

STATE OF NEW YORK

9813

IN SENATE

May 31, 2024

Introduced by Sen. KRUEGER -- (at request of the Attorney General) --
read twice and ordered printed, and when printed to be committed to
the Committee on Finance

AN ACT to amend the state finance law, the executive law and the tax
law, in relation to certain false claims

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Paragraph (b) of subdivision 11 of section 4 of the state
2 finance law, as amended by chapter 171 of the laws of 2022, is amended
3 to read as follows:
4 (b) Paragraph (a) of this subdivision shall not apply to (1) moneys to
5 be distributed to the federal government, to a local government, or to
6 any holder of a bond or other debt instrument issued by the state, any
7 public authority, or any public benefit corporation; (2) moneys to be
8 distributed solely or exclusively as a payment of damages or restitution
9 to individuals or entities that were specifically injured or harmed by
10 the defendant's or settling party's conduct and that are identified in,
11 or can be identified by the terms of, the relevant judgment, agreement
12 to settle, assurance of discontinuance, or relevant instrument resolving
13 the claim or cause of action; (3) moneys recovered or obtained by a
14 state agency or a state official or employee acting in their official
15 capacity where application of paragraph (a) of this subdivision is
16 prohibited by federal law, rule, or regulation, or would result in the
17 reduction or loss of federal funds or eligibility for federal benefits
18 pursuant to federal law, rule, or regulation; (4) moneys recovered or
19 obtained by or on behalf of a public authority, a public benefit corpo-
20 ration, the department of taxation and finance, the workers' compen-
21 sation board, the New York state higher education services corporation,
22 the tobacco settlement financing corporation, a state or local retire-
23 ment system, an employee health benefit program administered by the New
24 York state department of civil service, the Title IV-D child support
25 fund, the lottery prize fund, the abandoned property fund, or an endow-
26 ment of the state university of New York or any unit thereof or any
27 state agency, provided that all of the moneys received or recovered are

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 immediately transferred to the relevant public authority, public benefit
2 corporation, department, fund, program, or endowment; (5) moneys to be
3 refunded to an individual or entity as (i) an overpayment of a tax,
4 fine, penalty, fee, insurance premium, loan payment, charge or
5 surcharge; (ii) a return of seized assets, or (iii) a payment made in
6 error; (6) moneys to be used to prevent, abate, restore, mitigate, or
7 control any identifiable instance of prior or ongoing water, land or air
8 pollution; ~~and~~ (7) moneys deposited to the opioid settlement fund
9 established in section ninety-nine-~~nn~~ of this chapter; and (8) moneys to
10 be distributed pursuant to subdivision five or six of section one
11 hundred ninety of this chapter.

12 § 2. Subdivision 5 of section 188 of the state finance law, as added
13 by chapter 379 of the laws of 2010, is amended to read as follows:

14 5. "Material" means having a natural tendency to influence, or be
15 capable of influencing the payment or receipt of money or property. A
16 claim, record, or statement is material if it has a natural tendency to
17 influence, or is capable of influencing, the payment or receipt of money
18 or property at the time it is presented, made, or used, or caused to be
19 presented, made, or used, regardless of whether it actually influences
20 the payment or receipt of money or property.

21 § 3. Paragraph (h) of subdivision 1 and paragraph (a) of subdivision 4
22 of section 189 of the state finance law, paragraph (h) of subdivision 1
23 as amended by section 1 of part J of chapter 57 of the laws of 2018 and
24 paragraph (a) of subdivision 4 as amended by section 1 of part DD of
25 chapter 59 of the laws of 2023, are amended to read as follows:

26 (h) knowingly conceals or knowingly and improperly avoids or decreases
27 an obligation to pay or transmit money or property to the state or a
28 local government, or conspires to do the same; shall be liable to the
29 state or a local government, as applicable, for a civil penalty of not
30 less than six thousand dollars and not more than twelve thousand
31 dollars, as adjusted to be equal to the civil penalty allowed under the
32 federal False Claims Act, 31 U.S.C. sec. 3729, et seq., as amended, as
33 adjusted for inflation by the Federal Civil Penalties Inflation Adjust-
34 ment Act of 1990, as amended (28 U.S.C. 2461 note; Pub. L. No.
35 101-410), plus three times the amount of all damages, including conse-
36 quential damages, which the state or local government sustains because
37 of the act of that person. Damages under this section shall be calcu-
38 lated and multiplied before any subtractions are made for compensatory
39 payments or credits received by the government from any source, includ-
40 ing but not limited to the defendant.

