations with all
29 information known to such person about the violation within 30
30 days after the date on which the person first obtained the
31 information;
- 32 b. The person fully cooperated with any official investigation of
33 the violation; and
- 34 c. At the time such person furnished the State with information
35 about the violation, no criminal prosecution, civil action, or
36 administrative action had commenced with respect to such
37 violation, and the person did not have actual knowledge of the
38 existence of an investigation into such violation.
39
- 40 5. a. Civil actions instituted under this act shall be brought in
41 the name of the State of New Jersey.
- 42 b. The Attorney General shall investigate a violation of this act
43 and may bring a civil action under this act upon finding that a
44 person has violated or is violating this act.
- 45 c. A person may bring a civil action for a violation of this act for
46 the person and for the State. A person bringing such an action shall
47 be referred to as the qui tam plaintiff. The complaint shall be
48 brought in the name of the State and identified on its face as a qui

1 tam action, and shall be filed with the clerk of the Superior Court.
2 Immediately upon filing of the complaint, the qui tam plaintiff shall
3 serve by registered mail, return receipt requested, the Attorney
4 General with a copy of the complaint and written disclosure of
5 substantially all material evidence and information the person
6 possesses.

7 d. If a person brings an action under this section and the action
8 is based upon the facts underlying a pending investigation by the
9 Attorney General, the Attorney General may take over the action on
10 behalf of the State. In order to take over the action, the Attorney
11 General shall give the person written notification within 20 days
12 after notice of the action is served on the Attorney General that the
13 Attorney General is conducting an investigation of the facts of the
14 action and will take over the action filed under this act.

15 e. The Attorney General may elect to intervene and proceed with
16 the action, on behalf of the State, within 60 days after it receives
17 both the complaint and the material evidence and information.
18 Once filed, the action may be voluntarily dismissed by the person
19 bringing the action if the Attorney General gives written consent to
20 the dismissal, along with the reason for the consent, and the court
21 approves the dismissal.

22 f. A complaint filed by a person under this section shall remain
23 under seal for up to 60 days and shall not be served on the
24 defendant until the court so orders. The Attorney General may, for
25 good cause shown, request the court to extend the time during
26 which the complaint remains under seal. Any such motion may be
27 supported by affidavits or other submissions in camera. Before the
28 expiration of the 60-day period or any extensions obtained under
29 this subsection, the Attorney General shall:

30 (1) notify the court that he intends to proceed with the action, in
31 which case the action is conducted by the Attorney General and the
32 seal shall be lifted; or

33 (2) notify the court that he declines to proceed with the action,
34 in which case the seal shall be lifted and the person bringing the
35 action shall have the right to conduct the action.

36 g. The defendant shall not be required to respond to any
37 complaint filed under this act until 30 days after the complaint is
38 unsealed and served upon the defendant in accordance with this act.

39 h. When a person files an action under this act no other person
40 may intervene or bring a related action based on the facts
41 underlying the pending action.

42 i. If the Attorney General, on behalf of the State, proceeds with
43 the action, he has the primary responsibility for prosecuting the
44 action, and shall not be bound by any act of the person bringing the
45 action. The person bringing the action has the right to continue as a
46 party to the action, subject to the limitations specified in this act.

47 j. The Attorney General may move to dismiss the action for
48 good cause shown, notwithstanding the objections of the person

1 bringing the action, provided that the person bringing the action has
2 been notified by the Attorney General and the court has provided
3 the person bringing the action with the opportunity to oppose the
4 motion at a hearing.

5 k. Nothing in this act shall be construed to limit the authority of
6 the Attorney General or the person bringing the action to settle the
7 action, if the court determines after a hearing that the proposed
8 settlement is fair, adequate, and reasonable under all the
9 circumstances.

10 l. Upon a showing by the Attorney General that unrestricted
11 participation during the course of the litigation by the person
12 initiating the action would interfere with or unduly delay the
13 Attorney General's prosecution of the case, or would be repetitious,
14 irrelevant, or for purposes of harassment, the court may, in its
15 discretion, impose limitations on the person's participation,
16 including, but not limited to:

- 17 (1) limiting the number of witnesses the person may call;
- 18 (2) limiting the length of the testimony of the person's witnesses;
- 19 (3) limiting the person's cross-examination of witnesses; or
- 20 (4) otherwise limiting the participation by the person in the
21 litigation.

22 m. Upon a showing by the defendant that unrestricted
23 participation during the course of the litigation by the person
24 initiating the action would be for purposes of harassment or would
25 cause the defendant undue burden or unnecessary expense, the court
26 may limit the participation by the person in the litigation, as the
27 court determines appropriate.

28 n. If the Attorney General decides not to proceed with the
29 action, the seal shall be lifted and the person who initiated the
30 action shall have the right to conduct the action. If the Attorney
31 General so requests, he shall be served at his expense with copies of
32 all pleadings and motions filed in the action and copies of all
33 deposition transcripts. When a person proceeds with the action, the
34 court, without limiting the rights of the person initiating the action,
35 may permit the Attorney General to intervene and take over the
36 action on behalf of the State at a later date upon a showing of good
37 cause.

38 o. Whether or not the Attorney General proceeds with the
39 action, upon a showing by the Attorney General that certain actions
40 of discovery by the person initiating the action would interfere with
41 an investigation by the State or the prosecution of a criminal or civil
42 matter arising out of the same facts, the court may stay such
43 discovery for a period of not more than 60 days. Such a showing
44 shall be conducted in camera. The court may extend the 60-day
45 period upon a further showing in camera by the Attorney General
46 that the criminal or civil investigation or proceeding has been
47 pursued with reasonable diligence and any proposed discovery in

1 the civil action will interfere with an ongoing criminal or civil
2 investigation or proceeding.

3 p. The application of one civil remedy under this act does not
4 preclude the application of any other remedy, civil or criminal,
5 under this act or any other provision of law.

6
7 6. a. If the Attorney General proceeds with and prevails in an
8 action brought by a person under this act, except as provided in
9 subsection b. of this section, the court shall order the distribution to
10 the person of at least 15%, but not more than 25% of the proceeds
11 recovered under any judgment obtained by the Attorney General
12 under this act or of the proceeds of any settlement of the claim,
13 depending upon the extent to which the person substantially
14 contributed to the prosecution of the action.

15 b. If the Attorney General proceeds with an action which the
16 court finds to be based primarily on disclosures of specific
17 information, other than that provided by the person bringing the
18 action, relating to:

19 (1) allegations or transactions in a criminal, civil, or
20 administrative hearing;

21 (2) a legislative, administrative, or auditor general report,
22 hearing, audit, or investigation; or

23 (3) information from the news media,
24 the court may award such sums as it considers appropriate, but in no
25 case more than 10% of the proceeds recovered under a judgment or
26 received in settlement of a claim under this act, taking into account
27 the significance of the information and the role of the person
28 bringing the action in advancing the case to litigation.

29 c. The Attorney General shall receive a fixed 10% of the
30 proceeds in any action or settlement of the claim that it brings,
31 which shall only be used to support its ongoing investigation and
32 prosecution of false claims pursuant to the provisions of this act.

33 d. If the Attorney General does not proceed with an action under
34 this section, the person bringing the action or settling the claim
35 shall receive an amount which the court decides is reasonable for
36 collecting the civil penalty and damages. The amount shall be not
37 less than 25%, but not more than 33%, of the proceeds of the action
38 or settlement of a claim under this act.

39 e. Following any distributions under subsections a., b., c., or d.
40 of this section, any remaining proceeds, including civil penalties
41 awarded under this act, shall be deposited in the General Fund.

42 f. Any payment under this section to the person bringing the
43 action shall be paid only out of the proceeds recovered from the
44 defendant.

45 g. Whether or not the Attorney General proceeds with the
46 action, if the court finds that the action was brought by a person
47 who planned and initiated the violation of this act upon which the
48 action was brought, the court may, to the extent the court considers

1 appropriate, reduce the share of the proceeds of the action which the
2 person would otherwise receive under this section, taking into
3 account the role of the person in advancing the case to litigation and
4 any relevant circumstances pertaining to the violation. If the person
5 bringing the action is convicted of criminal conduct arising from his
6 role in the violation of this act, the person shall be dismissed from
7 the civil action and shall not receive any share of the proceeds of
8 the action. Such dismissal shall not prejudice the right of the
9 Attorney General to continue the action.

10

11 7. a. If the Attorney General initiates an action under this act or
12 assumes control of an action brought by a person under this act, the
13 Attorney General shall be awarded its reasonable attorney's fees,
14 expenses, and costs.

15 b. If the court awards proceeds to the person bringing the action
16 under this act, the person shall also be awarded an amount for
17 reasonable attorney's fees and costs. Payment for reasonable
18 attorney's fees and costs shall be made from the recovered proceeds
19 before the distribution of any award.

20 c. If the Attorney General does not proceed with an action under
21 this act and the defendant is the prevailing party, the court shall
22 award the defendant reasonable attorney's fees and costs against the
23 person bringing the action.

24 d. No liability shall be incurred by the State or the Attorney
25 General for any expenses, attorney's fees, or other costs incurred by
26 any person in bringing or defending an action under this act.

27

28 8. a. No court shall have jurisdiction over an action brought
29 under this act against a member of the Legislature, a member of the
30 judiciary, a senior executive branch official, or a member of a
31 county or municipal governing body if the action is based on
32 evidence or information known to the State when the action was
33 brought. For purposes of this subsection, the term "senior executive
34 branch official" means any person employed in the executive
35 branch of government holding a position having substantial
36 managerial, policy-influencing or policy-executing responsibilities.

37 b. A person may not bring an action under this act based upon
38 allegations or transactions that are the subject of a pending action or
39 administrative proceeding in the State.

40 c. No court shall have jurisdiction over an action brought under
41 this act based upon the public disclosure of allegations or
42 transactions in a criminal, civil, or administrative hearing, in an
43 investigation, report, hearing or audit conducted by or at the request
44 of the Legislature or by the news media, unless the action is brought
45 by the Attorney General, or unless the person bringing the action is
46 an original source of the information. For purposes of this
47 subsection, the term "original source" means an individual who has
48 direct and independent knowledge of the information on which the

1 allegations are based and has voluntarily provided the information
2 to the department before filing an action under this act based on the
3 information.

4

5 9. a. No employer shall make, adopt, or enforce any rule,
6 regulation, or policy preventing an employee from disclosing
7 information to the State or law enforcement agency or from acting
8 to further a false claims action, including investigating, initiating,
9 testifying, or assisting in an action filed or to be filed under this act.

10 b. No employer shall discharge, demote, suspend, threaten,
11 harass, deny promotion to, or in any other manner discriminate
12 against an employee in the terms and conditions of employment
13 because of lawful acts done by the employee on behalf of the
14 employee or others in disclosing information to the State or a law
15 enforcement agency or in furthering a false claims action, including
16 investigation for, initiation of, testimony for, or assistance in an
17 action filed or to be filed under this act.

18 c. An employer who violates the provisions of subsection b. of
19 this section shall be liable for all relief necessary to make the
20 employee whole, including reinstatement with the same seniority
21 status the employee would have had but for the discrimination, two
22 times the amount of back pay, interest on the back pay,
23 compensation for any special damage sustained as a result of the
24 discrimination, and, where appropriate, punitive damages, litigation
25 costs, and reasonable attorneys' fees associated with an action
26 brought under this subsection. An action may be brought in the
27 Superior Court for relief provided in this subsection.

28 d. An employee who is discharged, demoted, suspended,
29 harassed, denied promotion, or in any other manner discriminated
30 against in the terms and conditions of employment by his employer
31 because of participation in conduct which directly or indirectly
32 resulted in a false claim being submitted to the State shall be
33 entitled to the remedies under subsection c. of this section if both of
34 the following occurred:

35 (1) The employee voluntarily disclosed information to the State
36 or a law enforcement agency or acts in furtherance of a false claims
37 action, including investigation for, initiation of, testimony for, or
38 assistance in an action filed or to be filed.

39 (2) The employee had been harassed, threatened with termination
40 or demotion, or otherwise coerced by the employer or its
41 management into engaging in the fraudulent activity in the first
42 place.

43

44 10. A civil action under this act may not be brought:

45 a. More than six years after the date on which the violation of
46 the act is committed; or

47 b. More than three years after the date when facts material to the
48 right of action are known or reasonably should have been known by

1 the State official charged with responsibility to act in the
2 circumstances, but in no event more than 10 years after the date on
3 which the violation was committed, whichever occurs last.

4
5 11. In any action brought under this act, the State or the person
6 bringing the action shall be required to prove all essential elements
7 of the cause of action, including damages, by a preponderance of
8 the evidence.

9
10 12. All moneys recovered by the Attorney General in
11 accordance with the provisions of this act shall be deposited in the
12 General Fund.

13
14 13. This act shall take effect on the 60th day after enactment.

15
16 STATEMENT

17
18 This bill establishes the “New Jersey Medicaid False Claims
19 Act” to combat Medicaid fraud.

20 The federal False Claims Act (FCA) applies to many types of
21 fraud committed against the federal government, but increasingly is
22 used to combat Medicaid fraud. FCA actions reportedly have
23 generated more than \$1 billion in Medicaid fraud recoveries in the
24 last six years. The federal FCA only applies to fraud against the
25 federal government. To encourage states to engage in the fight
26 against Medicaid fraud, the federal Deficit Reduction Act of 2005
27 provides a financial incentive for states to adopt their own false
28 claims acts: the federal government agrees to pay an additional
29 10% of the federal share of any recovery to a state when an action
30 to recover Medicaid funds is litigated under a qualifying state false
31 claims act in effect by January 1, 2007. To qualify, the state act
32 must meet the following four requirements:

- 33 • Liability provisions modeled on the federal FCA with respect to
34 Medicaid expenditures;
- 35 • Provisions that are at least as effective as the federal FCA in
36 rewarding and facilitating *qui tam* actions, which encourage
37 private individuals to report fraud against the government by
38 filing a lawsuit on behalf of the government, and which reward
39 them with a share of the recovery;
- 40 • A provision that the complaint be filed under seal for 60 days
41 with review by the State Attorney General; and
- 42 • Civil penalties that are not less than those authorized under the
43 federal FCA, which currently imposes a civil penalty of \$5,500 to
44 \$11,000 for violations, plus up to three times the amount of
45 damages sustained by the State.

46 This bill is modeled on the federal FCA; however, the bill
47 applies only to false Medicaid claims, not to other types of false
48 claims against the State.

