

# HOUSE BILL No. 4577

March 24, 2005, Introduced by Reps. David Law, Kahn, Elsenheimer, Schuitmaker, Vander Veen, Baxter, Newell, Tobocman, Drolet, Sheen, Nofs, Nitz, Marleau, Robertson, Garfield, Amos, Ward, Cushingberry, Condino, McConico, Dillon, Jones, Pastor, Clemente, Mayes and Lemmons, III and referred to the Committee on Judiciary.

A bill to amend 1977 PA 72, entitled  
"The medicaid false claim act,"  
(MCL 400.601 to 400.613) by adding sections 10a, 10b, and 10c.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           **SEC. 10A. (1) ANY PERSON MAY BRING A CIVIL ACTION IN THE NAME**  
2           **OF THIS STATE UNDER THIS SECTION TO RECOVER LOSSES THAT THIS STATE**  
3           **SUFFERS FROM A VIOLATION OF THIS ACT. A SUIT FILED UNDER THIS**  
4           **SECTION SHALL NOT BE DISMISSED UNLESS THE ATTORNEY GENERAL HAS BEEN**  
5           **NOTIFIED AND HAD AN OPPORTUNITY TO APPEAR AND OPPOSE THE DISMISSAL.**  
6           **(2) IF A PERSON OTHER THAN THE ATTORNEY GENERAL INITIATES AN**  
7           **ACTION UNDER THIS SECTION, THE COMPLAINT SHALL REMAIN UNDER SEAL**  
8           **AND THE CLERK SHALL NOT ISSUE THE SUMMONS FOR SERVICE ON THE**  
9           **DEFENDANT UNTIL AFTER THE TIME FOR THE ATTORNEY GENERAL'S ELECTION**

1 UNDER SUBSECTION (3) EXPIRES. AT THE TIME OF FILING THE COMPLAINT,  
2 THE PERSON SHALL SERVE A COPY OF THE COMPLAINT ON THE ATTORNEY  
3 GENERAL AND SHALL DISCLOSE, IN WRITING, SUBSTANTIALLY ALL MATERIAL  
4 EVIDENCE AND INFORMATION IN THE PERSON'S POSSESSION SUPPORTING THE  
5 COMPLAINT TO THE ATTORNEY GENERAL.

6 (3) THE ATTORNEY GENERAL MAY ELECT TO INTERVENE IN AN ACTION  
7 UNDER THIS SECTION. BEFORE THE EXPIRATION OF THE LATER OF 90 DAYS  
8 AFTER THE FILING OF THE COMPLAINT OR ANY EXTENSION OF THE 90 DAYS  
9 THAT IS REQUESTED BY THE ATTORNEY GENERAL AND GRANTED BY THE COURT,  
10 THE ATTORNEY GENERAL SHALL NOTIFY THE COURT AND THE PERSON  
11 INITIATING THE ACTION OF 1 OF THE FOLLOWING:

12 (A) THAT THE ATTORNEY GENERAL WILL PROCEED WITH THE ACTION FOR  
13 THIS STATE AND HAVE PRIMARY RESPONSIBILITY FOR PROCEEDING WITH THE  
14 ACTION.

15 (B) THAT THE ATTORNEY GENERAL DECLINES TO TAKE OVER THE ACTION  
16 AND THE PERSON INITIATING THE ACTION HAS THE RIGHT TO PROCEED WITH  
17 THE ACTION.

18 (4) IF AN ACTION IS FILED UNDER THIS SECTION, A PERSON OTHER  
19 THAN THE ATTORNEY GENERAL SHALL NOT INTERVENE IN OR BRING ANOTHER  
20 ACTION ON BEHALF OF THIS STATE BASED ON THE FACTS UNDERLYING THE  
21 ACTION.