41 (a) This section shall apply to tax law violations only if: (i) the
42 revenue, net income, or sales of [the] at least one person against whom
43 the action is brought equals or exceeds one million dollars for any
44 taxable year subject to any action brought pursuant to this article, or
45 the value of the assets of at least one person against whom the action
46 is brought equals or exceeds five million dollars during any taxable
47 year subject to any action brought pursuant to this article; and (ii)
48 the aggregate damages to the state and local governments pleaded in such
49 action exceed ~~[three hundred and fifty thousand]~~ one million dollars;
50 provided that for purposes of applying paragraph (h) of subdivision one
51 of this section to a tax law violation, the person is alleged to have
52 knowingly concealed or knowingly and improperly avoided an obligation to
53 pay taxes to the state or a local government.

54 § 4. Section 190 of the state finance law, as added by section 39 of
55 part C of chapter 58 of the laws of 2007, subdivision 1, paragraphs (a)
56 and (b) of subdivision 2 and subdivision 9 as amended and the closing

1 paragraphs of paragraphs (a) and (f) of subdivision 2 as added by chap-
2 ter 379 of the laws of 2010, paragraphs (d) and (e) of subdivision 2 as
3 amended by section 9, subdivision 4 as amended by section 9-a and subdivi-
4 sions 6 and 7 as amended by section 9-b of part A of chapter 56 of the
5 laws of 2013, and paragraphs (a) and (b) of subdivision 6 as amended by
6 chapter 791 of the laws of 2022, is amended to read as follows:

7 § 190. Civil actions for false claims. 1. Civil enforcement actions.

8 (a) The attorney general shall have the authority to investigate
9 violations under section one hundred eighty-nine of this article. If the
10 attorney general believes that a person has violated or is violating
11 such section, then the attorney general may bring a civil action on
12 behalf of the people of the state of New York or on behalf of a local
13 government against such person. A local government also shall have the
14 authority to investigate violations that may have resulted in damages to
15 such local government under section one hundred eighty-nine of this
16 article, and may bring a civil action on its own behalf, or on behalf of
17 any subdivision of such local government, to recover damages sustained
18 by such local government as a result of such violations. No action may
19 be filed pursuant to this subdivision against the federal government,
20 the state or a local government, or any officer or employee thereof
21 acting in [~~his or her~~] their official capacity. The attorney general
22 shall consult with the office of medicaid inspector general prior to
23 filing any action related to the medicaid program.

24 (b) The attorney general is empowered to subpoena witnesses, compel
25 their attendance, examine them under oath before the attorney general or
26 a magistrate, a court of record or a judge or justice thereof and
27 require the production of any books or papers which the attorney general
28 deems relevant or material to the inquiry. If the attorney general
29 believes it to be in the public interest that an investigation be made,
30 the attorney general may either require or permit any person to file
31 with the attorney general a statement in writing under oath or otherwise
32 as to all the facts and circumstances concerning the subject matter
33 which the attorney general believes it is in the public interest to
34 investigate, and for that purpose may prescribe forms upon which such
35 statements shall be made. The attorney general may also require such
36 other data and information as the attorney general may deem relevant and
37 may make such special and independent investigations as the attorney
38 general may deem necessary in connection with the matter. The attorney
39 general's investigative powers shall not abate or terminate by reason of
40 any action or proceeding brought by the attorney general, a local
41 government, or a qui tam plaintiff under this article.

