

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.