1 **DEFINITIONS**

2 Under the bill, “claim” means a request or demand related in any
3 way to the State Medicaid program established by N.J.S.A. 30:4D-1
4 et seq. under a contract or otherwise, for money, property or
5 services made to any employee, officer or agent of the State, or to
6 any contractor, grantee or other recipient if the State provides any
7 portion of the money or property requested or demanded, or if the
8 State will reimburse the contractor, grantee or other recipient for
9 any portion of the money or property requested or demanded. The
10 term “claim” does not include claims, records, or statements made
11 in connection with State tax laws.

12 “False” means contains or is based upon a materially incorrect
13 fact, statement, representation, or record.

14 “Qui tam” means an action that allows a private person to sue for
15 a recovery, part of which the State shall receive.

16

17 **LIABILITY**

18 A person who commits any of the following would be jointly and
19 severally liable for the same civil penalties applicable under the
20 federal False Claims Act, which currently is not less than \$5,500
21 and not more than \$11,000 for each false claim, plus three times the
22 amount of damages sustained by the State:

- 23 • Knowingly presents or causes to be presented to any employee,
24 officer or agent of the State, or to any contractor, grantee or other
25 recipient of State funds, a false claim for payment or approval;
- 26 • Knowingly makes, uses, or causes to be made or used a false
27 record or statement to get a false claim paid or approved;
- 28 • Conspires to defraud the State by getting a false claim allowed or
29 paid by the State;
- 30 • Has possession, custody, or control of public property or money
31 used or to be used by the State and knowingly delivers or causes
32 to be delivered less property than the amount for which the
33 person receives a certificate or receipt;
- 34 • Is authorized to make or deliver a document certifying receipt of
35 property used or to be used by the State and knowingly makes or
36 delivers a receipt that falsely represents the property used or to be
37 used;
- 38 • Knowingly buys, or receives as a pledge of an obligation or debt,
39 public property from any person who lawfully may not sell or
40 pledge the property;
- 41 • Knowingly makes, uses, or causes to be made or used a false
42 record or statement to conceal, avoid, or decrease an obligation to
43 pay or transmit money or property to the State; or
- 44 • Is a beneficiary of an inadvertent submission of a false claim to
45 any employee, officer or agent of the State, or to any contractor,
46 grantee or other recipient of State funds, subsequently discovers
47 the falsity of the claim and fails to disclose the false claim to the
48 State within a reasonable time after discovery of the false claim.

1 The party bringing the action shall be required to prove all
2 essential elements of the cause of action, including damages, by a
3 preponderance of the evidence.

4 A court could reduce the treble damages upon finding that the
5 person who committed the violation did not have knowledge of the
6 existence of an investigation into such violation, furnished officials
7 responsible for investigating the violation with all information he
8 knew within 30 days after he obtained it, fully cooperated with any
9 official investigation of the violation and did so before criminal,
10 civil or administrative action had commenced. The remedies
11 available under this bill do not preclude other civil or criminal
12 remedies under other laws.

13

14 **PROCEDURES**

15 If an individual who is not the Attorney General initiates a civil
16 action, the person would be referred to as a qui tam plaintiff. When
17 a qui tam plaintiff files an action, no other private person may
18 intervene or bring a related action based on the same underlying
19 facts. The complaint shall be brought in the name of the State and
20 identified on its face as a qui tam action, and shall be filed with the
21 clerk of the Superior Court. Immediately upon filing of the
22 complaint, the qui tam plaintiff shall serve by registered mail,
23 return receipt requested, the Attorney General with a copy of the
24 complaint and written disclosure of substantially all material
25 evidence and information the person possesses.

26 If a person brings an action under this section and the action is
27 based upon the facts underlying a pending investigation by the
28 Attorney General, the Attorney General may take over the action on
29 behalf of the State. In order to take over the action, the Attorney
30 General shall give the person written notification within 20 days
31 after notice of the action is served on the Attorney General that the
32 Attorney General is conducting an investigation of the facts of the
33 action and will take over the action filed under this act.

34 If an investigation is not already pending, the Attorney General
35 may elect to intervene and proceed with the action within 60 days
36 after receiving the complaint, evidence and information from the
37 qui tam plaintiff. The qui tam plaintiff may voluntarily dismiss the
38 action if the Attorney General gives written consent and the court
39 approves.

40 The complaint is required to remain under seal for up to 60 days.
41 This period may be extended for good cause upon the Attorney
42 General's request. The defendant is not to be served until the court
43 so orders, and a defendant has 30 days after proper service to
44 respond.

45 If the Attorney General proceeds with the action, the Attorney
46 General has primary responsibility for prosecuting the action,
47 although the qui tam plaintiff may continue as a party. The
48 Attorney General may move to dismiss the action for good cause if

1 the plaintiff is notified and has an opportunity to object. The action
2 may be settled if the court finds the proposed settlement fair,
3 adequate, and reasonable.

4 The court may limit a plaintiff's participation if it finds that his
5 participation would interfere with or unduly delay prosecution of
6 the case, or if the court finds that the plaintiff's purpose is to harass
7 or cause the defendant undue burden or unnecessary expense.

8

9 **AWARD**

10 If the Attorney General proceeds and prevails in the action, the
11 qui tam plaintiff would be entitled to between 15% and 25% of the
12 proceeds recovered, depending on the extent to which the person
13 contributed to the prosecution of the action. If the Attorney General
14 does not proceed with the case, the plaintiff would receive not less
15 than 25% and not more than 33% of proceeds recovered under the
16 judgment. The governmental entity injured by the false claim
17 would receive compensatory damages, and the Attorney General
18 would receive 10% of the proceeds in any action or settlement, and
19 this award could be used only to support ongoing investigations and
20 prosecutions of false Medicaid claims. Any remaining proceeds
21 would be deposited in the General Fund.

22

23 **LIMITATIONS**

24 Actions are prohibited against members of the judiciary and
25 legislative branches, senior executive branch officials with
26 substantial managerial, policy-influencing or policy-executing
27 responsibilities, and members of county and municipal governing
28 bodies if based on evidence or information known to the State.

29 A person may not bring an action under this act based upon
30 allegations or transactions that are the subject of a pending civil
31 action or administrative proceeding.

32 An action cannot be brought more than six years after the
33 violation was committed or more than three years after the material
34 facts are known or reasonably should have been known, and in no
35 event more than 10 years after the violation is committed.

36 Actions are not be permitted when based upon public disclosure
37 of allegations or transactions in criminal, civil, or administrative
38 hearings, investigations, reports or audits conducted by or at the
39 request of the Legislature or by the news media, unless the action is
40 brought by the Attorney General or the person bringing the action is
41 an original source of the information. "Original source" means that
42 the individual with direct, independent knowledge of the relevant
43 information voluntarily provided it before filing an action.

44

45 **NO EMPLOYER RETALIATION**

46 The bill prohibits an employer from preventing an employee
47 from disclosing information and prohibits retaliation against an
48 employee because of lawful acts to disclose information or further a

1 false claims action. Remedies for retaliation include reinstatement
2 with the same seniority status, two times the amount of back pay,
3 interest on the back pay, compensation for any special damage
4 sustained as a result of the discrimination, and, where appropriate,
5 punitive damages, litigation costs, and attorneys' fees.

[Corrected Copy]

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 360 and 1829

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 3, 2008

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Committee Substitute for Senate Bill Nos. 360 and 1829.

Section 1. This substitute will establish the "New Jersey False Claims Act."

Definitions (Section 2). This substitute will authorize a person to bring a civil action against any other person who knowingly causes the State to pay a false claim. Under the provisions of the substitute, proof of specific intent to defraud is not required. The committee amended the substitute to clarify that acts occurring by innocent mistake or as a result of mere negligence would be a defense to an action under the act. The committee also amended the substitute to add the definition of "State," which is defined as "any of the principal departments in the Executive Branch of State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; and any independent State authority, commission, instrumentality or agency."

Civil Penalties and Damages (Sections 3 and 4). The substitute provides that a person would be jointly and severally liable to the State for a civil penalty as is currently allowed under the federal False Claims Act (31 U.S.C.s.3729 et seq.), if the person knowingly presents a false claim. Currently, this federal civil penalty is not less than \$5,000 and not more than \$10,000 and, pursuant to federal law, is subject to future adjustments as prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990. Civil penalties also will include an additional amount equal to three times the amount of damages which the State sustains because of the act or omission. The committee amended this section of the substitute to provide that a person is liable if he has possession, custody, or control of public property or money used or to be used by the State and intending to defraud the entity or willfully to conceal the property delivers or

causes to be delivered less property than the amount for which the person receives a certificate or receipt. In addition, the amendments clarify that a person is liable under the substitute if the person is authorized to make or deliver a document certifying receipt of property used or to be used by the State and knowingly makes or delivers a receipt without completely knowing that the information on the receipt is true. The committee amendments add the term “fraudulent” whenever referring to a “false claim” throughout this section so that the phrase now reads, “a false or fraudulent claim.”

Originally the substitute provided that the court could reduce the treble damages authorized under the act to not less than twice the amount of damages which the State sustains and that the court could order that no civil penalties be imposed. The committee amendments remove the provision which allowed the court to eliminate the requirement that a civil penalty be paid. The provision which authorizes the court to reduce the treble damages remains unchanged. In addition, the amendments clarify that one of the enumerated factors the court should consider in making the determination to reduce the treble damages is that the person fully cooperated with any government investigation.

Jurisdiction of the Courts and Responsibilities of the Parties (Sections 5 and 6). The substitute provided that any person may bring an action in Superior Court on behalf of the State. The committee amended the substitute to provide that an action may be brought in either State or federal court. The amendments also provide that the Superior Court would have jurisdiction over any State action brought under the act. Civil actions instituted under the act would be brought in the name of the State of New Jersey.

The amendments further provide that the complaint filed by a person under the act will remain sealed for at least 60 days and will not be served on the defendant until the court so orders. Immediately upon filing of the complaint, a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses will be served on the Attorney General. Under the provisions of the substitute, the Attorney General for good cause shown may request the court to extend the time during which a complaint remains under seal. The committee amended the substitute to delete the limitations on the number of motions for extension of the seal of the complaint that may be filed by the Attorney General. Investigating allegations of false claims is a lengthy process and it is critical that the complaint remain under seal while any criminal investigation is conducted.

If the Attorney General proceeds with the case, the Attorney General will have primary responsibility for prosecuting the action, but the person bringing the action has the right to continue as a party to the action, subject to any limitations specified in the act. The committee amended this section to provide that if the Attorney General proceeds with an action, the person bringing the action has an ongoing

duty to disclose information related to the action to the Attorney General. This provision would facilitate the Attorney General's prosecution of the false claims action and ensure that the person who originally filed the complaint does not withhold relevant information, including information that may be favorable to the defendant.

The substitute provides that the Attorney General could move to dismiss the action for good cause, provided the person bringing the action has been notified and given an opportunity for a hearing. The committee amendments eliminated the requirement that the Attorney General demonstrate good cause before making a motion to dismiss the action. In addition, the committee amended the substitute to provide that the decision of the Attorney General to proceed with an action is final and not subject to review by any court or agency. If the Attorney General declines to proceed with an action, the person bringing the complaint may pursue the action in accordance with the provisions of the substitute. Nothing in the act should be construed to limit the authority of the Attorney General or the person bringing the action to settle the action, if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

Distribution of Proceeds (Section 7). The substitute provides that if the Attorney General proceeds with the action and prevails, the person bringing the action would be entitled to at least 15% but not more than 25% of the proceeds recovered under the judgment, depending upon the extent to which the person substantially contributed to the prosecution of the action. If the Attorney General does not proceed with the case, the person bringing a successful action will receive an amount which the court decides is reasonable for collecting the penalty and damages. This amount will be not less than 25% and not more than 30% of the proceeds of the action or settlement. The State entity injured by the submission of the false claim will receive an award not to exceed the compensatory damages. The Attorney General will receive a fixed 10% of the proceeds in any action or settlement of the claim that it brings, which will only be used to support its ongoing investigation and prosecution of false claims. The committee amended the substitute to provide that this 10% of the proceeds would be deposited in the newly created "False Claim Prosecution Fund."

This substitute provides that whether or not the Attorney General proceeds with the action, if the court finds that the action was brought by a person who knowingly planned and initiated the violation of this act upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his role in the violation of this act, the person would be dismissed

from the civil action and would not receive any share of the proceeds of the action. Such dismissal would not prejudice the right of the Attorney General to continue the action. The committee amended this section to eliminate the provision that the court could reduce to no more than 10% of the share of the recovered proceeds if the court finds that the person who brought the action knowingly planned and initiated the violation.

Attorney's Fees (Section 8). The substitute, as amended, provides that if the Attorney General initiates an action or assumes control of an action brought by a person under this act, the Attorney General would be awarded reasonable attorney's fees, expenses, and costs. If the court awards proceeds to the person bringing the action under this act, the person would also be awarded an amount for reasonable attorney's fees, expenses, and costs. Payment for reasonable attorney's fees, expenses, and costs would be made from the recovered proceeds before the distribution of any award. If the Attorney General does not proceed with an action and the defendant is the prevailing party, the court may award the defendant reasonable attorney's fees, expenses, and costs against the person bringing the action if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

Certain Barred Actions (Section 9). This substitute provides that no member of the Judiciary or Legislative branches, or any senior Executive branch official or any member of a county or municipal governing body may be civilly liable if the basis for an action is premised on evidence or information known to the State when the action was brought. The committee amendments provide that no action may be brought under this act by a present or former employee or agent of the State or any political subdivision thereof when the action is based upon information discovered in any civil, criminal or administrative investigation or audit which investigation or audit was within the scope of the employee's or agent's duties or job description, thereby eliminating the possibility that an employee or agent might unduly profit by merely performing their duties. Employees or agents of the State performing investigations and audits have the duty to report information related to false claims uncovered in the course of the investigation or audit. In addition, the amendments provide that unless a person is an original source, a person may not bring an action under this act that is based on allegations or transactions that the person knew or had reason to know were known to the Attorney General or other law enforcement officials prior to the person filing the action or serving the disclosure of material evidence. For the purposes of this subsection, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this act based on this information.

Retaliation Against Employees (Section 10). The substitute prohibits employers from discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee in the terms and conditions of employment because of any acts done by the employee in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed. An employer who violates this provision would be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant would be required to pay litigation costs and reasonable attorneys' fees associated with an action brought under this section. The substitute provides that an employee may bring an action in the Superior Court for the relief provided in the act.