42 2. Qui tam civil actions. (a) Any person may bring a qui tam civil
43 action for a violation of section one hundred eighty-nine of this arti-
44 cle on behalf of the person and the people of the state of New York or a
45 local government. No action may be filed pursuant to this subdivision
46 against the federal government, the state or a local government, or any
47 officer or employee thereof acting in [~~his or her~~] their official capac-
48 ity.

49 For purposes of subparagraphs (i) and (iv) of paragraph (a) of subdivi-
50 sion eight of section seventy-three of the public officers law, any
51 activity by a former government employee in connection with the securing
52 of rights, protections or benefits related to preparing or filing an
53 action under this article shall not be deemed to be an appearance or
54 practice before any agency.

55 (b) A copy of the complaint and written disclosure of substantially
56 all material evidence and information the person possesses shall be

1 served on the state pursuant to subdivision one of section three hundred
2 seven of the civil practice law and rules. Any complaint filed in a
3 court of the state of New York shall be filed in supreme court in
4 camera, shall remain under seal for at least sixty days, and shall not
5 be served on the defendant until the court so orders. The seal shall not
6 preclude the attorney general, a local government, or the qui tam plain-
7 tiff from serving the complaint, any other pleadings, or the written
8 disclosure of substantially all material evidence and information
9 possessed by the person bringing the action, on relevant federal, state,
10 or local government agencies, or on law enforcement authorities of the
11 state, a local government, the federal government, or other jurisdic-
12 tions, so that the actions may be investigated or prosecuted, except
13 that such seal applies to the agencies or authorities so served to the
14 same extent as the seal applies to other parties in the action.

15 If the allegations in the complaint allege a violation of section one
16 hundred eighty-nine of this article involving damages to a local govern-
17 ment, then the attorney general may at any time provide a copy of such
18 complaint and written disclosure to the attorney for such local govern-
19 ment; provided, however, that if the allegations in the complaint
20 involve damages only to a city with a population of one million or more,
21 or only to the state and such a city, then the attorney general shall
22 provide such complaint and written disclosure to the corporation counsel
23 of such city within thirty days.

24 The state may elect to supersede or intervene and proceed with the
25 action, or to authorize a local government that may have sustained
26 damages to supersede or intervene, within sixty days after it receives
27 both the complaint and the material evidence and information; provided,
28 however, that if the allegations in the complaint involve damages only
29 to a city with a population of one million or more, then the attorney
30 general may not supersede or intervene in such action without the
31 consent of the corporation counsel of such city. The attorney general
32 shall consult with the office of the medicaid inspector general prior to
33 superseding or intervening in any action related to the medicaid
34 program. The attorney general may, for good cause shown, move the court
35 for extensions of the time during which the complaint remains under seal
36 under this subdivision. Any such motions may be supported by affidavits
37 or other submissions in camera.

38 (c) Prior to the expiration of the sixty day period or any extensions
39 obtained under paragraph (b) of this subdivision, the attorney general
40 shall notify the court that [~~he or she~~] they:

41 (i) [~~intends~~] intend to file a complaint against the defendant on
42 behalf of the people of the state of New York or a local government, and
43 thereby be substituted as the plaintiff in the action and convert the
44 action in all respects from a qui tam civil action brought by a private
45 person into a civil enforcement action by the attorney general under
46 subdivision one of this section;

47 (ii) [~~intends~~] intend to intervene in such action, as of right, so as
48 to aid and assist the plaintiff in the action; or

49 (iii) if the action involves damages sustained by a local government,
50 [~~intends~~] intend to grant the local government permission to: (A) file
51 and serve a complaint against the defendant, and thereby be substituted
52 as the plaintiff in the action and convert the action in all respects
53 from a qui tam civil action brought by a private person into a civil
54 enforcement action by the local government under subdivision one of this
55 section; or (B) intervene in such action, as of right, so as to aid and
56 assist the plaintiff in the action.

1 The attorney general shall provide the local government with a copy of
2 any such notification at the same time the court is notified.

