

1 HB594
2 138857-1
3 By Representative Scott
4 RFD: Judiciary
5 First Read: 22-MAR-12

2
3
4
5
6
7
8 SYNOPSIS: Existing law does not provide a specific
9 remedy for the state to pursue damages sustained
10 when a person or entity commits false or fraudulent
11 acts against the state.

12 This bill would establish the Alabama False
13 Claims Act, to provide a remedy for combating fraud
14 in government programs.

15 This bill would provide that certain persons
16 who make false claims or commit fraud against the
17 state shall be liable to the state for three times
18 the amount of damage sustained, a civil penalty,
19 and any associated costs, including attorneys'
20 fees.

21 This bill would provide for the
22 responsibilities of the Attorney General and
23 individuals, as qui tam plaintiffs, in
24 investigating and proceeding against violators in
25 civil actions.

26 This bill would prohibit any employer from
27 taking retaliatory action or preventing an employee

1 from disclosing information to government or law
2 enforcement agencies investigating false or
3 fraudulent claims actions.

4 This bill would also provide for the
5 limitation of actions.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To create the Alabama False Claims Act, relating to
12 false or fraudulent claims made upon state government; to
13 subject certain violators, making false claims or committing
14 fraud against the state to treble damages and civil penalties;
15 to provide for the award of attorneys' fees; to provide for
16 the responsibilities of the Attorney General and individuals,
17 as qui tam plaintiffs, in investigating and proceeding against
18 violators in civil actions; to prohibit retaliatory actions by
19 employers against employees who disclose information to
20 government or law enforcement agencies investigating false
21 claims actions; and to provide for the limitation of actions.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall be known and may be cited
24 as the Alabama False Claims Act.

25 Section 2. For the purposes of this act, the
26 following terms have the following meanings:

1 (1) CLAIM. Includes any request or demand for money,
2 property, or services made to any employee, officer, or agent
3 of the state, or to any contractor, grantee, or other
4 recipient, whether under contract or not, if any portion of
5 the money, property, or services requested or demanded issued
6 from, or was provided by, the state. The term does not include
7 a request or demand for money or property that the state has
8 paid to an individual as compensation for state employment or
9 as an income subsidy with no restrictions on that individual's
10 use of the money or property.

11 (2) KNOWING and KNOWINGLY.

12 a. When a person, with respect to information, does
13 any of the following:

14 1. Has actual knowledge of the information.

15 2. Acts in deliberate ignorance of the truth or
16 falsity of the information.

17 3. Acts in reckless disregard of the truth or
18 falsity of the information.

19 b. Proof of specific intent to defraud is not
20 required.

21 (3) PERSON. Includes any natural person,
22 corporation, firm, association, organization, partnership,
23 business, or trust.

24 Section 3. (a) A person shall be liable to the state
25 for three times the amount of damages sustained by the state
26 as a result of the person committing any of the following
27 acts:

1 (1) Knowingly presents or causes to be presented to
2 an officer or employee of the state a false claim for payment
3 or approval.

4 (2) Knowingly makes, uses, or causes to be made or
5 used a false record or statement to get a false claim paid or
6 approved by the state.

7 (3) Conspires to defraud the state by getting a
8 false claim allowed or paid by the state.

9 (4) Has possession, custody, or control of public
10 property or money used or to be used by the state and
11 knowingly delivers or causes to be delivered less property
12 than the amount for which the person receives a certificate or
13 receipt.

14 (5) Is authorized to make or deliver a document
15 certifying receipt of property used or to be used by the state
16 and knowingly makes or delivers a receipt that falsely
17 represents the property used or to be used.

18 (6) Knowingly buys, or receives as a pledge of an
19 obligation or debt, public property from any person who
20 lawfully may not sell or pledge the property.

21 (7) Knowingly makes, uses, or causes to be made or
22 used a false record or statement to conceal, avoid, or
23 decrease an obligation to pay or transmit money or property to
24 the state.

25 (8) Is a beneficiary of an inadvertent submission of
26 a false claim to the state and subsequently discovers the
27 falsity of the claim, and fails to disclose the false claim to

1 the state within a reasonable time after discovery of the
2 false claim.