Statute of Limitations and Burden of Proof (Sections 11 and 12). This substitute provides that a civil action under the act may not be brought more than six years after the date the violation of the act was committed or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last. The substitute provides that the public entity or the person bringing the action will have the burden to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

False Claims Prosecution Fund (Section 13). The substitute in its original form provided that all the moneys recovered by the Attorney General would be deposited in the General Fund. The committee amended this section to establish in the General Fund the "False Claims Prosecution Fund" as a nonlapsing revolving fund in the Department of Treasury. Monies deposited in this fund would be utilized by the Attorney General for the exclusive purpose of investigating and prosecuting false claims. The State Treasurer would deposit 10% of the proceeds recovered by the Attorney General in the False Claims Prosecution Fund. The amendments also provide that the State Treasurer would deposit 25% of the State share of monies recovered from actions related to false or fraudulent Medicaid claims brought pursuant to this act in the "Medicaid Fraud Control Fund" established by section 10 of P.L.2007, c.58 (C.30:4D-62). In addition, the amendments provide that the State share of all other moneys recovered by the Attorney General would be deposited in the General Fund.

Subpoena Power (Section 14). The substitute provides that if the Attorney General has reason to believe that a person has engaged in, or

is engaging in, an act or practice which violates this act, or any other relevant statute or regulation, the Attorney General may issue subpoenas to compel the attendance of witnesses and the production of books, records, accounts, papers and documents. If a person subpoenaed refuses to obey the command of the subpoena, a judge of the Superior Court may, on proof by affidavit of service of the subpoena, of payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring that person before the judge, who is authorized to proceed against the person as for a contempt of court. If the matter that the Attorney General seeks to obtain by request is located outside the State, the person so required may make it available to the Attorney General or the Attorney General's representative to examine the matter at the place where it is located.

Licensed Professionals (Subsection c. of section 14). The substitute provides that if a licensed professional or an owner, administrator or employee of a licensed professional, including but not limited to an owner, administrator or employee of any hospital, an insurance company, an insurance producer, solicitor or adjuster, or any other person licensed or certified by a licensing authority of this State, or an agent, representative or employee of any of them is found to have violated any provision of this act, then the Attorney General would notify the appropriate licensing authority of the violation so that the licensing authority may take appropriate administrative action. In its original form the substitute referred to agents and brokers, the committee amendments delete this reference and replace it with insurance producer.

Sovereign Immunity (Section 15). The substitute provides that this act should not be construed as waiving the sovereign immunity of the State and its officers and employees as otherwise provided by law.

Medicaid Fraud Statute (Section 16). The substitute also amends N.J.S.A.30:4D-17, an existing Medicaid fraud statute, so that civil penalties for Medicaid fraud committed under that statute are consistent with those under the False Claims Act, and are supplemental to the penalties under the False Claims Act.

Privileges and Immunities and Severability Clause (Sections 17 and 18). The committee amended the substitute to include two new supplemental sections: sections 17 and 18. Section 17 would provide that this new false claims act would not abrogate or modify any existing statutory or common law privileges or immunities. Section 18 provides that this act should be liberally construed to effectuate its remedial and deterrent purposes. If any provision of the act or its application to any particular person or circumstance is held invalid, that provision or its application is severable and would not affect the validity of other provisions or applications of the act.

This act is not intended to disrupt a good faith offer or a good faith counteroffer made during contract or claims negotiations. The

substitute also provides that acts occurring by a mistake or as a result of mere negligence are not covered by this act and the act shall not abrogate or modify any existing statutory or common law privileges or immunities.

Effective Date. The substitute takes effect on the 60th day after enactment.

COMMITTEE AMENDMENTS

1. Section 1 was amended to reflect the addition of two new supplemental sections. Section 16, which is not included in the new title of the act, is an amendatory section.

2. Section 2 was amended to provide that acts occurring by innocent mistake or as a result of mere negligence would be a defense to an action under this act. This section was also amended to add the definition of “State,” which is defined as “any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; and any independent State authority, commission, instrumentality or agency.”

3. Section 3 was amended to add the term “fraudulent” whenever referring to a “false claim” throughout the section. The amendments provide that a person is liable if he has possession, custody, or control of public property or money used or to be used by the State and intending to defraud the entity or willfully to conceal the property delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt. In addition, the amendments clarify that a person is liable under the substitute if the person is authorized to make or deliver a document certifying receipt of property used or to be used by the State and knowingly makes or delivers a receipt without completely knowing that the information on the receipt is true.

4. Section 4 was amended to remove the provision which allowed the court to eliminate the requirement that a civil penalty be paid. The amendments also clarified that one of the enumerated factors the court should consider in making the determination to reduce the treble damages is that the person fully cooperated with any government investigation.

5. Section 5 was amended to clarify that the false claim action may be brought in State or federal court. The amendments also provide that the Superior Court shall have jurisdiction over a State action brought pursuant to this substitute. In addition, the amendments clarify that a complaint brought under the substitute would remain under seal for at least 60 days. The amendments would also delete the language which provided for a limitation on the number of motions for extension of the seal of the complaint.

6. Section 6 was amended to provide that if the Attorney General proceeds with an action the person bringing the action has an ongoing

duty to disclose information related to the action to the Attorney General. The amendments eliminate the requirement that the Attorney General must demonstrate good cause before making a motion to dismiss the action. In addition, this section was amended to provide that the decision of the Attorney General to proceed with an action is final and not subject to review by any court or agency.

7. Section 7 was amended to clarify that the fixed 10% that the Attorney General receives in any action or settlement be deposited in the newly created “False Claims Prosecution Fund” established in section 13 of the substitute. The committee amendments would also eliminate the reference that the court could reduce no more than 10% of the share of the recovered proceeds if the court finds that the person who brought the action knowingly planned and initiated the violation.

8. Section 8 was amended to provide that if the Attorney General initiates an action under the substitute or assumes control of an action brought by a person under the substitute, the Attorney General would be awarded reasonable attorney's fees, expenses, and costs.

9. Section 9 was amended to add a new subsection d. which provides that no action may be brought under this substitute by a present or former employee or agent of the State or any political subdivision thereof when the action is based upon information discovered in any civil, criminal or administrative investigation or audit which investigation or audit was within the scope of the employee's or agent's duties or job description. The amendments also add a new subsection e. which provides that unless a person is an original source, a person may not bring an action under this act that is based on allegations or transactions that the person knew or had reason to know were known to the Attorney General or other law enforcement officials prior to the person filing the action or serving the disclosure of material evidence. For the purposes of this subsection, the term “original source” means an individual who has direct and independence knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this act based on this information.

10. Section 13 was amended to establish a new nonlapsing revolving fund called the “False Claims Prosecution Fund” in the Department of Treasury. This section provides that the monies deposited in this fund would be used by the Attorney General for the exclusive purpose of investigating and prosecuting false claims. The State Treasurer would be required to deposit into the fund 10% of the proceeds recovered by the Attorney General. In addition, this section provides that the State Treasurer deposit 25% of the State share of monies recovered from actions related to false or fraudulent Medicaid claims brought pursuant to this act in the “Medicaid Fraud Control Fund” established by N.J.S.A.30:4D-62. Any remaining monies would be deposited in the General Fund.

11. Section 14 is amended to delete the reference to agent and broker and substitute it with insurance producer with regard to those individuals who if it is found that they violated the act that the Attorney General is authorized to contact their licensing authority.

12. Section 17 was amended to provide that the act shall not abrogate or modify any existing statutory or common law privilege or immunities.

13. Section 18 was amended to provide that this act shall be liberally construed to effectuate its remedial and deterrent purposes. If any provision of this act or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this act.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 360 and 1829**

STATE OF NEW JERSEY

DATED: JUNE 25, 2006

The Senate Budget and Appropriations Committee reports favorably Senate Committee Substitute for Senate Bill Nos. 360 and 1829.

This Senate Committee Substitute for Senate Bill Nos. 360 and 1829 will establish the "New Jersey False Claims Act," which will authorize a person to bring a civil action in New Jersey Superior Court against any other person who knowingly causes the State to pay a false claim. Any person who knowingly presents a false claim and deceives the State for the purposes of getting a false claim paid will be subject to a civil penalty for each false claim of not less than \$5,500 and not more than \$11,000, as is also currently allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.). The minimum and maximum civil penalties will be subject to future adjustments that follow the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990. Civil penalties also will include an additional amount equal to three times the amount of damages which the State sustains because of the act or omission.

Under the provisions of the substitute, any person may bring an action in Superior Court on behalf of the State. A copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses will be served on the Attorney General. The complaint will be sealed for up to 60 days and will not be served on the defendant until the court so orders.

Once the Attorney General receives the complaint, the Attorney General has 60 days, barring any extensions, to notify the court that the Attorney General either intends to proceed with the action at which time the seal is lifted, or declines to take over the action, in which case the seal will be lifted and the person bringing the action may proceed with the action. If the Attorney General proceeds with the case the Attorney General will have primary responsibility for prosecuting the action but the person bringing the action will have the right to continue as a party to the action. The Attorney General may move to dismiss the action for good cause, provided the person bringing the action has been notified and given an opportunity for a hearing.

If the Attorney General proceeds with the action and prevails, the

person bringing this action will be entitled to at least 15% but not more than 25% of the proceeds recovered under the judgment, depending upon the extent to which the person substantially contributed to the prosecution of the action. If the Attorney General does not proceed with the case, the person bringing a successful action will receive an amount which the court decides is reasonable for collecting the penalty and damages which will be not less than 25% and not more than 30% of the proceeds recovered under the judgment or by way of a settlement. The State entity injured by the submission of the false claim will receive an award not to exceed the compensatory damages. The Attorney General will receive a fixed 10% of the proceeds in any action or settlement of the claim that it brings, which will only be used to support its ongoing investigation and prosecution of false claims.

Any remaining proceeds will be deposited in the General Fund.

Members of the Judiciary and Legislative branches, and senior executive branch officials will be exempt from the provisions of this substitute.

This substitute provides that a civil action under the act may not be brought more than six years after the date the violation of the act was committed or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last. In addition the substitute provides that the public entity or the person bringing the action will have the burden to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

The substitute also amends N.J.S.A.30:4D-17, an existing Medicaid fraud statute, so that civil penalties for Medicaid fraud committed under that statute are consistent with those under the False Claims Act, and are supplemental to the penalties under the False Claims Act.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the provisions of this substitute would be an indeterminate expenditure that would be offset by a revenue increase. At this time, the OLS is unable to predict how many cases of fraudulent claims are submitted to the State for payment.

In 1986, the U.S. Congress reinvigorated the federal False Claims Act in hopes of including all types of financial fraud against the federal government. In FFY 2006, the federal government reported collecting \$1.174 billion from fraud cases. California, Delaware, Florida, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, New Hampshire, New Mexico, Nevada, Tennessee, Texas, Virginia, and the District of Columbia have adopted their own versions of the False Claims Act in attempt to cut down on State fraudulent claims and recover money.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 1829

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 2006

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with amendments Senate Bill No. 1829.

As amended, this bill establishes the “New Jersey False Health Claims Act” to combat fraud in connection with State health assistance programs.

The federal False Claims Act (FCA) applies to many types of fraud committed against the federal government, but increasingly is used to combat health claims fraud. FCA actions reportedly have generated more than \$1 billion in Medicaid fraud recoveries in the last six years. The federal FCA only applies to fraud against the federal government. As an incentive for states to coordinate with the federal government in fighting Medicaid fraud, the federal Deficit Reduction Act of 2005 provides a financial incentive for states to adopt their own false claims acts: the federal government will pay a state an additional 10% of the federal share of any recovery when an action to recover Medicaid funds is litigated under a qualifying state false claims act that is in effect by January 1, 2007. To qualify, the state act must meet the following four requirements:

- Liability provisions modeled on the federal FCA with respect to Medicaid expenditures;
- Provisions that are at least as effective as the federal FCA in rewarding and facilitating qui tam actions, which encourage private individuals to report fraud against the government by filing a lawsuit on behalf of the government, and which reward them with a share of the recovery;
- A provision that the complaint be filed under seal for 60 days with review by the state Attorney General; and
- Civil penalties that are not less than those authorized under the federal FCA, which currently imposes a civil penalty of \$5,500 to \$11,000 for violations, plus up to three times the amount of damages sustained by the State.

SCOPE OF BILL

This bill is modeled on the federal FCA. Rather than applying to all types of fraud against the State, or just to Medicaid fraud, this bill applies to any fraud that is related to the following New Jersey health assistance programs: Medicaid and any Medicaid waiver programs administered by the Department of Human Services or the Department of Health and Senior Services; Charity Care; NJ FamilyCare; PAAD and Senior Gold Prescription Discount programs; Statewide Respite Care Program; Personal Assistance Services program; Work First New Jersey General program; and AIDS Drug Distribution Program.

DEFINITIONS

Under the bill, “claim” means a request or demand related in any way to the above State health assistance programs, that is made under a contract or otherwise, for money, property or services made to any employee, officer or agent of the State, or to any contractor, grantee or other recipient if the State provides any portion of the money or property requested or demanded, or if the State will reimburse the contractor, grantee or other recipient for any portion of the money or property requested or demanded. The term does not include claims, records, or statements made in connection with State tax laws.

“False” means contains or is based upon a materially incorrect fact, statement, representation, or record.

“Qui tam” means an action that allows a private person to sue for a recovery, part of which the State shall receive.

LIABILITY

A person who commits any of the following violations would be liable for the same civil penalties applicable under the federal False Claims Act (currently between \$5,500 and \$11,000 for each false claim), plus three times the amount of damages sustained by the State:

- Knowingly presents or causes to be presented to any employee, officer or agent of the State, or to any contractor, grantee or other recipient of State funds, a false claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved;
- Conspires to defraud the State by getting a false claim allowed or paid by the State;
- Has possession, custody, or control of public property or money used or to be used by the State and, intending to defraud the State or willfully to conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers a receipt that falsely represents the property used or to be used;

- Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State.

The burden of proof for all essential elements, including damages, is a preponderance of the evidence.

A court could reduce the damages upon finding that the person who committed the violation did not have knowledge of the existence of an investigation into such violation, furnished officials responsible for investigating the violation with all information he knew within 30 days after he obtained it, and fully cooperated with any official investigation before criminal, civil or administrative action had commenced. The remedies available under this bill do not preclude other civil or criminal remedies under other laws.