3 (d) If the state notifies the court that it intends to file a
4 complaint against the defendant and thereby be substituted as the plain-
5 tiff in the action, or to permit a local government to do so, such
6 complaint, whether filed separately or as an amendment to the qui tam
7 plaintiff's complaint, must be filed within thirty days after the
8 notification to the court. For statute of limitations purposes, any such
9 complaint filed by the state or a local government shall relate back to
10 the filing date of the complaint of the qui tam plaintiff, to the extent
11 that the cause of action of the state or local government arises out of
12 the conduct, transactions, or occurrences set forth, or attempted to be
13 set forth, in the complaint of the qui tam plaintiff.

14 (e) If the state notifies the court that it intends to intervene in
15 the action, or to permit a local government to do so, then such motion
16 to intervene, whether filed separately or as an amendment to the qui tam
17 plaintiff's complaint, shall be filed within thirty days after the
18 notification to the court. For statute of limitations purposes, any
19 complaint filed by the state or a local government, whether filed sepa-
20 rately or as an amendment to the qui tam plaintiff's complaint, shall
21 relate back to the filing date of the complaint of the qui tam plain-
22 tiff, to the extent that the cause of action of the state or local
23 government arises out of the conduct, transactions, or occurrences set
24 forth, or attempted to be set forth, in the complaint of the qui tam
25 plaintiff.

26 (f) If the state declines to participate in the action or to authorize
27 participation by a local government, the qui tam action may proceed
28 subject to judicial review under this section, the civil practice law
29 and rules, and other applicable law. Once thirty days have passed
30 following the date on which the state was required to or in fact did
31 inform the court pursuant to paragraph (c) of this subdivision whether
32 it intends to supersede or intervene, or authorize a local government to
33 do so, (i) a qui tam claim alleging a violation of section one hundred
34 eighty-nine of this article on behalf of the state shall be discontinued
35 only with the consent of the attorney general or a court order; (ii) a
36 qui tam claim alleging a violation of section one hundred eighty-nine of
37 this article on behalf of the state and a local government shall be
38 discontinued only with the consent of the attorney general or a court
39 order; and (iii) a qui tam claim alleging a violation of section one
40 hundred eighty-nine of this article solely on behalf of a local govern-
41 ment shall be discontinued only with the consent of the attorney gener-
42 al, such local government, or a court order.

43 The qui tam plaintiff shall provide the state or any applicable local
44 government with a copy of any document filed with the court on or about
45 the date it is filed, or any order issued by the court on or about the
46 date it is issued. A qui tam plaintiff shall notify the state or any
47 applicable local government within five business days of any decision,
48 order or verdict resulting in judgment in favor of the state or local
49 government. The qui tam plaintiff shall provide the state or local
50 government a draft of any proposed settlement agreement affecting the
51 qui tam action at least five business days before executing any settle-
52 ment agreement.

53 3. Time to answer. If the state decides to participate in a qui tam
54 action or to authorize the participation of a local government, the
55 court shall order that the qui tam complaint be unsealed and served at
56 the time of the filing of the complaint or intervention motion by the

1 state or local government. After the complaint is unsealed, or if a
2 complaint is filed by the state or a local government pursuant to subdivi-
3 sion one of this section, the defendant shall be served with the
4 complaint and summons pursuant to article three of the civil practice
5 law and rules. A copy of any complaint which alleges that damages were
6 sustained by a local government shall also be served on such local
7 government. The defendant shall be required to respond to the summons
8 and complaint within the time allotted under rule three hundred twenty
9 of the civil practice law and rules.

10 4. Related actions. When a person brings a qui tam action under this
11 section, no person other than the attorney general, or a local govern-
12 ment attorney acting pursuant to subdivision one of this section or
13 paragraph (b) of subdivision two of this section, may intervene or bring
14 a related civil action based upon the facts underlying the pending
15 action; provided, however, that nothing in this subdivision shall be
16 deemed to deny persons the right, upon leave of court, to file briefs
17 amicus curiae.