22 (5) IF THE ATTORNEY GENERAL ELECTS TO PROCEED WITH THE ACTION  
23 UNDER SUBSECTION (3), THE ATTORNEY GENERAL HAS PRIMARY  
24 RESPONSIBILITY FOR PROSECUTING THE ACTION AND MAY DO ALL OF THE  
25 FOLLOWING:

26 (A) AGREE TO DISMISS THE ACTION, NOTWITHSTANDING THE OBJECTION  
27 OF THE PERSON INITIATING THE ACTION, BUT ONLY IF THAT PERSON HAS

1 BEEN NOTIFIED OF AND OFFERED THE OPPORTUNITY TO PARTICIPATE IN A  
2 HEARING ON THE MOTION TO DISMISS.

3 (B) SETTLE THE ACTION, NOTWITHSTANDING THE OBJECTION OF THE  
4 PERSON INITIATING THE ACTION, BUT ONLY IF THAT PERSON HAS BEEN  
5 NOTIFIED OF AND OFFERED THE OPPORTUNITY TO PARTICIPATE IN A HEARING  
6 ON THE SETTLEMENT AND IF THE COURT DETERMINES THAT THE SETTLEMENT  
7 IS FAIR, ADEQUATE, AND REASONABLE UNDER THE CIRCUMSTANCES. UPON A  
8 SHOWING OF GOOD CAUSE, THE SETTLEMENT HEARING MAY BE HELD IN  
9 CAMERA.

10 (C) REQUEST THE COURT TO LIMIT THE PARTICIPATION OF THE PERSON  
11 INITIATING THE ACTION. IF THE ATTORNEY GENERAL DEMONSTRATES THAT  
12 UNRESTRICTED PARTICIPATION BY THE PERSON INITIATING THE ACTION  
13 DURING THE LITIGATION WOULD INTERFERE WITH OR UNDULY DELAY THE  
14 ATTORNEY GENERAL'S PROSECUTION OF THE CASE OR WOULD BE REPETITIOUS,  
15 IRRELEVANT, OR UNDULY HARASSING, THE COURT MAY DO ANY OF THE  
16 FOLLOWING:

17 (i) LIMIT THE NUMBER OF THE PERSON'S WITNESSES.

18 (ii) LIMIT THE LENGTH OF THE TESTIMONY OF THE PERSON'S  
19 WITNESSES.

20 (iii) LIMIT THE PERSON'S CROSS-EXAMINATION OF WITNESSES.

21 (iv) OTHERWISE LIMIT THE PERSON'S PARTICIPATION IN THE  
22 LITIGATION.

23 (6) IF THE ATTORNEY GENERAL NOTIFIES THE COURT THAT HE OR SHE  
24 DECLINES TO TAKE OVER THE ACTION UNDER SUBSECTION (3), THE PERSON  
25 WHO INITIATED THE ACTION SHALL HAVE THE RIGHT TO PROCEED WITH THE  
26 ACTION. AT THE ATTORNEY GENERAL'S REQUEST AND EXPENSE, THE ATTORNEY  
27 GENERAL SHALL BE PROVIDED WITH COPIES OF ALL PLEADINGS FILED IN THE

1 ACTION AND COPIES OF ALL DEPOSITION TRANSCRIPTS. NOTWITHSTANDING  
2 THE ATTORNEY GENERAL'S ELECTION NOT TO TAKE OVER THE ACTION, THE  
3 COURT MAY PERMIT THE ATTORNEY GENERAL TO INTERVENE IN THE ACTION AT  
4 ANY TIME UPON A SHOWING OF GOOD CAUSE AND, SUBJECT TO SUBSECTION  
5 (7), WITHOUT AFFECTING THE RIGHTS OR STATUS OF THE PERSON  
6 INITIATING THE ACTION.

7 (7) UPON A SHOWING, CONDUCTED IN CAMERA, THAT ACTIONS OF THE  
8 PERSON INITIATING THE ACTION DURING DISCOVERY WOULD INTERFERE WITH  
9 THE ATTORNEY GENERAL'S INVESTIGATION OR PROSECUTION OF A CRIMINAL  
10 OR CIVIL MATTER, THE COURT MAY STAY THE DISCOVERY FOR NOT MORE THAN  
11 90 DAYS. THE COURT MAY EXTEND THE STAY UPON A FURTHER SHOWING THAT  
12 THE ATTORNEY GENERAL IS PURSUING THE INVESTIGATION OR PROCEEDING  
13 WITH REASONABLE DILIGENCE AND THE DISCOVERY WOULD INTERFERE WITH  
14 THE ONGOING INVESTIGATION OR PROCEEDING.