PROCEDURES

If an individual who is not the Attorney General initiates a civil action, the action would be identified on its face as a qui tam action, be brought in the name of the State, and be filed with the clerk of the Superior Court. No other private person may intervene or bring a related action based on the same underlying facts as in a qui tam action.

Immediately upon filing of the complaint, the qui tam plaintiff shall serve the Attorney General with a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses. If the action is based upon the facts underlying a pending investigation by the Attorney General, the Attorney General may take over the action on behalf of the State. In order to take over the action, the Attorney General shall give the person written notification within 30 days after notice of the action is served on the Attorney General that he is conducting an investigation and will take over the action filed under this act. If an investigation is not pending, the Attorney General may intervene and proceed with the action within 60 days after being served by the qui tam plaintiff. The qui tam plaintiff may voluntarily dismiss the action if the Attorney General gives written consent and the court approves.

The complaint is required to remain under seal for up to 60 days. This period may be extended for good cause upon the Attorney General's request. The defendant is not to be served until the court so orders, and a defendant has 30 days after service to respond.

If the Attorney General proceeds with the action, he has primary responsibility for prosecuting the action, although the qui tam plaintiff may continue as a party. The Attorney General may move to dismiss the action if the plaintiff is notified and has an opportunity for a hearing. The action may be settled if the court determines after a

hearing that the proposed settlement is fair, adequate, and reasonable. The hearing may be held in camera for good cause.

The court may limit a plaintiff's participation if it finds that his participation would interfere with or unduly delay prosecution of the case, or if it finds that the plaintiff's purpose is to harass or cause the defendant undue burden or unnecessary expense.

The Attorney General is authorized to administer oaths, request or compel the attendance of witnesses and the production of documents. Further, the Attorney General is required to report refusals to obey such subpoenas to the relevant State licensing authority in the case of a licensed health care professional, an owner, administrator or employee of any hospital, an insurance company, agent, broker, solicitor or adjuster, or any other person licensed or certified by a State licensing authority, or an agent or representative, so that the licensing authority may take appropriate administrative action.

AWARD

If the Attorney General proceeds and prevails in the action, the qui tam plaintiff would be entitled to between 15% and 25% of the proceeds recovered, depending on the extent to which the person contributed to the prosecution of the action. If the Attorney General does not proceed with the case, the plaintiff would receive not less than 25% and not more than 30% of the proceeds recovered under the judgment. The governmental entity injured by the false claim would receive compensatory damages, and the Attorney General would receive 10% of the proceeds in any action or settlement, and this award could be used only to support ongoing investigations and prosecutions of false State health assistance claims. Any remaining proceeds would be deposited in the General Fund.

LIMITATIONS

Actions are prohibited against members of the judiciary and legislative branches, senior executive branch officials with substantial managerial, policy-influencing or policy-executing responsibilities, and members of county and municipal governing bodies if based on evidence or information known to the State.

A person may not bring an action under this act based upon allegations or transactions that are the subject of a pending State action or administrative proceeding.

An action cannot be brought more than six years after the violation was committed or more than three years after the material facts are known or reasonably should have been known, and in no event more than 10 years after the violation is committed.

Actions are not permitted when based upon public disclosure of allegations or transactions in criminal, civil, or administrative hearings, investigations, reports or audits conducted by or at the request of the Legislature or by the news media, unless the action is

brought by the Attorney General or the person bringing the action is an original source of the information. “Original source” means that the individual with direct, independent knowledge of the relevant information voluntarily provided it before filing an action.

In addition, the bill is not to be construed as waiving the sovereign immunity of the State or its officers and employees as otherwise provided by law.

NO EMPLOYER RETALIATION

The bill prohibits an employer from preventing an employee from disclosing information and prohibits retaliation against an employee because of lawful acts to disclose information or further a false claims action. Remedies for retaliation include reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages, litigation costs, and attorneys' fees.

COMMITTEE AMENDMENTS

The amendments:

- broaden the scope of the bill to State health assistance programs;
- make technical changes to conform to the language and standards in the federal FCA (sections 3, 5 and 7);
- increase from 20 to 30 days the period that the Attorney General has to notify a private plaintiff as to the Attorney General's plans regarding an action filed by a private plaintiff (section 5);
- reduce the award to a plaintiff from 33% to 30% in cases where the Attorney General does not proceed with an action, to be consistent with the awards under the analogous provision in the federal FCA (section 6);
- authorize the Attorney General to issue subpoenas and to report refusals to obey such subpoenas to the relevant State licensing authority (section 12);
- amend N.J.S.A.30:4D-17, which is an existing Medicaid fraud statute, so that civil penalties for Medicaid fraud committed under that statute are consistent with those under this bill (section 14).

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 360 and 1829**

with Senate Floor Amendments
(Proposed By Senator ADLER)

ADOPTED: JANUARY 7, 2008

SCS for Senate Bill Nos. 360 and 1829 (1R) establishes the "New Jersey False Claims Act" which authorizes a person to bring a civil action in New Jersey Superior Court against any other person who knowingly causes the State to pay a false claim. This act is not intended to disrupt a good faith offer or a good faith counteroffer made during contract or claims negotiation. The substitute also provides that acts occurring by mistake or as a result of mere negligence are not covered by this article and that the act shall not abrogate or modify any existing statutory or common law privileges or immunities.

This Senate floor amendment makes the following changes to the committee substitute as it was amended by the Assembly Judiciary Committee on Thursday, January 3rd, 2008:

1. Subsection d. of section 3 of the substitute is amended to retain the original mens rea in the substitute which provided for a knowing standard of intent. This floor amendment would delete "intending to defraud the entity or willfully to conceal the property" with regard to delivering or causing to be delivered less property than the amount for which the person receives a certificate or receipt and replace it with "knowingly."

2. Subsection e. of section 3 of the substitute is amended to provide that a person is liable under the act if the person is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the entity, makes or delivers a receipt without completely knowing that the information on the receipt is true;

3. Subsection b. of section 6 of the substitute is amended to retain the provision found in the substitute which required the Attorney General to demonstrate good cause when making a motion to dismiss the action. The Assembly Judiciary Committee amendments eliminated this requirement.

4. Subsection e. of section 9 would be omitted in its entirety. It had been added by the Assembly committee amendments. This subsection provided that unless a person is an original source, a person may not bring an action under this act which is based on allegations or transactions that the person knew or had reason to know were known

to the Attorney General or other law enforcement officials prior to the person filing the action or serving the disclosure of material evidence.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 360
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: JUNE 21, 2006

SUMMARY

Synopsis: Establishes the "New Jersey False Claims Act."
Type of Impact: Indeterminate Expenditure Offset By A Potential Revenue Increase. General Fund.
Agencies Affected: Department of Law and Public Safety

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
State Cost	Indeterminate State Expenditure		
State Revenue	Indeterminate State Revenue Increase		

- Establishes the "New Jersey False Claim Act," which authorizes a person to bring a civil action against any other person who knowingly causes the State to pay a false claim.
- Ascertains the distribution of proceeds and establishes civil penalties be not less than \$5,000 and not more than \$10,000 for each false claim, plus three times the amount of damages.
- Exempts members of the Judiciary and Legislative branches, senior executive branch officials from the provisions of this bill.
- Provides a statute of limitations.

BILL DESCRIPTION

Senate Bill No. 360 of 2006 establishes the "New Jersey False Claim Act," which authorizes a person to bring an action against any other person who knowingly causes the State to pay a false claim.

This bill establishes civil penalties of not less than \$5,000 and not more than \$10,000 for each false claim, plus three times the amount of damages which the public entity sustains because of the act or omission.

The bill requires that if the Office of the Attorney General proceeds with a case he would have primary responsibility for prosecuting the action. If the Attorney General proceeds with the action and prevails, the person bringing this action would be entitled to at least 15 percent but not more than 25 percent of the proceeds recovered under the judgment, depending upon the extent to which the person substantially contributed to the prosecution of the action. If the Attorney General does not proceed with the case, the person bringing the action would receive an amount which the court decides is reasonable for collecting the penalty and damages. The amount would not be less than 25 percent and not more than 33 percent of proceeds recovered under the judgment. The governmental agency injured by the submission of the false claim would receive an award not to exceed the compensatory damages. The Attorney General would receive a fixed 10 percent of the proceeds in any action or settlement of the claim that it brings, which would only be used to support its ongoing investigation and prosecution of false claims. Any remaining proceeds would be deposited in the General Fund.

This bill provides that a civil action under the act may not be brought more than five years after the date the violation of the act was committed or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with responsibility to act in the circumstances, but in no event more than seven years after the date on which the violation is committed, whichever occurs last.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the provisions of this bill would be an indeterminate expenditure that would be offset by a revenue increase.

At this time, the Office of Legislative Services is unable to predict how many cases of fraudulent claims are submitted to the State for payment.

In 1986, the U.S. Congress reinvigorated the federal False Claims Act in hopes to include all types of financial fraud against the federal government. In FFY 2006, the federal government reported collecting \$1.174 billion from fraud cases. California, Delaware, Florida, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, New Hampshire, New Mexico, Nevada, Tennessee, Texas, Virginia, and the District of Columbia have adopted their own versions of the False Claims Act in attempt to cut down on State fraudulent claims and recover money.

Section: Law and Public Safety

Analyst: Kristin A. Brunner
Associate Fiscal Analyst

Approved: David J. Rosen
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.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1829

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JUNE 26, 2006

SUMMARY

- Synopsis:** Establishes “New Jersey False Health Claims Act.”
- Type of Impact:** Possible increase in recoveries related to the Medicaid, PAAD and other State health assistance programs which would reduce State expenditures for those programs.
- Agencies Affected:** Departments of Health and Senior Services and Human Services; the proposed Department of Children and Families; the Department of Law and Public Safety; and the Administrative Office of the Courts.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Indeterminate - See Comments Below		
State Revenue	Indeterminate. According to the Bill Statement, the federal False Claims Act has resulted in \$1 billion in Medicaid recoveries during the last six years.		

- The Department of Law and Public Safety will be able to recoup its costs from the proceeds of cases it wins. However, as it is not known whether litigation costs under the New Jersey False Health Claims Act will be greater than other types of litigation involving Medicaid and other types of health care fraud, it is not known whether the State’s litigation costs will increase in those cases that the State loses.
- Under the federal Deficit Reduction Act of 2005, the State is entitled to receive an additional 10 percent of any Medicaid program recovery that is realized pursuant to an approved False Claims Act. Thus, the State would receive 60 percent, rather than 50 percent, of any Medicaid recovery.

BILL DESCRIPTION

Senate Bill No 1829 (1R) of 2006 establishes the “New Jersey False Health Claims Act,” modeled after the federal False Claims Act (FCA), to combat fraud in Medicaid and other State health assistance programs.

The FCA applies to many types of fraud committed against the federal government and is being used against Medicaid fraud. To encourage states to fight Medicaid fraud, the federal Deficit Reduction Act of 2005 allows states to retain an additional 10 percent of any recovery if the recovery was realized by an approved state false claims act in effect by January 1, 2007. To qualify, a state false claims act must meet the following four requirements:

- Liability provisions must be modeled on the federal FCA with respect to Medicaid expenditures;
- Provisions that are at least as effective as the federal FCA in rewarding and facilitating *qui tam* actions and which reward such persons with a share of the proceeds recovered, depending on the extent to which a person contributed to the prosecution of the action - - *qui tam* refers to an action that allows a private person to sue for a recovery, part of which the state shall receive;
- A provision that the complaint be filed under seal for 60 days with review by the state Attorney General;
- Civil penalties that are not less than those authorized under the federal FCA, which currently imposes a civil penalty of \$5,500 to \$11,000 for violations, plus up to three times the amount of damages sustained by the State.
- Prohibits an employer from preventing an employee from disclosing information and prohibits retaliation against an employee related to a false claims action.

This bill applies to false claims under the Medicaid program and various other health assistance programs administered by the Departments of Health and Senior Services and Human Services such as: Charity Care; NJ FamilyCare; PAAD and the Senior Gold Prescription Discount programs; Statewide Respite Care Program; Personal Assistance Services program; Work First New Jersey General Assistance program; and the AIDS Drug Distribution Program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services is not able to estimate whether the State may incur additional litigation costs in cases filed under the “New Jersey False Health Claims Act” or whether the State will realize any additional recoveries under the bill.

Litigation Costs:

In cases litigated under the “New Jersey False Health Claims Act,” the Department of Law and Public Safety can recoup its litigation costs from recoveries realized from those cases that it wins. For those cases that the department loses, the State would absorb those costs. However, it is not known whether litigation costs under the bill will be greater than litigation costs associated with Medicaid and other health care related fraud that are currently being prosecuted, it is not possible to determine whether State administrative costs associated with the bill.

Recoveries:

As the federal Deficit Reduction Act of 2005 entitles New Jersey to an additional 10 percent of any recoveries litigated under an approved false claims act, the State share of Medicaid recoveries would increase from 50 percent to 60 percent. However, as it is not known how many cases will be litigated under the bill, or how much additional recoveries the State may realize as a result of the bill, so it is not possible to estimate whether the State will realize any additional Medicaid recoveries. Similarly, it cannot be determined whether the State will realize an increase in recoveries for other health care assistance programs covered by the bill.

It is noted that the Sponsor's statement to the bill indicates that the federal government has realized more than \$1 billion in Medicaid fraud recoveries under the federal False Claims Act over the last six years.

Section: Human Services

*Analyst: Jay Hershberg
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

ASSEMBLY, No. 3428

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JULY 4, 2006

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

Assemblymen Manzo and Wisniewski

SYNOPSIS

Establishes the "New Jersey False Claims Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/15/2007)

1 AN ACT establishing the “New Jersey False Claims Act,”
2 supplementing Title 2A of the New Jersey Statutes and amending
3 P.L.1968, c.413.

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

7
8 1. (New section) Sections 1 through 15 of this act shall be
9 known and may be cited as the “New Jersey False Claims Act.”

10
11 2. (New section) As used in this act:
12 “Attorney General” means the Attorney General of the State of
13 New Jersey, or his designee.

14 “Claim” means a request or demand, under a contract or
15 otherwise, for money, property, or services that is made to any
16 employee, officer, or agent of the State, or to any contractor,
17 grantee, or other recipient if the State provides any portion of the
18 money, property, or services requested or demanded, or if the State
19 will reimburse the contractor, grantee, or other recipient for any
20 portion of the money, property, or services requested or demanded.
21 The term does not include claims, records, or statements made in
22 connection with State tax laws.

