

## FALSE CLAIMS ACT

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### House Bill 4773

Sponsor: Rep. Gino Polidori

Committee: Government Operations

Complete to 2-11-08

## A SUMMARY OF HOUSE BILL 4773 AS INTRODUCED 5-16-07

The bill would create a new act known as the False Claims Act to establish remedies and sanctions against a person who presents a false or fraudulent claim to obtain money, property or services from the state or a political subdivision (i.e., a local unit of government). It allows for enforcement by the attorney general or by a private individual. The bill would prohibit retaliation against a person who pursues a remedy under this act.

(A political subdivision would include a county, city, township, village, district, metropolitan government or authority, political body with the legal power or authority to levy taxes, or other legally authorized local governmental body, or a combination of such subdivisions.)

Damages and Penalties for False Claims. A person who commits any of the offenses described below, regardless of specific intent to defraud, is liable to the state or a political subdivision for three times the amount of damages sustained because of the act, as well as the costs of an action brought to recover damages or a penalty, and could be liable to the state or a subdivision for a civil penalty of up to \$10,000 for each act. The bill would apply to a person (individual or entity) who:

- Knowingly presents or causes to be presented to an officer or employee a false claim for payment or approval.
- Knowingly makes or uses a false record or statement to get a false claim paid or approved.
- Conspires to defraud by getting a false claim allowed or paid.
- Has possession, custody, or control of public property or money used or to be used by the state or political subdivision and knowingly delivers 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 or a political subdivision and knowingly makes or delivers a receipt that falsely represents the property used.
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully could not sell or pledge the property.

- Knowingly makes, uses, or causes to be made a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a political subdivision.

Actions to Recover Losses/Intervention by Attorney General. Any person could bring an action in the name of the state to recover losses sustained by the state under the act. A court could not dismiss such an action unless the attorney general has been notified and had an opportunity to appear and oppose dismissal. If the opportunity to oppose dismissal is not exercised within 28 days, the opportunity would be considered waived.

If a person other than the attorney general initiates an action, the complaint would be sealed and the clerk could not issue a summons for service on the defendant until the attorney general decides whether to take over the action or not. At the time the complaint is filed, a copy would have to be served on the attorney general, along with disclosure in writing of substantially all material evidence and information supporting the complaint.

Within 90 days after receiving the complaint and disclosure, the attorney general would be required to notify the court and the person initiating the action of one of the following: (1) that he or she will take over the action for the state and have primary responsibility for proceeding with the action or (2) that he or she declines to take over the case and the person initiating the action has the right to proceed.

If the attorney general elects to proceed with an action through initiation or intervention, he or she would have primary responsibility for prosecuting the action and could do all of the following:

- Agree to dismiss the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on a motion to dismiss.
- Settle the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the settlement and if the court determines that the settlement is fair, adequate, and reasonable under the circumstances. On a showing of good cause, the settlement hearing may be heard in camera (in the judge's chambers).
- Request that the court limit the participation of the person initiating the action. If the attorney general demonstrates that unrestricted participation by the person initiating the action would interfere with or unduly delay the prosecution of the case, or it would be repetitious, irrelevant, or unduly harassing, the court could limit the number of the person's witnesses, limit the length of witness testimony, limit the person's cross-examination of witnesses, or otherwise limit the person's participation in the litigation.

If the attorney general notifies the court that he or she declines to take over the action, the person who initiated the action could proceed with it. However, the attorney general, at his or her request and expense, could be provided with copies of all pleadings filed in the action and copies of all deposition transcripts. In spite of an election not to take over the action, the court may permit the attorney general to intervene at any time on a showing of good cause without affecting the rights or status of the person initiating the claim.

However, if the court determines, after a hearing in camera, that the actions of the person initiating the claim during discovery would interfere with the attorney general's investigation or prosecution of a criminal or civil matter, the court could stay the discovery for more than 90 days. The court could extend the stay on a further showing that the attorney general is pursuing the investigation or proceeding with reasonable diligence and that the discovery would interfere with the ongoing investigation.