18 5. Rights of the parties of qui tam actions. (a) If the attorney
19 general elects to convert the qui tam civil action into an attorney
20 general enforcement action, then the state shall have the primary
21 responsibility for prosecuting the action. If the attorney general
22 elects to intervene in the qui tam civil action then the state and the
23 person who commenced the action, and any local government which
24 sustained damages and intervenes in the action, shall share primary
25 responsibility for prosecuting the action. If the attorney general
26 elects to permit a local government to convert the action into a civil
27 enforcement action, then the local government shall have primary respon-
28 sibility for investigating and prosecuting the action. If the action
29 involves damages to a local government but not the state, and the local
30 government intervenes in the qui tam civil action, then the local
31 government and the person who commenced the action shall share primary
32 responsibility for prosecuting the action. Under no circumstances shall
33 the state or a local government be bound by an act of the person bring-
34 ing the original action. Such person shall have the right to continue as
35 a party to the action, subject to the limitations set forth in paragraph
36 (b) of this subdivision. Under no circumstances shall the state be bound
37 by the act of a local government that intervenes in an action involving
38 damages to the state. If neither the attorney general nor a local
39 government intervenes in the qui tam action then the qui tam plaintiff
40 shall have the responsibility for prosecuting the action, subject to the
41 attorney general's right to intervene at a later date upon a showing of
42 good cause.

43 (b)(i) The state may move to dismiss the action notwithstanding the
44 objections of the person initiating the action if the person has been
45 served with the motion to dismiss and the court has provided the person
46 with an opportunity to be heard on the motion. If the action involves
47 damages to both the state and a local government, then the state shall
48 consult with such local government before moving to dismiss the action.
49 If the action involves damages sustained by a local government but not
50 the state, then the local government may move to dismiss the action
51 notwithstanding the objections of the person initiating the action if
52 the person has been served with the motion to dismiss and the court has
53 provided the person with an opportunity to be heard on the motion.

54 (ii) The state or a local government may settle the action with the
55 defendant notwithstanding the objections of the person initiating the
56 action if the court determines, after an opportunity to be heard, that

1 the proposed settlement is fair, adequate, and reasonable with respect
2 to all parties under all the circumstances. Upon a showing of good
3 cause, such opportunity to be heard may be held in camera.

4 (iii) Upon a showing by the attorney general or a local government
5 that the original plaintiff's unrestricted participation during the
6 course of the litigation would interfere with or unduly delay the prose-
7 cution of the case, or would be repetitious or irrelevant, or upon a
8 showing by the defendant that the original qui tam plaintiff's unre-
9 stricted participation during the course of the litigation would be for
10 purposes of harassment or would cause the defendant undue burden, the
11 court may, in its discretion, impose limitations on the original
12 plaintiff's participation in the case, such as:

13 (A) limiting the number of witnesses the person may call;

14 (B) limiting the length of the testimony of such witnesses;

15 (C) limiting the person's cross-examination of witnesses; or

16 (D) otherwise limiting the participation by the person in the liti-
17 gation.

18 (c) Notwithstanding any other provision of law, whether or not the
19 attorney general or a local government elects to supersede or intervene
20 in a qui tam civil action, the attorney general and such local govern-
21 ment may elect to pursue any remedy available with respect to the crimi-
22 nal or civil prosecution of the presentation of false claims, including
23 any administrative proceeding to determine a civil money penalty or to
24 refer the matter to the office of the medicaid inspector general for
25 medicaid related matters. If any such alternate civil remedy is pursued
26 in another proceeding, the person initiating the action shall have the
27 same rights in such proceeding as such person would have had if the
28 action had continued under this section.

29 (d) Notwithstanding any other provision of law, whether or not the
30 attorney general elects to supersede or intervene in a qui tam civil
31 action, or to permit a local government to supersede or intervene in the
32 qui tam civil action, upon a showing by the state or local government
33 that certain actions of discovery by the person initiating the action
34 would interfere with the state's or a local government's investigation
35 or prosecution of a criminal or civil matter arising out of the same
36 facts, the court may stay such discovery for a period of not more than
37 sixty days. Such a showing shall be conducted in camera. The court may
38 extend the period of such stay upon a further showing in camera that the
39 state or a local government has pursued the criminal or civil investi-
40 gation or proceedings with reasonable diligence and any proposed discov-
41 ery in the civil action will interfere with the ongoing criminal or
42 civil investigation or proceedings.