23 “Knowing” or “knowingly” means, with respect to information,
24 that a person:

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

26 (2) acts in deliberate ignorance of the truth or falsity of the
27 information; or

28 (3) acts in reckless disregard of the truth or falsity of the
29 information.

30 No proof of specific intent to defraud is required. Innocent mistake
31 shall be a defense to an action under this act.

32
33 3. (New section) Any person who commits any of the
34 following acts shall be jointly and severally liable to the State for a
35 civil penalty of not less than and not more than the civil penalty
36 allowed under the federal False Claims Act (31 U.S.C. s.3729 et
37 seq.), as may be adjusted in accordance with the inflation
38 adjustment procedures prescribed in the Federal Civil Penalties
39 Inflation Adjustment Act of 1990, Pub.L.101-410, for each false
40 claim, plus three times the amount of damages which the State
41 sustains because of the act of that person:

42 a. Knowingly presents or causes to be presented to an
43 employee, officer or agent of the State, or to any contractor,
44 grantee, or other recipient of State funds, a false claim for payment
45 or approval;

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 b. Knowingly makes, uses, or causes to be made or used a false
2 record or statement to get a false claim paid or approved by the
3 State;
- 4 c. Conspires to defraud the State by getting a false claim
5 allowed or paid by the State;
- 6 d. Has possession, custody, or control of public property or
7 money used or to be used by the State and knowingly delivers or
8 causes to be delivered less property than the amount for which the
9 person receives a certificate or receipt;
- 10 e. Is authorized to make or deliver a document certifying
11 receipt of property used or to be used by the State and knowingly
12 makes or delivers a receipt that falsely represents the property used
13 or to be used;
- 14 f. Knowingly buys, or receives as a pledge of an obligation or
15 debt, public property from any person who lawfully may not sell or
16 pledge the property; or
- 17 g. Knowingly makes, uses, or causes to be made or used a false
18 record or statement to conceal, avoid, or decrease an obligation to
19 pay or transmit money or property to the State.
20
- 21 4. (New section) The court may reduce the treble damages
22 authorized under section 3 of this act to not less than twice the
23 amount of damages which the State sustains and may order that no
24 civil penalty be imposed if the court finds all of the following:
- 25 a. The person committing the violation furnished officials of
26 the State responsible for investigating false claims violations with
27 all information known to such person about the violation within 30
28 days after the date on which the person first obtained the
29 information;
- 30 b. The person fully cooperated with any official investigation
31 of the violation; and
- 32 c. At the time such person furnished the State with information
33 about the violation, no criminal prosecution, civil action, or
34 administrative action had commenced with respect to such
35 violation, and the person did not have actual knowledge of the
36 existence of an investigation into such violation.
37
- 38 5. (New section) a. The Attorney General shall investigate a
39 violation of this act. If the Attorney General finds that a person has
40 violated or is violating this act, the Attorney General may bring a
41 civil action in Superior Court against the person.
- 42 b. A person may bring a civil action in Superior Court for a
43 violation of this act for the person and for the State. Civil actions
44 instituted under this act shall be brought in the name of the State of
45 New Jersey.
- 46 c. A complaint filed by a person under this act shall remain
47 under seal for up to 60 days and shall not be served on the
48 defendant until the court so orders. Once filed, the action may be

1 voluntarily dismissed by the person bringing the action if the
2 Attorney General gives written consent to the dismissal along with
3 the reason for consenting, and the court approves the dismissal.

4 d. A complaint alleging a false claim filed under this act shall
5 be so designated when filed, in accordance with the Rules
6 Governing the Courts of the State of New Jersey. Immediately
7 upon filing of the complaint, the plaintiff shall serve by registered
8 mail, return receipt requested, the Attorney General with a copy of
9 the complaint and written disclosure of substantially all material
10 evidence and information the person possesses. The Attorney
11 General may elect to intervene and proceed with the action on
12 behalf of the State within 60 days after it receives both the
13 complaint and the material evidence and information.

14 e. If a person brings an action under this act and the action is
15 based upon the facts underlying a pending investigation by the
16 Attorney General, the Attorney General may take over the action on
17 behalf of the State. In order to take over the action, the Attorney
18 General shall give the person written notification within 30 days
19 after notice of the action is served on the Attorney General that the
20 Attorney General is conducting an investigation of the facts of the
21 action and will take over the action.

22 f. The Attorney General may, for good cause shown, request
23 that the court extend the time during which the complaint remains
24 under seal. Any such motion may be supported by affidavits or
25 other submissions in camera. No more than three motions for an
26 extension, each for a request of no more than a 90-day period, shall
27 be considered.

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

30 (1) file a pleading with the court that he intends to proceed with
31 the action, in which case the action is conducted by the Attorney
32 General and the seal shall be lifted; or

33 (2) file a pleading with the court that he declines to proceed
34 with the action, in which case the seal shall be lifted and the person
35 bringing the action shall have the right to conduct the action.

36 h. The defendant's answer to any complaint filed under this act
37 shall be filed in accordance with the Rules Governing the courts of
38 the State of New Jersey after the complaint is unsealed and served
39 upon the defendant.

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

43

44 6. (New section) a. If the Attorney General proceeds with the
45 action, the Attorney General shall have primary responsibility for
46 prosecuting the action, and shall not be bound by any act of the
47 person bringing the action. The person bringing the action has the
48 right to continue as a party to the action, subject to limitations

1 specified in this act.

2 b. The Attorney General may move to dismiss the action for
3 good cause shown, notwithstanding the objections of the person
4 bringing the action, provided that the person bringing the action has
5 been notified by the Attorney General and the court has provided
6 the person bringing the action with the opportunity for a hearing.

7 c. Nothing in this act shall be construed to limit the authority
8 of the Attorney General or the person bringing the action to settle
9 the action, if the court determines after a hearing that the proposed
10 settlement is fair, adequate, and reasonable under all the
11 circumstances. Upon a showing of good cause, the hearing may be
12 held in camera.

13 d. Upon a showing by the Attorney General that unrestricted
14 participation during the course of the litigation by the person
15 initiating the action would interfere with or unduly delay the
16 Attorney General's prosecution of the case, or would be repetitious,
17 irrelevant, or for purposes of harassment, the court may, in its
18 discretion, impose limitations on the person's participation,
19 including, but not limited to:

- 20 (1) Limiting the number of witnesses the person may call;
21 (2) Limiting the length of the testimony of the person's
22 witnesses;
23 (3) Limiting the person's cross-examination of witnesses; or
24 (4) Otherwise limiting the participation by the person in the
25 litigation.

26 e. Upon a showing by the defendant that unrestricted
27 participation during the course of the litigation by the person
28 initiating the action would be for purposes of harassment or would
29 cause the defendant undue burden or unnecessary expense, the court
30 may limit the participation by the person in the litigation.

31 f. If the Attorney General decides not to proceed with the
32 action, the seal shall be lifted and the person who initiated the
33 action shall have the right to conduct the action. If the Attorney
34 General so requests, the Attorney General shall be served at the
35 expense of the Attorney General with copies of all pleadings and
36 motions filed in the action and copies of all deposition transcripts.
37 When a person proceeds with the action, the court, without limiting
38 the rights of the person initiating the action, may permit the
39 Attorney General to intervene and take over the action on behalf of
40 the State at a later date upon showing of good cause.

41 g. Whether or not the Attorney General proceeds with the
42 action, upon a showing by the Attorney General that certain actions
43 of discovery by the person initiating the action would interfere with
44 an investigation by the State or the prosecution of a criminal or civil
45 matter arising out of the same facts, the court may stay such
46 discovery for a period of not more than 60 days. Such a showing
47 shall be conducted in camera. The court may extend the 60-day
48 period upon a further showing in camera by the Attorney General

1 that the criminal or civil investigation or proceeding has been
2 pursued with reasonable diligence and any proposed discovery in
3 the civil action will interfere with an ongoing criminal or civil
4 investigation or proceeding.

5 h. The application of one civil remedy under this act shall not
6 preclude the application of any other remedy, civil, administrative
7 or criminal, under this act or any other provision of law. Civil and
8 administrative remedies under this act are supplemental, not
9 mutually exclusive. If after the filing of a complaint under section
10 5 of this act, the Attorney General decides to pursue an alternate
11 administrative recovery action under subsection (e) of section 17 of
12 P.L.1968, c.413 (C.30:4D-17), the plaintiff shall have the same
13 rights in the administrative recovery action as the plaintiff would
14 have had if the action had continued in Superior Court. Any finding
15 of fact or conclusion of law made in the proceeding under
16 subsection (e) of section 17 of P.L.1968, c.413 (C. 30:4D-17) that
17 has become final shall be conclusive on all parties to an action
18 initiated under section 5 of this act. As used in this subsection, the
19 term "final" means that the finding of fact or conclusion of law has
20 been finally determined on appeal to the appropriate court, all time
21 for filing such an appeal with respect to the finding or conclusion
22 has expired, or the finding or conclusion is not subject to judicial
23 review.

24

25 7. (New section) a. If the Attorney General proceeds with and
26 prevails in an action brought by a person under this act, except as
27 provided in subsection b., the court shall order the distribution to
28 the person of at least 15% but not more than 25% of the proceeds
29 recovered under any judgment obtained by the Attorney General
30 under this act or of the proceeds of any settlement of the claim,
31 depending upon the extent to which the person substantially
32 contributed to the prosecution of the action.

33 b. If the Attorney General proceeds with an action which the
34 court finds to be based primarily on disclosures of specific
35 information, other than that provided by the person bringing the
36 action, relating to allegations or transactions in a criminal, civil, or
37 administrative hearing; a legislative, administrative, or inspector
38 general report, hearing, audit, or investigation; or from the news
39 media, the court may award such sums as it considers appropriate,
40 but in no case more than 10% of the proceeds recovered under a
41 judgment or received in settlement of a claim under this act, taking
42 into account the significance of the information and the role of the
43 person bringing the action in advancing the case to litigation.

44 c. The Attorney General shall receive a fixed 10% of the
45 proceeds in any action or settlement of the claim that it brings,
46 which shall only be used to support its ongoing investigation and
47 prosecution of false claims pursuant to the provisions of this act.

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

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

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

15 g. Whether or not the Attorney General proceeds with the
16 action, if the court finds that the action was brought by a person
17 who knowingly planned and initiated the violation of this act upon
18 which the action was brought, the court may, to the extent the court
19 considers appropriate, reduce the share of the proceeds of the action
20 which the person would otherwise receive under this section to no
21 more than 10%, taking into account the role of the person in
22 advancing the case to litigation and any relevant circumstances
23 pertaining to the violation. If the person bringing the action is
24 convicted of criminal conduct arising from his role in the violation
25 of this act the person shall be dismissed from the civil action and
26 shall not receive any share of the proceeds of the action. Such
27 dismissal shall not prejudice the right of the Attorney General to
28 continue the action.

29
30 8. (New section) a. If the Attorney General initiates an action
31 under this act or assumes control of an action brought by a person
32 under this act, the Attorney General shall be awarded its reasonable
33 attorney's fees, expenses, and costs.

34 b. If the court awards proceeds to the person bringing the
35 action under this act, the person shall also be awarded an amount
36 for reasonable attorney's fees, expenses, and costs. Payment for
37 reasonable attorney's fees, expenses, and costs shall be made from
38 the recovered proceeds before the distribution of any award.

39 c. If the Attorney General does not proceed with an action
40 under this act and the defendant is the prevailing party, the court
41 may award the defendant reasonable attorney's fees, expenses, and
42 costs against the person bringing the action if the court finds that
43 the claim of the person bringing the action was clearly frivolous,
44 clearly vexatious, or brought primarily for purposes of harassment.

45 d. No liability shall be incurred by the State or the Attorney
46 General for any expenses, attorney's fees, or other costs incurred by
47 any person in bringing or defending an action under this act.

1 9. (New section) a. No member of the Legislature, a member
2 of the Judiciary, a senior Executive branch official, or a member of
3 a county or municipal governing body may be civilly liable if the
4 basis for an action is premised on evidence or information known to
5 the State when the action was brought. For purposes of this
6 subsection, the term “senior Executive branch official” means any
7 person employed in the Executive branch of government holding a
8 position having substantial managerial, policy-influencing or
9 policy-executing responsibilities.

10 b. A person may not bring an action under this act based upon
11 allegations or transactions that are the subject of a pending action or
12 administrative proceeding in the State.

13 c. No action brought under this act shall be based upon the
14 public disclosure of allegations or transactions in a criminal, civil,
15 or administrative hearing, in an investigation, report, hearing or
16 audit conducted by or at the request of the Legislature or by the
17 news media, unless the action is brought by the Attorney General,
18 or unless the person bringing the action is an original source of the
19 information. For purposes of this subsection, the term “original
20 source” means an individual who has direct and independent
21 knowledge of the information on which the allegations are based
22 and has voluntarily provided the information to the State before
23 filing an action under this act based on the information.
24

25 10. (New section) a. No employer shall make, adopt, or enforce
26 any rule, regulation, or policy preventing an employee from
27 disclosing information to a State or law enforcement agency or from
28 acting to further a false claims action, including investigating,
29 initiating, testifying, or assisting in an action filed or to be filed
30 under this act.

31 b. No employer shall discharge, demote, suspend, threaten,
32 harass, deny promotion to, or in any other manner discriminate
33 against an employee in the terms and conditions of employment
34 because of lawful acts done by the employee on behalf of the
35 employee or others in disclosing information to a State or law
36 enforcement agency or in furthering a false claims action, including
37 investigation for, initiation of, testimony for, or assistance in an
38 action filed or to be filed under this act.

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

1 employee may bring an action in the Superior Court for the relief
2 provided in this subsection.

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

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

14 (2) The employee had been harassed, threatened with
15 termination or demotion, or otherwise coerced by the employer or
16 its management into engaging in the fraudulent activity in the first
17 place.

18

19 11. (New section) A civil action under this act may not be
20 brought:

21 a. More than six years after the date on which the violation of
22 the act is committed; or

23 b. More than three years after the date when facts material to
24 the right of action are known or reasonably should have been
25 known by the State official charged with responsibility to act in the
26 circumstances, but in no event more than 10 years after the date on
27 which the violation is committed, whichever occurs last.