3 (b) A person who commits any of the acts listed in
4 subsection (a) shall also be liable to the state for the costs
5 of a civil action brought to recover any of those penalties or
6 damages, including attorney's fees, and may be liable to the
7 state for a civil penalty of not less than five thousand five
8 hundred dollars (\$5,500) and not more than eleven thousand
9 dollars (\$11,000) for each false claim.

10 (c) Notwithstanding subsection (a), the court may
11 assess not less than two times the amount of damages which the
12 state sustains because of the act of the person described in
13 that subsection, and no civil penalty, if the court finds all
14 of the following:

15 (1) The person committing the violation furnished
16 officials of the state responsible for investigating false
17 claims violations with all information known to that person
18 about the violation within 30 days after the date on which the
19 person first obtained the information.

20 (2) The person fully cooperated with any
21 investigation by the state regarding the violation.

22 (3) At the time the person furnished the state with
23 information about the violation, no criminal prosecution,
24 civil action, or administrative action had commenced with
25 respect to the violation, and the person did not have actual
26 knowledge of the existence of an investigation regarding the
27 violation.

1 (d) This section does not apply to claims, records,
2 or statements made under Title 40, Code of Alabama 1975,
3 relating to taxation.

4 Section 4. (a) The Attorney General shall diligently
5 investigate violations pursuant to Section 3 involving state
6 funds. If the Attorney General finds that a person has
7 violated or is violating Section 3, the Attorney General may
8 bring a civil action against that person.

9 (b) (1) A person may bring a civil action for a
10 violation of this act in the name of the person and the State
11 of Alabama. The person bringing the action shall be known as
12 the qui tam plaintiff. Once filed, the action may be dismissed
13 only with the written consent of the court and the Attorney
14 General, taking into account the best interests of the parties
15 involved and the public purposes behind this act.

16 (2) A copy of the complaint and written disclosure
17 of substantially all material evidence and information the
18 person possesses shall be served on the Attorney General by
19 mail on the same date the complaint is filed. The complaint
20 filed by a person shall also be filed in the circuit court in
21 camera and shall remain under seal for 60 days. The complaint
22 shall not be served on the defendant until after the complaint
23 is unsealed.

24 (3) Within 60 days after receiving a complaint
25 alleging violations, the Attorney General shall do either of
26 the following:

1 a. Notify the court that the office of the Attorney
2 General intends to proceed with the action, in which case the
3 seal shall be lifted upon the expiration of 60 days as
4 provided in subdivision (2).

5 b. Notify the court that the office of the Attorney
6 General declines to proceed with the action, in which case the
7 seal shall be lifted upon the expiration of 60 days as
8 provided in subdivision (2) and the qui tam plaintiff may
9 proceed with the action.

10 (4) Any information or documents furnished by the
11 qui tam plaintiff to the Attorney General in connection with
12 the initiation of a qui tam action or investigation under this
13 section is not a public record and is exempt from public
14 disclosure under state law.

15 (5) Upon a showing of good cause and reasonable
16 diligence in an investigation, the Attorney General may move
17 the court for extensions of the time during which the
18 complaint remains under seal. The motion may be supported by
19 affidavits or other submissions in camera.

20 (6) When a person brings an action pursuant to this
21 subsection, no other person, other than the state, may bring a
22 related action based on the facts underlying the pending
23 action.

24 (c) (1) No court shall have jurisdiction over an
25 action brought pursuant to subsection (b) against a member of
26 the Legislature, a member of the state judiciary, or an
27 elected official in the executive branch of the state, if the

1 action is based on evidence or information known to the state
2 when the action was brought.

3 (2) In no event may a person bring an action
4 pursuant to subsection (c) which is based upon allegations or
5 transactions which are the subject of a civil suit or an
6 administrative civil money penalty proceeding in which the
7 state is already a party.

8 (3)a. No court shall have jurisdiction over an
9 action brought pursuant to this act based upon the public
10 disclosure of allegations or transactions in a criminal,
11 civil, or administrative hearing, in an investigation, report,
12 hearing, or audit conducted by or at the request of the
13 Legislature, or State Auditor, or from the news media, unless
14 the action is brought by the Attorney General or the person
15 bringing the action is an original source of the information.