43 6. Awards to qui tam plaintiff. (a) If the attorney general elects to
44 convert the qui tam civil action into an attorney general enforcement
45 action, or to permit a local government to convert the action into a
46 civil enforcement action by such local government, or if the attorney
47 general or a local government elects to intervene in the qui tam civil
48 action, then the person or persons who initiated the qui tam civil
49 action collectively shall be entitled to receive between fifteen and
50 twenty-five percent of the proceeds recovered in the action or in
51 settlement of the action. The court shall determine the percentage of
52 the proceeds to which a person commencing [a] any qui tam civil action
53 is entitled, by considering the extent to which the plaintiff substan-
54 tially contributed to the prosecution of the action. Where the court
55 finds that the action was based primarily on disclosures of specific
56 information (other than information provided by the person bringing the

1 action) relating to allegations or transactions in a criminal, civil or
2 administrative hearing, in a legislative or administrative report, hear-
3 ing, audit or investigation, or from the news media, the court may award
4 such sums as it considers appropriate, but in no case more than ten
5 percent of the proceeds, taking into account the significance of the
6 information and the role of the person or persons bringing the action in
7 advancing the case to litigation. Where the court finds that the action
8 was based on disclosure of specific information related to the use of
9 government funds during a declaration of a state of emergency, the court
10 shall increase the percentage of the proceeds to which the person
11 commencing such qui tam civil action is entitled by up to five percent
12 more than the maximum percentage allowed pursuant to this paragraph. Any
13 such person shall also receive an amount for reasonable expenses that
14 the court finds to have been necessarily incurred, reasonable attorneys'
15 fees, and costs pursuant to article eighty-one of the civil practice law
16 and rules. All such expenses, fees, and costs shall be awarded against
17 the defendant.

18 (b) If the attorney general or a local government does not elect to
19 intervene or convert the action, and the action is successful, then the
20 person or persons who initiated the qui tam action which obtains
21 proceeds shall be entitled to receive between twenty-five and thirty
22 percent of the proceeds recovered in the action or settlement of the
23 action. The court shall determine the percentage of the proceeds to
24 which a person commencing [a] **any** qui tam civil action is entitled, by
25 considering the extent to which the plaintiff substantially contributed
26 to the prosecution of the action. Where the court finds that the action
27 was based on disclosure of specific information related to the use of
28 government funds during a declaration of a state of emergency, the court
29 shall increase the percentage of the proceeds to which the person
30 commencing such qui tam civil action is entitled by up to ten percent
31 more than the maximum percentage allowed pursuant to this paragraph.
32 Such person shall also receive an amount for reasonable expenses that
33 the court finds to have been necessarily incurred, reasonable attorneys'
34 fees, and costs pursuant to article eighty-one of the civil practice law
35 and rules. All such expenses, fees, and costs shall be awarded against
36 the defendant.

37 (c) With the exception of a court award of costs, expenses or attor-
38 neys' fees, any payment to a person pursuant to this paragraph shall be
39 made from the proceeds.

40 (d) If the attorney general or a local government does not proceed
41 with the action and the person bringing the action conducts the action,
42 the court may award to the defendant its reasonable attorneys' fees and
43 expenses if the defendant prevails in the action and the court finds
44 that the claim of the person bringing the action was clearly frivolous,
45 clearly vexatious, or brought primarily for purposes of harassment.

46 7. Costs, expenses, disbursements and attorneys' fees. In any action
47 brought pursuant to this article, the court may award any local govern-
48 ment that participates as a party in the action an amount for reasonable
49 expenses which the court finds to have been necessarily incurred, plus
50 reasonable attorneys' fees, plus costs pursuant to article eighty-one of
51 the civil practice law and rules. All such expenses, fees and costs
52 shall be awarded directly against the defendant and shall not be charged
53 from the proceeds, but shall only be awarded if a local government
54 prevails in the action.