28

29 12. (New section) In any action brought under this act, the State
30 or the person bringing the action shall be required to prove all
31 essential elements of the cause of action, including damages, by a
32 preponderance of the evidence.

33

34 13. (New section) All moneys recovered by the Attorney
35 General in accordance with the provisions of this act shall be
36 deposited in the General Fund.

37

38 14. (New section) a. If the Attorney General has reason to
39 believe that a person has engaged in, or is engaging in, an act or
40 practice which violates this act, or any other relevant statute or
41 regulation, the Attorney General or the Attorney General's designee
42 may administer oaths and affirmations, and request or compel the
43 attendance of witnesses or the production of documents. The
44 Attorney General may issue, or designate another to issue,
45 subpoenas to compel the attendance of witnesses and the production
46 of books, records, accounts, papers and documents. Witnesses shall
47 be entitled to receive the same fees and mileage as persons
48 summoned to testify in the courts of the State.

1 If a person subpoenaed pursuant to this section shall neglect or
2 refuse to obey the command of the subpoena, a judge of the
3 Superior Court may, on proof by affidavit of service of the
4 subpoena, of payment or tender of the fees required and of refusal
5 or neglect by the person to obey the command of the subpoena,
6 issue a warrant for the arrest of said person to bring that person
7 before the judge, who is authorized to proceed against the person as
8 for a contempt of court.

9 b. If the matter that the Attorney General seeks to obtain by
10 request is located outside the State, the person so required may
11 make it available to the Attorney General or the Attorney General's
12 representative to examine the matter at the place where it is located.
13 The Attorney General may designate representatives, including
14 officials of the state in which the matter is located, to inspect the
15 matter on behalf of the Attorney General, and the Attorney General
16 may respond to similar requests from officials of other states.

17 c. If a licensed professional, an owner, administrator or
18 employee of licensed professional, included but not limited to an
19 owner, administrator or employee of any hospital, an insurance
20 company, agent, broker, solicitor or adjuster, or any other person
21 licensed or certified by a licensing authority of this State, or an
22 agent, representative or employee of any of them is found to have
23 violated any provision of this section, the Attorney General shall
24 notify the appropriate licensing authority of the violation so that the
25 licensing authority may take appropriate administrative action.

26 d. State investigators shall not be subject to subpoena in civil
27 actions by any court of this State to testify concerning any matter of
28 which they have knowledge pursuant to a pending false claims
29 investigation by the State, or a pending claim for civil penalties
30 initiated by the State.

31
32 15. (New section) This act shall not be construed as waiving the
33 sovereign immunity of the State and its officers and employees as
34 otherwise provided by law.

35
36 16. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to
37 read as follows:

38 17. (a) Any person who willfully obtains benefits under this act
39 to which he is not entitled or in a greater amount than that to which
40 he is entitled and any provider who willfully receives medical
41 assistance payments to which he is not entitled or in a greater
42 amount than that to which he is entitled is guilty of a high
43 misdemeanor and, upon conviction thereof, shall be liable to a
44 penalty of not more than \$10,000.00 or to imprisonment for not
45 more than 3 years or both.

46 (b) Any provider, or any person, firm, partnership, corporation
47 or entity, who:

1 (1) Knowingly and willfully makes or causes to be made any
2 false statement or representation of a material fact in any cost study,
3 claim form, or any document necessary to apply for or receive any
4 benefit or payment under this act; or

5 (2) At any time knowingly and willfully makes or causes to be
6 made any false statement, written or oral, of a material fact for use
7 in determining rights to such benefit or payment under this act; or

8 (3) Conceals or fails to disclose the occurrence of an event
9 which

10 (i) affects his initial or continued right to any such benefit or
11 payment, or

12 (ii) affects the initial or continued right to any such benefit or
13 payment of any provider or any person, firm, partnership,
14 corporation or other entity in whose behalf he has applied for or is
15 receiving such benefit or payment

16 with an intent to fraudulently secure benefits or payments not
17 authorized under this act or in greater amount than that which is
18 authorized under this act; or

19 (4) Knowingly and willfully converts benefits or payments or
20 any part thereof received for the use and benefit of any provider or
21 any person, firm, partnership, corporation or other entity to a use
22 other than the use and benefit of such provider or such person, firm,
23 partnership, corporation or entity; is guilty of a high misdemeanor
24 and, upon conviction thereof, shall be liable to a penalty of not
25 more than \$10,000.00 for the first and each subsequent offense or to
26 imprisonment for not more than three years or both.

27 (c) Any provider, or any person, firm, partnership, corporation
28 or entity who solicits, offers, or receives any kickback, rebate or
29 bribe in connection with:

30 (1) The furnishing of items or services for which payment is or
31 may be made in whole or in part under this act; or

32 (2) The furnishing of items or services whose cost is or may be
33 reported in whole or in part in order to obtain benefits or payments
34 under this act; or

35 (3) The receipt of any benefit or payment under this act, is
36 guilty of a high misdemeanor and, upon conviction thereof, shall be
37 liable to a penalty of not more than \$10,000.00 or to imprisonment
38 for not more than 3 years or both.

39 This subsection shall not apply to (A) a discount or other
40 reduction in price under this act if the reduction in price is properly
41 disclosed and appropriately reflected in the costs claimed or charges
42 made under this act; and (B) any amount paid by an employer to an
43 employee who has a bona fide employment relationship with such
44 employer for employment in the provision of covered items or
45 services.

46 (d) Whoever knowingly and willfully makes or causes to be
47 made or induces or seeks to induce the making of any false
48 statement or representation of a material fact with respect to the

1 conditions or operations of any institution or facility in order that
2 such institution or facility may qualify either upon initial
3 certification or recertification as a hospital, skilled nursing facility,
4 intermediate care facility, or health agency, thereby entitling them
5 to receive payments under this act, shall be guilty of a high
6 misdemeanor and shall be liable to a penalty of not more than
7 \$3,000.00 or imprisonment for not more than 1 year or both.

8 (e) Any person, firm, corporation, partnership, or other legal
9 entity who violates the provisions of any of the foregoing
10 subsections of this section or any provisions of section 3 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill), shall, in
12 addition to any other penalties provided by law, be liable to civil
13 penalties of (1) payment of interest on the amount of the excess
14 benefits or payments at the maximum legal rate in effect on the date
15 the payment was made to said person, firm, corporation, partnership
16 or other legal entity for the period from the date upon which
17 payment was made to the date upon which repayment is made to the
18 State, (2) payment of an amount not to exceed three-fold the amount
19 of such excess benefits or payments, and (3) payment in the sum of
20 **[\$2,000.00]** not less than and not more than the civil penalty
21 allowed under the federal False Claims Act (31 U.S.C. s.3729 et
22 seq.), as it may be adjusted for inflation pursuant to the federal
23 Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410
24 for each excessive claim for assistance, benefits or payments.

25 (f) Any person, firm, corporation, partnership or other legal
26 entity, other than an individual recipient of medical services
27 reimbursable by the Division of Medical Assistance and Health
28 Services, who, without intent to violate this act, obtains medical
29 assistance or other benefits or payments under this act in excess of
30 the amount to which he is entitled, shall be liable to a civil penalty
31 of payment of interest on the amount of the excess benefits or
32 payments at the maximum legal rate in effect on the date the benefit
33 or payment was made to said person, firm, corporation, partnership,
34 or other legal entity for the period from September 15, 1976 or the
35 date upon which payment was made, whichever is later, to the date
36 upon which repayment is made to the State, provided, however,
37 that no such person, firm, corporation, partnership or other legal
38 entity shall be liable to such civil penalty when excess medical
39 assistance or other benefits or payments under this act are obtained
40 by such person, firm, corporation, partnership or other legal entity
41 as a result of error made by the Division of Medical Assistance and
42 Health Services, as determined by said division; provided, further,
43 that if preliminary notification of an overpayment is not given to a
44 provider by the division within 180 days after completion of the
45 field audit as defined by regulation, no interest shall accrue during
46 the period beginning 180 days after completion of the field audit
47 and ending on the date preliminary notification is given to the
48 provider.

1 (g) All interest and civil penalties provided for in this act and all
2 medical assistance and other benefits to which a person, firm,
3 corporation, partnership, or other legal entity was not entitled shall
4 be recovered in an administrative procedure held pursuant to the
5 “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B-1, et
6 seq.), except that recovery actions against minors or incompetents
7 shall be initiated in a court of competent jurisdiction.

8 (h) Upon the failure of any person, firm, corporation,
9 partnership or other legal entity to comply within 10 days after
10 service of any order of the director or his designee directing
11 payment of any amount found to be due pursuant to subsection (g)
12 of this section, or at any time prior to any final agency adjudication
13 not involving a recipient or former recipient of benefits under this
14 act, the director may issue a certificate to the clerk of the superior
15 court that such person, firm, corporation, partnership or other legal
16 entity is indebted to the State for the payment of such amount. A
17 copy of such certificate shall be served upon the person, firm,
18 corporation, partnership or other legal entity against whom the
19 order was entered. Thereupon the clerk shall immediately enter
20 upon his record of docketed judgments the name of the person,
21 firm, corporation, partnership or other legal entity so indebted, and
22 of the State, a designation of the statute under which such amount is
23 found to be due, the amount due, and the date of the certification.
24 Such entry shall have the same force and effect as the entry of a
25 docketed judgment in the Superior Court. Such entry, however,
26 shall be without prejudice to the right of appeal to the Appellate
27 Division of the Superior Court from the final order of the director or
28 his designee.

29 (i) In order to satisfy any recovery claim asserted against a
30 provider under this section, whether or not that claim has been the
31 subject of final agency adjudication, the division or its fiscal agents
32 is authorized to withhold funds otherwise payable under this act to
33 the provider.

34 (j) The Attorney General may, when requested by the
35 commissioner or his agent, apply ex parte to the Superior Court to
36 compel any party to comply forthwith with a subpoena issued under
37 this act. Any party who, having been served with a subpoena issued
38 pursuant to the provisions of this act, fails either to attend any
39 hearing, or to appear or be examined, to answer any question or to
40 produce any books, records, accounts, papers or documents, shall
41 be liable to a penalty of \$500.00 for each such failure, to be
42 recovered in the name of the State in a summary civil proceeding to
43 be initiated in the Superior Court. The Attorney General shall
44 prosecute the actions for the recovery of the penalty prescribed in
45 this section when requested to do so by the commissioner or his
46 agent and when, in the judgment of the Attorney General, the facts
47 and law warrant such prosecution. Such failure on the part of the
48 party shall be punishable as contempt of court by the court in the

1 same manner as like failure is punishable in an action pending in
2 the court when the matter is brought before the court by motion
3 filed by the Attorney General and supported by affidavit stating the
4 circumstances.

5 (cf: P.L.1979, c.365, s.16)

6

7 17. This act shall take effect on the 60th day after enactment.

8

9

10 STATEMENT

11

12 This bill will establish the "New Jersey False Claims Act,"
13 which will authorize a person to bring a civil action in New Jersey
14 Superior Court against any other person who knowingly causes the
15 State to pay a false claim. Any person who knowingly presents a
16 false claim and deceives the State for the purposes of getting a false
17 claim paid will be subject to a civil penalty for each false claim of
18 not less than \$5,500 and not more than \$11,000, as is also currently
19 allowed under the federal False Claims Act (31 U.S.C. s.3729 et
20 seq.). The minimum and maximum civil penalties will be subject to
21 future adjustments that follow the inflation adjustment procedures
22 prescribed in the Federal Civil Penalties Inflation Adjustment Act
23 of 1990. Civil penalties also will include an additional amount
24 equal to three times the amount of damages which the State sustains
25 because of the act or omission.

26 Under the provisions of the bill, any person may bring an action
27 in Superior Court on behalf of the State. A copy of the complaint
28 and a written disclosure of substantially all material evidence and
29 information the person possesses will be served on the Attorney
30 General. The complaint will be sealed for up to 60 days and will
31 not be served on the defendant until the court so orders.

32 Once the Attorney General receives the complaint, the Attorney
33 General has 60 days, barring any extensions, to notify the court that
34 the Attorney General either intends to proceed with the action at
35 which time the seal is lifted, or declines to take over the action, in
36 which case the seal will be lifted and the person bringing the action
37 may proceed with the action. If the Attorney General proceeds with
38 the case the Attorney General will have primary responsibility for
39 prosecuting the action but the person bringing the action will have
40 the right to continue as a party to the action. The Attorney General
41 may move to dismiss the action for good cause, provided the
42 person bringing the action has been notified and given an
43 opportunity for a hearing.

44 If the Attorney General proceeds with the action and prevails, the
45 person bringing this action will be entitled to at least 15% but not
46 more than 25% of the proceeds recovered under the judgment,
47 depending upon the extent to which the person substantially
48 contributed to the prosecution of the action. If the Attorney General

1 does not proceed with the case, the person bringing a successful
2 action will receive an amount which the court decides is reasonable
3 for collecting the penalty and damages which will be not less than
4 25% and not more than 30% of the proceeds recovered under the
5 judgment or by way of a settlement. The State entity injured by the
6 submission of the false claim will receive an award not to exceed
7 the compensatory damages. The Attorney General will receive a
8 fixed 10% of the proceeds in any action or settlement of the claim
9 that it brings, which will only be used to support its ongoing
10 investigation and prosecution of false claims.

11 Any remaining proceeds will be deposited in the General Fund.

12 Members of the Judiciary and Legislative branches, and senior
13 executive branch officials will be exempt from the provisions of
14 this bill.

15 This bill provides that a civil action under the act may not be
16 brought more than six years after the date the violation of the act
17 was committed or more than three years after the date when facts
18 material to the right of action are known or reasonably should have
19 been known by the State official charged with responsibility to act
20 in the circumstances, but in no event more than 10 years after the
21 date on which the violation is committed, whichever occurs last. In
22 addition the bill provides that the public entity or the person
23 bringing the action will have the burden to prove all essential
24 elements of the cause of action, including damages, by a
25 preponderance of the evidence.

26 The bill also amends N.J.S.A.30:4D-17, an existing Medicaid
27 fraud statute, so that civil penalties for Medicaid fraud committed
28 under that statute are consistent with those under the False Claims
29 Act, and are supplemental to the penalties under the False Claims
30 Act.

31

32 FISCAL IMPACT:

33 The Office of Legislative Services (OLS) estimates that the
34 provisions of this bill would be an indeterminate expenditure that
35 would be offset by a revenue increase. At this time, the OLS is
36 unable to predict how many cases of fraudulent claims are
37 submitted to the State for payment.