16 b. For purposes of paragraph a., the term "original
17 source" means an individual who has direct and independent
18 knowledge of the information on which the allegations are
19 based, who voluntarily provided the information to the state
20 before filing an action based on that information, and whose
21 information provided the basis or catalyst for the
22 investigation, hearing, audit, or report which led to the
23 public disclosure as described in paragraph a.

24 (4) No court shall have jurisdiction over an action
25 brought pursuant to subsection (b) based upon information
26 discovered by a present or former employee of the state during
27 the course of his or her employment, unless that employee

1 first in good faith exhausted existing internal procedures for
2 reporting and seeking recovery of such falsely claimed sums
3 through official channels and unless the state failed to act
4 on the information provided within a reasonable period of
5 time.

6 (d) (1) If the state proceeds with the action, it
7 shall have the primary responsibility for prosecuting the
8 action, and shall not be bound by an act of the person
9 bringing the action. The qui tam plaintiff shall have the
10 right to continue as a full party to the action subject to the
11 limitations described in subdivision (2).

12 (2)a. The state may seek to dismiss the action for
13 good cause notwithstanding the objections of the qui tam
14 plaintiff if the qui tam plaintiff has been notified by the
15 state of the filing of the motion and the court has provided
16 the qui tam plaintiff with an opportunity to oppose the motion
17 and present evidence at a hearing.

18 b. The state may settle the action with the
19 defendant notwithstanding the objections of the qui tam
20 plaintiff if the court determines, after a hearing providing
21 the qui tam plaintiff an opportunity to present evidence, that
22 the proposed settlement is fair, adequate, and reasonable
23 under all of the circumstances.

24 c. Upon a showing by the state that unrestricted
25 participation during the course of the litigation by the
26 person initiating the action would interfere with or unduly
27 delay the state's prosecution of the case, or would be

1 repetitious, irrelevant, or for purposes of harassment, the
2 court, in its discretion, may impose any of the following
3 limitations on the person's participation:

4 1. Limiting the number of witnesses the person may
5 call.

6 2. Limiting the length of the testimony of
7 witnesses.

8 3. Limiting the person's cross-examination of
9 witnesses.

10 4. Otherwise limiting the participation by the
11 person in the litigation.

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

18 (e) (1) If the state elects not to proceed, the qui
19 tam plaintiff shall have the same right to proceed in the
20 action as the Attorney General would have had if the Attorney
21 General had chosen to proceed pursuant to subsection (b). If
22 the state requests, and at its expense, the state shall be
23 served with copies of all pleadings filed in the action and
24 supplied with copies of all deposition transcripts.

25 (2)a. Upon timely application, the court shall
26 permit the state to intervene in an action with which it had
27 initially declined to proceed if the interest of the state in

1 recovery of the property or funds involved is not being
2 adequately represented by the qui tam plaintiff, or for other
3 good cause shown.

4 b. If the state is allowed to intervene pursuant to
5 paragraph a., the qui tam plaintiff shall retain principal
6 responsibility for the action and the recovery of the parties
7 shall be determined as if the state had elected not to
8 proceed.

9 (3) Whether or not the state proceeds with the
10 action, upon a showing by the state that certain actions of
11 discovery by the person initiating the action would interfere
12 with the state's investigation or prosecution of a criminal or
13 civil matter arising out of the same facts, the court may stay
14 such discovery for a period of not more than 60 days. The
15 showing shall be conducted in camera. The court may extend the
16 60-day period upon a further showing in camera that the state
17 has pursued the criminal or civil investigation or proceedings
18 with reasonable diligence and any proposed discovery in the
19 civil action will interfere with the ongoing criminal or civil
20 investigation or proceedings.

21 (g) (1) If the state proceeds with an action brought
22 by a qui tam plaintiff pursuant to subsection (b), the qui tam
23 plaintiff shall receive at least 15 percent, but not more than
24 25 percent, of the proceeds of the action or settlement of the
25 claim, depending upon the extent to which the qui tam
26 plaintiff substantially contributed to the prosecution of the
27 action.