Alternative Action by AG. As an alternative, the attorney general could instead pursue damages or a penalty for an act through any proceeding available to the state government, including an administrative proceeding. If the attorney general pursues an alternative proceeding, a person who initiates an action has rights in that proceeding equivalent to the rights the person would have had if the original action had continued, to the extent that those rights are consistent with the law governing the proceeding. Findings of fact and conclusions of law that become final in an alternative proceeding are conclusive on the parties to an action.

Award to Prevailing Private Party. If a person other than the attorney general prevails in an action that person initiates, the court would be required to award the person necessary expenses, costs, reasonable attorney fees, and the following percentages of monetary proceeds resulting from the action or settlement of the claim: if the attorney general intervenes 15 to 25 percent; if the attorney general does not intervene, 25 to 30 percent.

However, if the court finds an action to be based primarily on disclosure of specific information that was not provided by the person bringing the action, such as information from a criminal, civil, or administrative hearing, a legislative report, an audit or investigation, or from the news media, and the attorney general proceeds with the action, the court could award the person bringing the action no more than 10 percent of the monetary recovery in addition to reasonable attorney fees, necessary expenses and costs.

Reduction of Award to Complicit Private Party. If the court finds that the person bringing the action planned, initiated, or participated in the conduct on which the action is brought, then the court could reduce or eliminate the share of the proceeds the person otherwise would be entitled to receive. A person who is convicted of criminal conduct arising from a violation of this act could not initiate or remain a party to an action under the act and is not entitled to share in the monetary proceeds resulting from the action or any settlement of the claim.

A person other than the attorney general could not bring an action based on allegations or transactions that are already the subject of a civil action, a criminal investigation or prosecution, or an administrative proceeding to which the state or federal government is already a party. The court would be required to dismiss an action brought in violation of this section.

No Private Action Based on Public Disclosure. Unless that person is the original source of the information, a person other than the attorney general could not initiate an action based on the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation, or from the news media. The person is the original source if he or she had direct and independent knowledge of the information on which the allegations are based and voluntarily provided the information to the attorney general before filing an action.

State Not Liable for Fees of Private Parties. This state and the attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bringing an action under this section. Any amount awarded to a person initiating an action to enforce this act would be payable solely from the proceeds of the action.

Award to Defendant. If a person proceeds with an action after being notified that the attorney general has declined to intervene, and the court subsequently finds the claim to be frivolous, the court could award the prevailing defendant actual and reasonable attorney fees and expenses and, in addition, impose a civil fine of up to \$10,000 on the person who initiated the action. The civil fine would be deposited in the state's General Fund.

Recovery of Costs by the State. The attorney general could recover all costs the state incurs in the litigation and recovery of restitution under the act, including the cost of investigation and attorney fees. The attorney general could retain the amount received from activities under the act, excluding amounts for restitution, court costs, and fines. The attorney general could not retain amounts until all the restitution awarded in the proceeding has been paid.

Employer Prohibitions and Sanctions. An employer could not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee in terms and conditions of employment because the employee initiates or participates in a proceeding or court action or because the employee cooperates with an investigation. This prohibition does not apply to an employment action against an employee if the court finds one or more of the following apply: (1) the employee brought a frivolous claim; (2) the employee planned, initiated, or participated in the conduct on which the action is brought; or (3) the employee is convicted of criminal conduct.

An employer who violates this section is liable to the employee for all of the following: (1) reinstatement without loss of seniority, (2) two times the amount of lost back pay, (3) interest on the back pay, (4) compensation for any special damages, and (5) any other relief necessary to make the employee whole.

Civil Action Limitations. A civil action could not be filed more than three years after the official of the state or political subdivision charged with responsibility to act discovers the act on which the action is based or more than 10 years after the act was committed, whichever is later.

## **FISCAL IMPACT:**

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.