38 In 1986, the U.S. Congress reinvigorated the federal False
39 Claims Act in hopes of including all types of financial fraud against
40 the federal government. In FFY 2006, the federal government
41 reported collecting \$1.174 billion from fraud cases. California,
42 Delaware, Florida, Hawaii, Illinois, Indiana, Louisiana,
43 Massachusetts, Michigan, New Hampshire, New Mexico, Nevada,
44 Tennessee, Texas, Virginia, and the District of Columbia have
45 adopted their own versions of the False Claims Act in attempt to cut
46 down on State fraudulent claims and recover money.

ASSEMBLY, No. 2186

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 30, 2006

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman LOUIS M. MANZO

District 31 (Hudson)

SYNOPSIS

Establishes the "New Jersey False Claims Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/24/2006)

1 AN ACT concerning false claims and supplementing Title 2A of the
2 New Jersey Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey
8 False Claims Act."

9

10 2. Definitions.

11 As used in this act:

12 a. "Agency" means any official, officer, commission, board,
13 authority, council, committee or department of the executive branch
14 of State government.

15 b. "Claim" includes any request or demand, under a contract or
16 otherwise, for money, property, or services, which is made to any
17 employee, officer or agent of an agency, or to any contractor,
18 grantee or other recipient if the agency provides any portion of the
19 money or property requested or demanded, or if the agency will
20 reimburse the contractor, grantee or other recipient for any portion
21 of the money or property requested or demanded.

22 c. "Knowing" or "knowingly" means, with respect to
23 information, that a person:

24 (1) has actual knowledge of the information;

25 (2) acts in deliberate ignorance of the truth or falsity of the
26 information; or

27 (3) acts in reckless disregard of the truth or falsity of the
28 information.

29 No proof of specific intent to defraud is required. Innocent
30 mistake shall be a defense to an action under this act.

31 d. "State government" means the government of the State or any
32 department, division, bureau, commission, regional planning
33 agency, board, district, authority, agency, or other instrumentality
34 of the state.

35 e. "Attorney General" means the Attorney General of the State
36 of New Jersey, or his designee.

37

38 3. Any person who:

39 a. Knowingly presents or causes to be presented to an officer or
40 employee of an agency a false claim for payment or approval;

41 b. Knowingly makes, uses or causes to be made or used a false
42 record or statement to get a false or fraudulent claim paid or
43 approved by an agency;

44 c. Conspires to submit a false claim to an agency or to deceive
45 an agency for the purpose of getting a false or fraudulent claim
46 allowed or paid;

1 d. Has possession, custody or control of property or money used
2 or to be used by an agency and, intending to deceive the agency or
3 knowingly conceal the property, delivers or causes to be delivered
4 less property than the amount for which the person receives a
5 certificate or receipt;

6 e. Is authorized to make or deliver a document certifying receipt
7 of property used or to be used by an agency and, intending to
8 deceive the agency, makes or delivers the receipt without knowing
9 that the information on the receipt is true;

10 f. Knowingly buys or receives, as a pledge of an obligation or a
11 debt, public property from an officer or employee of an agency who
12 may not sell or pledge the property lawfully; or

13 g. Knowingly makes, uses or causes to be made or used a false
14 record or statement to conceal, avoid, or decrease an obligation to
15 pay or transmit money or property to an agency, is liable to the
16 State for a civil penalty of not less than \$5,000 and not more than
17 \$10,000 and for treble the amount of damages the agency sustains
18 because of the act or omission of that person.

19

20 4. The court may reduce the treble damages authorized under
21 section 3 of P.L. ,c. (C.) (now pending before the
22 Legislature as section 3 of this bill) if the court finds one or more of
23 the following specific extenuating circumstances:

24 a. The person committing the violation furnished officials of the
25 agency responsible for investigating false claims violations with all
26 information known to the person about the violation within 30 days
27 after the date on which the person first obtained the information;

28 b. The person fully cooperated with any official investigation of
29 the violation; or

30 c. At the time the person furnished the agency with the
31 information about the violation, no criminal prosecution, civil
32 action, or administrative action had commenced under this section
33 with respect to the violation, and the person did not have actual
34 knowledge of the existence of an investigation into the violation; in
35 which case the court shall award no less than twice the amount of
36 damages sustained by the agency because of the act of the person.
37 The court shall set forth in a written order its findings and basis for
38 reducing the treble damages award.

39

40 5. a. The Attorney General may investigate a violation of this
41 act. If the Attorney General finds that a person has violated or is
42 violating this act, the Attorney General may bring a civil action
43 under this act against the person.

44 b. A person may bring a civil action for a violation of this act
45 for the person and for the affected agency. Civil actions instituted
46 under this act shall be brought in the name of the State of New
47 Jersey. A complaint filed by a person under this act may remain
48 under seal for up to 60 days and shall not be served on the

1 defendant until the court so orders. Once filed, the action may be
2 voluntarily dismissed by the person bringing the action if the
3 Attorney General gives written consent to the dismissal and its
4 reason for the consent.

5 c. The complaint shall be identified on its face as a qui tam
6 action when filed. Immediately upon filing of the complaint, a copy
7 of the complaint and written disclosure of substantially all material
8 evidence and information the person possesses shall be served on
9 the Attorney General, by registered mail, return receipt requested.
10 The Attorney General may elect to intervene and proceed with the
11 action, on behalf of the State, within 90 days after it receives both
12 the complaint and the material evidence and information.

13 d. If a person brings an action under this act and the action is
14 based upon the facts underlying a pending investigation by the
15 Attorney General, the Attorney General may take over the action on
16 behalf of the State. In order to take over the action, the Attorney
17 General shall give the person written notification within 20 days
18 after the action is filed that the Attorney General is conducting an
19 investigation of the facts of the action and that the Attorney General
20 will take over the action filed under this act.

21 e. The Attorney General may, for good cause shown, request the
22 court to extend the time during which the complaint remains under
23 seal. Any such motion may be supported by affidavits or other
24 submissions in camera.

25 f. Before the expiration of the 90 day period or any extensions
26 obtained under subsection e. , the Attorney General shall:

27 (1) notify the court that he intends to proceed with the action, in
28 which case the action is conducted by the Attorney General and the
29 seal shall be lifted; or

30 (2) notify the court that it declines to take over the action, in
31 which case the seal shall be lifted and the person bringing the action
32 shall have the right to conduct the action.

33 g. The defendant is not required to respond to any complaint
34 filed under this act until 20 days after the complaint is unsealed and
35 served upon the defendant in accordance with law.

36 h. When a person files an action under this act, no person other
37 than the Attorney General on behalf of the State may intervene or
38 bring an action under this act based on the facts underlying the
39 pending action.

40

41 6. a. If the Attorney General, on behalf of the State, proceeds
42 with the action, it has the primary responsibility for prosecuting the
43 action, and shall not be bound by any act of the person bringing the
44 action. The person bringing the action has the right to continue as a
45 party to the action, subject to the limitations specified in the act.

46 b. The Attorney General may move to dismiss the action for
47 good cause shown, notwithstanding the objections of the person
48 bringing the action provided that the person bringing the action has

1 been notified by the Attorney General and the court has provided
2 the person bringing the action with the opportunity to oppose the
3 motion at a hearing.

4 c. Nothing in this act shall be construed to limit the authority of
5 the Attorney General or the person bringing the action to settle the
6 action, if the court determines after a hearing that the proposed
7 settlement is fair, adequate, and reasonable under all the
8 circumstances.

9 d. Upon a showing by the Attorney General that unrestricted
10 participation during the course of the litigation by the person
11 initiating the action would interfere with or unduly delay the
12 Attorney General's prosecution of the case, or would be repetitious,
13 irrelevant, or for purposes of harassment, the court may, in its
14 discretion, impose limitations on the person's participation,
15 including, but not limited to:

- 16 (1) Limiting the number of witnesses the person may call;
- 17 (2) Limiting the length of the testimony of the person's
18 witnesses;
- 19 (3) Limiting the person's cross-examination of witnesses; or
- 20 (4) Otherwise limiting the participation by the person in the
21 litigation.

22 e. Upon a showing by the defendant that unrestricted
23 participation during the course of the litigation by the person
24 initiating the action would be for purposes of harassment or would
25 cause the defendant undue burden or unnecessary expense, the court
26 may limit the participation by the person in the litigation.

27 f. If the Attorney General decides not to proceed with the action,
28 the person who initiated the action has the right to conduct the
29 action. If the Attorney General requests it shall be served, at the
30 Attorney General's expense, with copies of all pleadings and
31 motions filed in the action and copies of all deposition transcripts.
32 When a person proceeds with the action, the court, without limiting
33 the rights of the person initiating the action, may permit the
34 Attorney General to intervene and take over the action on behalf of
35 the State at a later date upon showing of good cause.

36 g. Whether or not the Attorney General proceeds with the
37 action, upon a showing by the Attorney General that certain actions
38 of discovery by the person initiating the action would interfere with
39 an investigation by the State or the prosecution of a criminal or civil
40 matter arising out of the same facts, the court may stay such
41 discovery for a period of not more than 90 days. Such a showing
42 shall be conducted in camera. The court may extend the 90-day
43 period upon a further showing in camera by the Attorney General
44 that the criminal or civil investigation or proceeding has been
45 pursued with reasonable diligence and any proposed discovery in
46 the civil action will interfere with an ongoing criminal or civil
47 investigation or proceeding.

48 h. The application of one civil remedy under this act does not

1 preclude the application of any other remedy, civil or criminal,
2 under this act or any other provision of law. Civil remedies under
3 this act are supplemental, not mutually exclusive. Any finding of
4 fact or conclusion of law made in such other proceeding that has
5 become final shall be conclusive on all parties to an action under
6 this section. As used in this subsection, the term "final" means not
7 subject to judicial review.

8
9 7. Awards to plaintiffs bringing action.

10 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, inspector
23 general, or auditor general report, hearing, audit, or investigation; or
24 from the news media, the court may award such sums as it
25 considers appropriate, but in no case more than 10% of the proceeds
26 recovered under a judgment or received in settlement of a claim
27 under this act, taking into account the significance of the
28 information and the role of the person bringing the action in
29 advancing the case to litigation.

30 c. If the Attorney General does not proceed with an action under
31 this section, the person bringing the action or settling the claim
32 shall receive an amount which the court decides is reasonable for
33 collecting the civil penalty and damages. The amount shall be not
34 less than 25% and not more than 30% of the proceeds recovered
35 under a judgment rendered in an action under this act or in
36 settlement of a claim under this act.

37 d. Following any distributions under subsections a., b., or c. of
38 this section the agency injured by the submission of a false claim
39 shall be awarded an amount not to exceed its compensatory
40 damages. Any remaining proceeds, including civil penalties
41 awarded under this act shall be deposited in the General Fund.

42 e. Any payment under this section to the person bringing the
43 action shall be paid only out of the proceeds recovered from the
44 defendant.

45 f. Whether or not the Attorney General proceeds with the action,
46 if the court finds that the action was brought by a person who
47 planned and initiated the violation of this act upon which the action
48 was brought, the court may, to the extent the court considers

1 appropriate, reduce the share of the proceeds of the action which the
2 person would otherwise receive under this section, taking into
3 account the role of the person in advancing the case to litigation and
4 any relevant circumstances pertaining to the violation. If the person
5 bringing the action is convicted of criminal conduct arising from his
6 or her role in the violation of this act the person shall be dismissed
7 from the civil action and shall not receive any share of the proceeds
8 of the action. Such dismissal shall not prejudice the right of the
9 Attorney General to continue the action.

10
11 8. Expenses; attorney's fees and costs.

12 a. If the Attorney General initiates an action under this act or
13 assumes control of an action brought by a person under this act, the
14 Attorney General shall be awarded its reasonable attorney's fees,
15 expenses, and costs.

16 b. If the court awards the person bringing the action proceeds
17 under this act, the person shall also be awarded an amount for
18 reasonable attorney's fees and costs. Payment for reasonable
19 attorney's fees and costs shall be made from the recovered proceeds
20 before the distribution of any award.

21 c. If the Attorney General does not proceed with an action under
22 this act and the defendant is the prevailing party, the court shall
23 award the defendant reasonable attorney's fees and costs against the
24 person bringing the action.

25 d. No liability shall be incurred by the State, the affected
26 agency, or the Attorney General for any expenses, attorney's fees,
27 or other costs incurred by any person in bringing or defending an
28 action under this act.

29
30 9. Exemptions to civil actions.

31 a. No court shall have jurisdiction over an action brought under
32 this act against a member of the Legislature, a member of the
33 Judiciary, or a senior executive branch official if the action is based
34 on evidence or information known to the State when the action was
35 brought. For purposes of this subsection, the term "senior executive
36 branch official" means any person employed in the executive
37 branch of government holding a position having substantial
38 managerial, policy influencing or policy executing responsibilities.

39 b. In no event may a person bring an action under this act based
40 upon allegations or transactions that are the subject of a civil action
41 or an administrative proceeding in which the agency is already a
42 party.

43 c. No court shall have jurisdiction over an action brought under
44 this act based upon the public disclosure of allegations or
45 transactions in a criminal, civil, or administrative hearing; in a
46 legislative, administrative report, hearing, audit, or investigation; or
47 from the news media, unless the action is brought by the Attorney
48 General, or unless the person bringing the action is an original

1 source of the information. For purposes of this subsection, the term
2 "original source" means an individual who has direct and
3 independent knowledge of the information on which the allegations
4 are based and has voluntarily provided the information to the
5 department before filing an action under this act based on the
6 information.

7 d. No court shall have jurisdiction over an action where the
8 person bringing the action under this act is:

9 (1) Acting as an attorney for the State government; or

10 (2) An employee or former employee of State government, and
11 the action is based, in whole or in part, upon information obtained
12 in the course or scope of government employment.

13 (3) No court shall have jurisdiction over an action where the
14 person bringing the action under this act obtained the information
15 from an employee or former employee of State government who
16 was not acting in the course or scope of government employment.

17 (4) No court shall have jurisdiction over an action brought under
18 this act against a local government. For the purposes of this
19 subsection, the term "local government" means a municipality,
20 county or other political subdivision of the State, or any agency
21 thereof.

22
23 10. Protection for participating employees.