15 (8) AS AN ALTERNATIVE TO AN ACTION PERMITTED UNDER THIS  
16 SECTION, THE ATTORNEY GENERAL MAY PURSUE A VIOLATION OF THIS ACT  
17 THROUGH ANY ALTERNATE REMEDY AVAILABLE TO THIS STATE, INCLUDING AN  
18 ADMINISTRATIVE PROCEEDING. IF THE ATTORNEY GENERAL PURSUES AN  
19 ALTERNATE REMEDY, A PERSON WHO INITIATED AN ACTION UNDER THIS  
20 SECTION SHALL HAVE EQUIVALENT RIGHTS IN THAT PROCEEDING TO THE  
21 RIGHTS THAT THE PERSON WOULD HAVE HAD IF THE ACTION HAD CONTINUED  
22 UNDER THIS SECTION. FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT  
23 BECOME FINAL IN AN ALTERNATIVE PROCEEDING SHALL BE CONCLUSIVE ON  
24 THE PARTIES TO AN ACTION UNDER THIS SECTION. FOR PURPOSES OF THIS  
25 SUBSECTION, A FINDING OR CONCLUSION IS FINAL IF IT HAS BEEN FINALLY  
26 DETERMINED ON APPEAL TO THE APPROPRIATE COURT, IF THE TIME FOR  
27 FILING AN APPEAL WITH RESPECT TO THE FINDING OR CONCLUSION HAS

1 EXPIRED, OR IF THE FINDING OR CONCLUSION IS NOT SUBJECT TO JUDICIAL  
2 REVIEW.

3 (9) SUBJECT TO SUBSECTIONS (10) AND (11), IF A PERSON OTHER  
4 THAN THE ATTORNEY GENERAL PREVAILS IN AN ACTION THAT THE PERSON  
5 INITIATES UNDER THIS SECTION, THE COURT SHALL AWARD THE PERSON  
6 NECESSARY EXPENSES, COSTS, REASONABLE ATTORNEY FEES, AND THE  
7 FOLLOWING PERCENTAGE OF THE MONETARY PROCEEDS RESULTING FROM THE  
8 ACTION OR ANY SETTLEMENT OF THE CLAIM:

9 (A) IF THE ATTORNEY GENERAL INTERVENES, 15% TO 25%.

10 (B) IF THE ATTORNEY GENERAL DOES NOT INTERVENE, 25% TO 30%.

11 (10) IF THE COURT FINDS AN ACTION UNDER THIS SECTION TO BE  
12 BASED PRIMARILY ON DISCLOSURE OF SPECIFIC INFORMATION THAT WAS NOT  
13 PROVIDED BY THE PERSON BRINGING THE ACTION, SUCH AS INFORMATION  
14 FROM A CRIMINAL, CIVIL, OR ADMINISTRATIVE HEARING IN A STATE OR  
15 FEDERAL DEPARTMENT OR AGENCY, A LEGISLATIVE REPORT, HEARING, AUDIT,  
16 OR INVESTIGATION, OR THE NEWS MEDIA, THE COURT SHALL AWARD THE  
17 PERSON BRINGING THE ACTION NO MORE THAN 10% OF THE MONETARY  
18 RECOVERY IN ADDITION TO REASONABLE ATTORNEY FEES, NECESSARY  
19 EXPENSES, AND COSTS.

20 (11) IF THE COURT FINDS THAT THE PERSON BRINGING AN ACTION  
21 UNDER THIS SECTION PLANNED OR INITIATED THE CONDUCT UPON WHICH THE  
22 ACTION IS BROUGHT, THEN THE COURT MAY REDUCE, AS IT CONSIDERS  
23 APPROPRIATE, THE SHARE OF THE PROCEEDS OF THE ACTION THAT THE  
24 PERSON WOULD OTHERWISE BE ENTITLED TO RECEIVE. A PERSON WHO IS  
25 CONVICTED OF CRIMINAL CONDUCT ARISING FROM A VIOLATION OF THIS ACT  
26 SHALL NOT INITIATE OR REMAIN A PARTY TO AN ACTION UNDER THIS  
27 SECTION AND IS NOT ENTITLED TO SHARE IN THE MONETARY PROCEEDS

1 RESULTING FROM THE ACTION OR ANY SETTLEMENT UNDER THIS SECTION.

2 (12) A PERSON OTHER THAN THE ATTORNEY GENERAL SHALL NOT BRING  
3 AN ACTION UNDER THIS SECTION THAT IS BASED ON ALLEGATIONS OR  
4 TRANSACTIONS THAT ARE THE SUBJECT OF A CIVIL SUIT, A CRIMINAL  
5 INVESTIGATION OR PROSECUTION, OR AN ADMINISTRATIVE INVESTIGATION OR  
6 PROCEEDING TO WHICH THIS STATE OR THE FEDERAL GOVERNMENT IS ALREADY  
7 A PARTY.