1 (2) Where the action is one which the court finds to
2 be based primarily on disclosures of specific information,
3 other than information provided by the person bringing the
4 action, relating to allegations or transactions specifically
5 in a criminal, civil, or administrative hearing, in a
6 legislative or administrative report, hearing, audit, or
7 investigation, or from the news media, the court may award
8 such sums as it considers appropriate, but in no case more
9 than 10 percent of the proceeds, taking into account the
10 significance of the information and the role of the person
11 bringing the action in advancing the case to litigation. Any
12 payment under this subdivision shall be made from the
13 proceeds.

14 (3) If the state does not proceed with an action
15 pursuant to subsection (b), the qui tam plaintiff shall
16 receive an amount which the court decides is reasonable for
17 collecting the civil penalty and damages on behalf of the
18 government. The amount shall be at least 25 percent, but not
19 more than 30 percent, of the proceeds of the action or
20 settlement and shall be paid out of those proceeds.

21 (4) Whether or not the state proceeds with the
22 action, if the court finds that the action was brought by a
23 person who planned and initiated the violation of Section 3
24 upon which the action was brought, then the court may, to the
25 extent the court considers appropriate, reduce the share of
26 the proceeds of the action which the person would otherwise
27 receive under subdivision (1) or (2), taking into account the

1 role of that person in advancing the case to litigation and
2 any relevant circumstances pertaining to the violation. If the
3 person bringing the action is convicted of criminal conduct
4 arising from his or her role in the violation of Section 3,
5 that person shall be dismissed from the civil action and shall
6 not receive any share of the proceeds of the action. Such
7 dismissal shall not prejudice the right of the state to
8 continue the action.

9 (5) If the state does not proceed with the action
10 and the person bringing the action conducts the action, the
11 court may award to the defendant its reasonable attorneys'
12 fees and expenses if the defendant prevails in the action and
13 the court finds that the claim of the person bringing the
14 action was clearly frivolous, clearly vexatious, or brought
15 primarily for purposes of harassment.

16 Section 5. (a) No employer may make, adopt, or
17 enforce any rule, regulation, or policy preventing an employee
18 from disclosing information to a government or law enforcement
19 agency or from acting in furtherance of a false claims action,
20 including investigating, initiating, testifying, or assisting
21 in an action filed or to be filed pursuant to Section 4.

22 (b) No employer may discharge, demote, suspend,
23 threaten, harass, deny promotion to, or in any other manner
24 discriminate against, an employee in the terms and conditions
25 of employment because of lawful acts done by the employee on
26 behalf of the employee or others in disclosing information to
27 a government or law enforcement agency or in furthering a

1 false claims action, including investigation for, initiation
2 of, testimony for, or assistance in, an action filed or to be
3 filed pursuant to Section 4.

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

15 (d) An action may not be brought under this section
16 more than three years after the last act of the employer that
17 is alleged to violate this section.

18 Section 6. (a) A civil action pursuant to Section 4
19 may not be filed more than three years after the date of
20 discovery by the official of the state charged with
21 responsibility to act in the circumstances or, in any event,
22 more than six years after the date on which the violation of
23 Section 3 is committed.

24 (b) A civil action pursuant to Section 4 may be
25 brought for activity prior to the effective date of this act
26 if the limitations period set in subsection (a) has not
27 lapsed.

1 (c) In any action brought pursuant to Section 4 the
2 state or the qui tam plaintiff shall be required to prove all
3 essential elements of the cause of action, including damages,
4 by a preponderance of the evidence.

5 (d) Notwithstanding any other provision of law, a
6 guilty verdict rendered in a criminal proceeding charging
7 false statements or fraud, whether upon a verdict after trial
8 or upon a plea of guilty or nolo contendere, except for a plea
9 of nolo contendere made prior to the effective date of this
10 act, shall estop the defendant from denying the essential
11 elements of the offense in any action which involves the same
12 transaction as in the criminal proceeding and which is brought
13 pursuant to subsection (a) or subsection (b) of Section 4.

14 Section 7. (a) The provisions of this act are not
15 exclusive, and the remedies provided for in this act shall be
16 in addition to any other remedies provided for in any other
17 law or available under common law.

18 (b) This act shall be liberally construed and
19 applied to promote the public interest.

20 Section 8. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.