24 Any employee who is discharged, demoted, suspended,
25 threatened, harassed, or in any other manner discriminated against
26 in the terms and conditions of employment by his employer because
27 of lawful acts in furtherance of an action under this act, including
28 investigation for initiation of, testimony for, or assistance in an
29 action filed or to be filed under this act, shall have a cause of action
30 under this act.

31
32 11. Limitation of actions.

33 A civil action under this act may not be brought:

34 a. More than five years after the date on which the violation of
35 the act is committed; or

36 b. More than two years after the date when facts material to the
37 right of action are known or reasonably should have been known by
38 the State official charged with responsibility to act in the
39 circumstances, but in no event more than seven years after the date
40 on which the violation is committed, whichever occurs last.

41
42 12. Burden of proof.

43 In any action brought under this act, the State of New Jersey or
44 the person bringing the action shall be required to prove all
45 essential elements of the cause of action, including damages, by a
46 preponderance of the evidence.

47
48 13. Construction and severability of provisions.

1 This act shall be liberally construed to effectuate its remedial and
2 deterrent purposes.

3 If any provision of this act or its application to any particular
4 person or circumstance is held invalid, that provision or its
5 application is severable and does not affect the validity of other
6 provisions or applications of this act.

7

8 14. Deposit of recovered moneys.

9 All moneys recovered by the Attorney General in accordance
10 with the provisions of "New Jersey False Claims Act"
11 P.L. ,c. (C.) (now pending before the Legislature as this
12 bill) shall be deposited in the General Fund.

13

14 15. This act shall take effect on the 30th day after enactment.

15

16

17

STATEMENT

18

19 This bill would establish the "New Jersey False Claim Act,"
20 which would authorize a person to bring an action against any
21 other person who knowingly causes the State to pay a false claim.
22 Any person who knowingly presents a false claim and deceives an
23 agency for the purposes of getting a false claim paid would be
24 subject to a civil penalty of not less than \$5,000 and not more than
25 \$10,000 and would be liable for treble damages to the agency
26 because of the act or omission.

27 Under the provisions of the bill, any person may bring an action
28 on behalf of an agency and the State. A complaint filed pursuant to
29 the provisions of this act would be identified as a "qui tam" action.
30 A copy of the complaint and a written disclosure of substantially all
31 material evidence and information the person possesses would be
32 served on the Attorney General. The complaint may be sealed and
33 would not be served on the defendant until the court so orders.

34 Once the Attorney General receives the complaint, he has 90
35 days, barring any extensions, to notify the court that he either
36 intends to proceed with the action at which time the seal is lifted, or
37 declines to take over the action, in which case the seal would be
38 lifted and the person bringing the action may proceed with the
39 action. If the Attorney General proceeds with the case he would
40 have primary responsibility for prosecuting the action but the
41 person bringing the action would have the right to continue as a
42 party to the action. The Attorney General may move to dismiss the
43 action, provided the person bringing the action has been notified
44 and given an opportunity to oppose the motion.

45 If the Attorney General proceeds with the action and prevails, the
46 person bringing this action would be entitled to at least 15% but not
47 more than 25% of the proceeds recovered under the judgment,
48 depending upon the extent to which the person substantially

1 contributed to the prosecution of the action. If the Attorney General
2 does not proceed with the case, the person bringing the action
3 would receive an amount which the court decides is reasonable for
4 collecting the penalty and damages. The amount would not be less
5 than 25% and not more than 30% of proceeds recovered under the
6 judgment. The agency injured by the submission of the false claim
7 would receive an award not to exceed the compensatory damages.
8 Any remaining proceeds would be deposited in the General Fund.

9 Members of the Judiciary and Legislative branches, senior
10 executive branch officials would be exempt from the provisions of
11 this bill.

12 This bill provides that a civil action under the act may not be
13 brought more than five years after the date the violation of the act
14 was committed or more than two years after the date when facts
15 material to the right of action are known or reasonably should have
16 been known by the State official charged with responsibility to act
17 in the circumstances, but in no event more than seven years after
18 the date on which the violation is committed, whichever occurs last.
19 In addition the bill provides that the State or the person bringing the
20 action would have the burden of proof.

[Corrected Copy]

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3428 and 2186

STATE OF NEW JERSEY

DATED: JANUARY 3, 2008

The Assembly Judiciary Committee reports favorably a committee substitute for Assembly Bill Nos. 3428 and 2186.

Section 1. This substitute will establish the "New Jersey False Claims Act."

Definitions (Section 2). This substitute will authorize a person to bring a civil action against any other person who knowingly causes the State to pay a false or fraudulent claim. Under the provisions of the substitute, proof of specific intent to defraud is not required. The substitute clarifies that acts occurring by innocent mistake or as a result of mere negligence would be a defense to an action under the act. The substitute defines "State" as "any of the principal departments in the Executive Branch of State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; and any independent State authority, commission, instrumentality or agency."

Civil Penalties and Damages (Sections 3 and 4). The substitute provides that a person would be jointly and severally liable to the State for a civil penalty as is currently allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.), if the person knowingly presents a false claim. Currently, this federal civil penalty is not less than \$5,000 and not more than \$10,000 and, pursuant to federal law, is subject to future adjustments as prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990. Civil penalties also will include an additional amount equal to three times the amount of damages which the State sustains because of the act or omission. The substitute provides that a person is liable if he has possession, custody, or control of public property or money used or to be used by the State and intending to defraud the entity or willfully to conceal the property delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt. In addition, the substitute clarifies that a person is liable if the person is authorized to make or deliver a document certifying receipt of property used or to be used by the State and knowingly makes or delivers a receipt without

completely knowing that the information on the receipt is true.

The bills originally provided that the court could reduce the treble damages authorized under the act to not less than twice the amount of damages which the State sustains and that the court could order that no civil penalties be imposed. The substitute removes the provision which allowed the court to eliminate the requirement that a civil penalty be paid. The provision which authorizes the court to reduce the treble damages remains unchanged. In addition, the substitute clarifies that one of the enumerated factors the court should consider in making the determination to reduce the treble damages is that the person fully cooperated with any government investigation.

Jurisdiction of the Courts and Responsibilities of the Parties (Sections 5 and 6). The bills in their original form provided that any person may bring an action in Superior Court on behalf of the State. The committee substitute provides that an action may be brought in either State or federal court. The substitute also provides that the Superior Court would have jurisdiction over any State action brought under the act. Civil actions instituted under the act would be brought in the name of the State of New Jersey.

The substitute further provides that the complaint filed by a person under the act will remain sealed for at least 60 days and will not be served on the defendant until the court so orders. Immediately upon filing of the complaint, a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses will be served on the Attorney General. Under the provisions of the substitute, the Attorney General for good cause shown may request the court to extend the time during which a complaint remains under seal. These motions to extend the seal are not limited under the substitute. Investigating allegations of false claims is a lengthy process and it is critical that the complaint remain under seal while any criminal investigation is conducted.

If the Attorney General proceeds with the case, the Attorney General will have primary responsibility for prosecuting the action, but the person bringing the action has the right to continue as a party to the action, subject to any limitations specified in the act. The substitute provides that if the Attorney General proceeds with an action, the person bringing the action has an ongoing duty to disclose information related to the action to the Attorney General. This provision would facilitate the Attorney General's prosecution of the false claims action and ensure that the person who originally filed the complaint does not withhold relevant information, including information that may be favorable to the defendant.

The bills originally provided that the Attorney General could move to dismiss the action for good cause, provided the person bringing the action has been notified and given an opportunity for a hearing. The substitute eliminated the requirement that the Attorney General demonstrate good cause before making a motion to dismiss the action. In addition, the substitute provides that the decision of the Attorney

General to proceed with an action is final and not subject to review by any court or agency. If the Attorney General declines to proceed with an action, the person bringing the complaint may pursue the action in accordance with the provisions of the substitute. Nothing in the act should be construed to limit the authority of the Attorney General or the person bringing the action to settle the action, if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

Distribution of Proceeds (Section 7). The substitute provides that if the Attorney General proceeds with the action and prevails, the person bringing the action would be entitled to at least 15% but not more than 25% of the proceeds recovered under the judgment, depending upon the extent to which the person substantially contributed to the prosecution of the action. If the Attorney General does not proceed with the case, the person bringing a successful action will receive an amount which the court decides is reasonable for collecting the penalty and damages. This amount will be not less than 25% and not more than 30% of the proceeds of the action or settlement. The State entity injured by the submission of the false claim will receive an award not to exceed the compensatory damages. The Attorney General will receive a fixed 10% of the proceeds in any action or settlement of the claim that it brings, which will only be used to support its ongoing investigation and prosecution of false claims. The substitute provides that this 10% of the proceeds would be deposited in the newly created “False Claim Prosecution Fund.”

This substitute provides that whether or not the Attorney General proceeds with the action, if the court finds that the action was brought by a person who knowingly planned and initiated the violation of this act upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his role in the violation of this act, the person would be dismissed from the civil action and would not receive any share of the proceeds of the action. Such dismissal would not prejudice the right of the Attorney General to continue the action. The bills originally provided that the court could reduce to no more than 10% of the share of the recovered proceeds if the court finds that the person who brought the action knowingly planned and initiated the violation. The substitute eliminates this provision.

Attorney’s Fees (Section 8). The substitute provides that if the Attorney General initiates an action or assumes control of an action brought by a person under this act, the Attorney General would be awarded reasonable attorney’s fees, expenses, and costs. If the court awards proceeds to the person bringing the action under this act, the

person would also be awarded an amount for reasonable attorney's fees, expenses, and costs. Payment for reasonable attorney's fees, expenses, and costs would be made from the recovered proceeds before the distribution of any award. If the Attorney General does not proceed with an action and the defendant is the prevailing party, the court may award the defendant reasonable attorney's fees, expenses, and costs against the person bringing the action if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

Certain Barred Actions (Section 9). This substitute provides that no member of the Judiciary or Legislative branches, or any senior Executive branch official or any member of a county or municipal governing body may be civilly liable if the basis for an action is premised on evidence or information known to the State when the action was brought. The substitute provides that no action may be brought under this act by a present or former employee or agent of the State or any political subdivision thereof when the action is based upon information discovered in any civil, criminal or administrative investigation or audit which investigation or audit was within the scope of the employee's or agent's duties or job description, thereby eliminating the possibility that an employee or agent might unduly profit by merely performing their duties. Employees or agents of the State performing investigations and audits have the duty to report information related to false claims uncovered in the course of the investigation or audit. In addition, the substitute provides that unless a person is an original source, a person may not bring an action under this act that is based on allegations or transactions that the person knew or had reason to know were known to the Attorney General or other law enforcement officials prior to the person filing the action or serving the disclosure of material evidence. For the purposes of this subsection, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this act based on this information.

Retaliation Against Employees (Section 10). The substitute prohibits employers from discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee in the terms and conditions of employment because of any acts done by the employee in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed. An employer who violates this provision would be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and,

where appropriate, punitive damages. In addition, the defendant would be required to pay litigation costs and reasonable attorneys' fees associated with an action brought under this section. The substitute provides that an employee may bring an action in the Superior Court for the relief provided in the act.

Statute of Limitations and Burden of Proof (Sections 11 and 12). This substitute provides that a civil action under the act may not be brought more than six years after the date the violation of the act was committed or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last. The substitute provides that the public entity or the person bringing the action will have the burden to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

False Claims Prosecution Fund (Section 13). The bills as originally introduced provided that all the moneys recovered by the Attorney General would be deposited in the General Fund. The substitute establishes in the General Fund the "False Claims Prosecution Fund" as a nonlapsing revolving fund in the Department of Treasury. Monies deposited in this fund would be utilized by the Attorney General for the exclusive purpose of investigating and prosecuting false claims. The State Treasurer would deposit 10% of the proceeds recovered by the Attorney General in the False Claims Prosecution Fund. The substitute provides that the State Treasurer would deposit 25% of the State share of monies recovered from actions related to false or fraudulent Medicaid claims brought pursuant to this act in the "Medicaid Fraud Control Fund" established by section 10 of P.L.2007, c.58 (C.30:4D-62). In addition, the substitute provides that the State share of all other moneys recovered by the Attorney General would be deposited in the General Fund.

Subpoena Power (Section 14). The substitute provides that if the Attorney General has reason to believe that a person has engaged in, or is engaging in, an act or practice which violates this act, or any other relevant statute or regulation, the Attorney General may issue subpoenas to compel the attendance of witnesses and the production of books, records, accounts, papers and documents. If a person subpoenaed refuses to obey the command of the subpoena, a judge of the Superior Court may, on proof by affidavit of service of the subpoena, of payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring that person before the judge, who is authorized to proceed against the person as for a contempt of court. If the matter that the Attorney General seeks to obtain by request is located outside the State, the person so required may make it available to the Attorney General or the Attorney General's representative to examine the matter at the place where it is

located.

Licensed Professionals (Subsection c. of section 14). The substitute provides that if a licensed professional or an owner, administrator or employee of a licensed professional, including but not limited to an owner, administrator or employee of any hospital, an insurance company, an insurance producer, solicitor or adjuster, or any other person licensed or certified by a licensing authority of this State, or an agent, representative or employee of any of them is found to have violated any provision of this act, then the Attorney General would notify the appropriate licensing authority of the violation so that the licensing authority may take appropriate administrative action. The bills in their original form referred to agents and brokers, the substitute deletes this reference and replaces it with insurance producer.

Sovereign Immunity (Section 15). The substitute provides that this act should not be construed as waiving the sovereign immunity of the State and its officers and employees as otherwise provided by law.

Medicaid Fraud Statute (Section 16). The substitute also amends N.J.S.A.30:4D-17, an existing Medicaid fraud statute, so that civil penalties for Medicaid fraud committed under that statute are consistent with those under the False Claims Act, and are supplemental to the penalties under the False Claims Act.

Privileges and Immunities and Severability Clause (Sections 17 and 18). The substitute provides that this new false claims act would not abrogate or modify any existing statutory or common law privileges or immunities. In addition, the substitute provides that this act should be liberally construed to effectuate its remedial and deterrent purposes. If any provision of the act or its application to any particular person or circumstance is held invalid, that provision or its application is severable and would not affect the validity of other provisions or applications of the act.

This act is not intended to disrupt a good faith offer or a good faith counteroffer made during contract or claims negotiations. The substitute also provides that acts occurring by a mistake or as a result of mere negligence are not covered by this act and the act shall not abrogate or modify any existing statutory or common law privileges or immunities.

Effective Date. The substitute takes effect on the 60th day after enactment.