8 (13) UNLESS THE PERSON IS THE ORIGINAL SOURCE OF THE  
9 INFORMATION, A PERSON, OTHER THAN THE ATTORNEY GENERAL, SHALL NOT  
10 INITIATE AN ACTION UNDER THIS SECTION BASED UPON THE PUBLIC  
11 DISCLOSURE OF ALLEGATIONS OR TRANSACTIONS IN A CRIMINAL, CIVIL, OR  
12 ADMINISTRATIVE HEARING, IN A STATE OR FEDERAL LEGISLATIVE,  
13 INVESTIGATIVE, OR ADMINISTRATIVE REPORT, HEARING, AUDIT, OR  
14 INVESTIGATION, OR FROM THE NEWS MEDIA. THE PERSON IS THE ORIGINAL  
15 SOURCE IF HE OR SHE HAD DIRECT AND INDEPENDENT KNOWLEDGE OF THE  
16 INFORMATION ON WHICH THE ALLEGATIONS ARE BASED AND VOLUNTARILY  
17 PROVIDED THE INFORMATION TO THE ATTORNEY GENERAL BEFORE FILING AN  
18 ACTION BASED ON THAT INFORMATION UNDER THIS SECTION.

19 (14) THIS STATE AND THE ATTORNEY GENERAL ARE NOT LIABLE FOR  
20 ANY EXPENSES, COSTS, OR ATTORNEY FEES THAT A PERSON INCURS IN  
21 BRINGING AN ACTION UNDER THIS SECTION. ANY AMOUNT AWARDED TO A  
22 PERSON INITIATING AN ACTION TO ENFORCE THIS ACT IS PAYABLE SOLELY  
23 FROM THE PROCEEDS OF THE ACTION OR SETTLEMENT.

24 SEC. 10B. THE ATTORNEY GENERAL MAY RECOVER ALL COSTS THIS  
25 STATE INCURS IN THE LITIGATION AND RECOVERY OF MEDICAID RESTITUTION  
26 UNDER THIS ACT, INCLUDING THE COST OF INVESTIGATION AND ATTORNEY  
27 FEES. THE ATTORNEY GENERAL SHALL RETAIN THE AMOUNT RECEIVED FOR

1 ACTIVITIES UNDER THIS ACT, EXCLUDING AMOUNTS FOR RESTITUTION, COURT  
2 COSTS, AND FINES. THE ATTORNEY GENERAL SHALL NOT RETAIN AMOUNTS  
3 UNDER THIS SECTION UNTIL ALL THE RESTITUTION AWARDED IN THE  
4 PROCEEDING HAS BEEN PAID.

5 SEC. 10C. (1) AN EMPLOYER SHALL NOT DISCHARGE, DEMOTE,  
6 SUSPEND, THREATEN, HARASS, OR OTHERWISE DISCRIMINATE AGAINST AN  
7 EMPLOYEE IN THE TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE THE  
8 EMPLOYEE INITIATES, ASSISTS IN, OR PARTICIPATES IN A PROCEEDING OR  
9 COURT ACTION UNDER THIS ACT OR BECAUSE THE EMPLOYEE COOPERATES WITH  
10 OR ASSISTS IN AN INVESTIGATION UNDER THIS ACT. THIS PROHIBITION  
11 DOES NOT APPLY TO AN EMPLOYMENT ACTION AGAINST AN EMPLOYEE WHO IS  
12 CONVICTED OF CRIMINAL CONDUCT ARISING FROM A VIOLATION OF THIS ACT.

13 (2) AN EMPLOYER WHO VIOLATES THIS SECTION IS LIABLE TO THE  
14 EMPLOYEE FOR ALL OF THE FOLLOWING:

15 (A) REINSTATEMENT TO THE EMPLOYEE'S POSITION WITHOUT LOSS OF  
16 SENIORITY.

17 (B) TWO TIMES THE AMOUNT OF LOST BACK PAY.

18 (C) INTEREST ON THE BACK PAY.

19 (D) COMPENSATION FOR ANY SPECIAL DAMAGES.

20 (E) ANY OTHER RELIEF NECESSARY TO MAKE THE EMPLOYEE WHOLE.