55 8. Exclusion from recovery. If the court finds that the qui tam civil
56 action was brought by a person who planned or initiated the violation of

1 section one hundred eighty-nine of this article upon which the action
2 was brought, then the court may, to the extent the court considers
3 appropriate, reduce the share of the proceeds of the action which the
4 person would otherwise be entitled to receive under subdivision six of
5 this section, taking into account the role of such person in advancing
6 the case to litigation and any relevant circumstances pertaining to the
7 violation. If the person bringing the qui tam civil action is convicted
8 of criminal conduct arising from [~~his or her~~] their role in the
9 violation of section one hundred eighty-nine of this article, that
10 person shall be dismissed from the qui tam civil action and shall not
11 receive any share of the proceeds of the action. Such dismissal shall
12 not prejudice the right of the attorney general to supersede or inter-
13 vene in such action and to civilly prosecute the same on behalf of the
14 state or a local government.

15 9. Certain actions barred. (a) The court shall dismiss a qui tam
16 action under this article if:

17 (i) it is based on allegations or transactions which are the subject
18 of a pending civil action or an administrative action in which the state
19 or a local government is already a party;

20 (ii) the state or local government has reached a binding settlement or
21 other agreement with the person who violated section one hundred eight-
22 y-nine of this article resolving the matter and such agreement has been
23 approved in writing by the attorney general, or by the applicable local
24 government attorney; or

25 (iii) against a member of the legislature, a member of the judiciary,
26 or a senior executive branch official if the action is based on evidence
27 or information known to the state when the action was brought.

28 (b) The court shall dismiss a qui tam action under this article,
29 unless opposed by the state or an applicable local government, or unless
30 the qui tam plaintiff is an original source of the information, if
31 substantially the same allegations or transactions as alleged in the
32 action were publicly disclosed:

33 (i) in a state or local government criminal, civil, or administrative
34 hearing in which the state or a local government or its agent is a
35 party;

36 (ii) in a federal, New York state or New York local government report,
37 hearing, audit, or investigation that is made on the public record or
38 disseminated broadly to the general public; provided that such informa-
39 tion shall not be deemed "publicly disclosed" in a report or investi-
40 gation because it was disclosed or provided pursuant to article six of
41 the public officers law, or under any other federal, state or local law,
42 rule or program enabling the public to request, receive or view docu-
43 ments or information in the possession of public officials or public
44 agencies;

45 (iii) in the news media, provided that such allegations or trans-
46 actions are not "publicly disclosed" in the "news media" merely because
47 information of allegations or transactions have been posted on the
48 internet or on a computer network.

49 (c) This subdivision is not jurisdictional.

50 10. Liability. Neither the state nor any local government shall be
51 liable for any expenses which any person incurs in bringing a qui tam
52 civil action under this article.

53 § 5. Paragraph (b) of subdivision 16 of section 63 of the executive
54 law, as amended by chapter 171 of the laws of 2022, is amended to read
55 as follows:

1 (b) Paragraph (a) of this subdivision shall not apply to any provision
2 in the resolution of a claim or cause of action providing (1) moneys to
3 be distributed to the federal government, to a local government, or to
4 any holder of a bond or other debt instrument issued by the state, any
5 public authority, or any public benefit corporation; (2) moneys to be
6 distributed solely or exclusively as a payment of damages or restitution
7 to individuals or entities that were specifically injured or harmed by
8 the defendant's or settling party's conduct and that are identified in,
9 or can be identified by the terms of, the relevant judgment, stipu-
10 lation, decree, agreement to settle, assurance of discontinuance, or
11 relevant instrument resolving the claim or cause of action; (3) moneys
12 recovered or obtained by the attorney general where application of para-
13 graph (a) of this subdivision is prohibited by federal law, rule, or
14 regulation, or would result in the reduction or loss of federal funds or
15 eligibility for federal benefits pursuant to federal law, rule, or regu-
16 lation; (4) moneys recovered or obtained by or on behalf of a public
17 authority, a public benefit corporation, the department of taxation and
18 finance, the workers' compensation board, the New York state higher
19 education services corporation, the tobacco settlement financing corpo-
20 ration, a state or local retirement system, an employee health benefit
21 program administered by the New York state department of civil service,
22 the Title IV-D child support fund, the lottery prize fund, the abandoned
23 property fund, or an endowment of the state university of New York or
24 any unit thereof or any state agency, provided that all of the moneys
25 received or recovered are immediately transferred to the relevant public
26 authority, public benefit corporation, department, fund, program, or
27 endowment; (5) moneys to be refunded to an individual or entity as (i)
28 an overpayment of a tax, fine, penalty, fee, insurance premium, loan
29 payment, charge or surcharge; (ii) a return of seized assets; or (iii) a
30 payment made in error; (6) moneys to be used to prevent, abate, restore,
31 mitigate or control any identifiable instance of prior or ongoing water,
32 land or air pollution; [~~and/or~~] (7) state moneys received as part of any
33 statewide opioid settlement agreements as defined in section 25.18 of
34 the mental hygiene law, to be spent on eligible expenditures as defined
35 in section 25.18 of the mental hygiene law; and/or (8) moneys to be
36 distributed pursuant to subdivision five or six of section one hundred
37 ninety of the state finance law.

38 § 6. Section 171 of the tax law is amended by adding a new subdivision
39 twenty-ninth to read as follows:

40 Twenty-ninth. Notwithstanding any provision of law to the contrary,
41 have authority to divulge or make known to the attorney general and the
42 attorney general's specifically-identified assistants any particulars
43 set forth in any return or report required to be made under the tax law
44 so that potential violations of the New York false claims act may be
45 investigated or prosecuted. Any information provided to the attorney
46 general pursuant to this authority (i) shall be specially marked and
47 shall be kept by the attorney general in a segregated file, access to
48 which shall be limited to the attorney general and the specifically-i-
49 dentified assistants, (ii) shall not be divulged or made known to anyone
50 else except as provided below, and (iii) shall be exempt from disclosure
51 under the freedom of information law. Notwithstanding any provision of
52 law to the contrary, the commissioner may authorize the attorney general
53 and the attorney general's specifically-identified assistants to divulge
54 or make known any particulars in any such report as necessary to inves-
55 tigate or prosecute potential violations of article thirteen of the
56 state finance law.

1 § 7. Section 190-b of the state finance law, as added by section 2 of
2 part J of chapter 57 of the laws of 2018, is amended to read as follows:

3 § 190-b. [~~Medicaid fraud~~] False claims act recovery reporting. The
4 attorney general shall make an annual report to the temporary president
5 of the senate, speaker of the assembly, chair of the senate finance
6 committee, chair of the assembly ways and means committee, chair of the
7 senate health committee, and chair of the assembly health committee by
8 April fifteenth of each year. Such report shall include the amount of
9 monies recovered by the [~~medicaid fraud control unit~~] attorney general
10 pursuant to the false claims act for the preceding calendar year, delin-
11 eated by three separate categories: (1) money recovered by the medicaid
12 fraud control unit; (2) money recovered in cases involving frauds unre-
13 lated to medicaid fraud or violations of the tax law; and (3) money
14 recovered in cases involving violations of the tax law.

15 § 8. Severability. If any clause, sentence, paragraph, section or part
16 of this act shall be adjudged by any court of competent jurisdiction to
17 be invalid and after exhaustion of all further judicial review, the
18 judgment shall not affect, impair or invalidate the remainder thereof,
19 but shall be confined in its operation to the clause, sentence, para-
20 graph, section or part of this act directly involved in the controversy
21 in which the judgment shall have been rendered.

22 § 9. This act shall take effect immediately and shall apply to any
23 pending cause of action brought pursuant to article 13 of the state
24 finance law; provided however, that no pending cause of action shall be
25 dismissed for failure to plead one million dollars in damages if that
26 action pleads damages in excess of three hundred fifty thousand dollars.