

Regular Session, 2010

SENATE BILL NO. 531

BY SENATOR CLAITOR

CIVIL PROCEDURE. Creates State Spending Programs Integrity Act authorizing actions and qui tam actions for certain matters. (8/15/10)

1 AN ACT

2 To enact Chapter 22-A of Title 39 of the Louisiana Revised Statutes of 1950, comprised of  
3 R.S. 39:2165 through 2165.10, relative to actions and qui tam actions; to authorize  
4 actions and qui tam actions for certain matters related to public entities and spending  
5 programs; to provide definitions, terms, procedures, conditions, and requirements;  
6 to provide relative to damages and awards; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 22-A of Title 39 of the Louisiana Revised Statutes of 1950,  
9 comprised of R.S. 39:2165 through 2165.10, is hereby enacted to read as follows:

10 **CHAPTER 22-A. STATE SPENDING PROGRAMS INTEGRITY ACT**

11 **§2165. Short title**

12 **This Chapter may be cited as the "State Spending Programs Integrity**  
13 **Act".**

14 **§2165.1. Legislative intent and purpose**

15 **The legislature intends the attorney general and private citizens of**  
16 **Louisiana to be agents of this state with the ability, authority, and resources to**  
17 **pursue civil monetary penalties or other remedies to protect the fiscal and**

1 programmatic integrity of state spending programs in Louisiana from persons  
2 who engage in fraud, misrepresentation, abuse, or other ill practices, as set forth  
3 in this Chapter, and obtain funds, property, or other compensation to which  
4 they are not entitled.

5 §2165.2. Definitions

6 As used in this Chapter, the following terms shall have the following  
7 meanings:

8 (1) "Claim" includes any request or demand, including any and all  
9 documents or information required by federal or state law or by rule, made  
10 against state program funds for payment. Each claim may be treated as a  
11 separate claim or several claims may be combined to form one claim.

12 (2) "False or fraudulent claim" means a claim which a person submits  
13 knowing the claim to be false, fictitious, untrue, or misleading in regard to any  
14 material information. "False or fraudulent claim" shall include a claim which  
15 is part of a pattern of incorrect submissions in regard to material information  
16 or which is otherwise part of a pattern in violation of applicable federal or state  
17 law or rule.

18 (3) "Knowing" or "knowingly" means that the person has actual  
19 knowledge of the information or acts in deliberate ignorance or reckless  
20 disregard of the truth or falsity of the information.

21 (4) "Misrepresentation" means the knowing failure to truthfully or fully  
22 disclose any and all information required, or the concealment of any and all  
23 information or the making of a false or misleading statement to any local, state,  
24 or federal agency for the purpose of obtaining funds, property, use of property,  
25 or other compensation from state spending programs.

26 (5) "Person" means a natural person or a juridical person.

27 (6) "Property" means any and all property, movable and immovable,  
28 corporeal and incorporeal.

29 (7) "Recovery" means the recovery of overpayments, damages, fines,

1 penalties, costs, expenses, restitution, attorney fees, interest, or settlement  
2 amounts

3 (8) "State spending program" means a program under which funds are  
4 expended by a department or other public entity for contracts or projects,  
5 including but not limited to, contract or project awards made under the state  
6 public bid law or state procurement law, projects for the construction or  
7 maintenance of, or improvements to, highways or other public facilities,  
8 contracts for professional services, and other contracts for services, materials  
9 or supplies whether let by bid or otherwise awarded. It shall not include any  
10 matter specifically subject to other qui tam action by law, including qui tam  
11 actions on behalf of hurricane relief programs and on behalf of medical  
12 assistance programs.

13 §2165.3. False or fraudulent claim; misrepresentation

14 A. No person shall knowingly present or cause to be presented a false or  
15 fraudulent claim for funds, property, use of property, or other compensation  
16 from a state spending program.

17 B. No person shall knowingly engage in misrepresentation to obtain, or  
18 attempt to obtain, funds, property, use of property, or other compensation from  
19 a state spending program.

20 C. No person shall conspire to defraud, or attempt to defraud, a state  
21 spending program through misrepresentation or by obtaining, or attempting to  
22 obtain, payment, goods or other compensation that he is not authorized to  
23 receive.

24 D. No person shall knowingly make, use, or cause to be made or used a  
25 false, fictitious, or misleading statement on any form or document for the  
26 purpose of receiving any funds, property, use of property, or other  
27 compensation from a state spending program that he is not authorized to  
28 receive.

29 E. Each violation of this Section may be treated as a separate violation

1 or may be combined into one violation at the option of the attorney general.

2 F. No action brought pursuant to this Section shall be instituted later  
3 than ten years after the date upon which the alleged violation occurred;  
4 however, the action shall be instituted within one year of when the attorney  
5 general knew that the prohibited conduct occurred.

6 §2165.4. Civil actions authorized

7 A. In addition to any other civil, criminal, or administrative action  
8 authorized by law, the attorney general may institute a civil action in the courts  
9 of this state to seek recovery from persons who violate the provisions of this  
10 Chapter.

11 B. An action to recover costs, expenses, fees, and attorney fees shall be  
12 ancillary to, and shall be brought and heard in the same court as, the civil action  
13 brought under the provision of Subsection A of this Section.

14 C.(1) A prevailing defendant may only seek recovery for costs, expenses,  
15 fees, and attorney fees if the court finds, following a contradictory hearing, that  
16 either of the following apply:

17 (a) The action was instituted by the attorney general pursuant to  
18 Subsection A of this Section after it should have been determined by the  
19 attorney general to be frivolous, vexatious, or brought primarily for the purpose  
20 of harassment.

21 (b) The attorney general proceeded with the action instituted pursuant  
22 to Subsection A of this Section after it should have been determined by the  
23 attorney general that proceeding would be frivolous, vexatious, or for the  
24 purpose of harassment.

25 (2) Recovery awarded to a prevailing defendant shall be awarded only  
26 for those reasonable, necessary, and proper costs, expenses, fees, and attorney  
27 fees actually incurred by the prevailing defendant.

28 D. An action to recover costs, expenses, fees, and attorney fees may be  
29 brought no later than sixty days after the rendering of judgment by the district

1 court, unless the district court decision is appealed. If the district court decision  
2 is appealed, such action may be brought no later than sixty days after the  
3 rendering of the final opinion on appeal by the court of appeal or, if applicable,  
4 by the supreme court.

5 §2165.5. Damages; fines; penalties; interest

6 A. Actual damages incurred as a result of a violation of the provisions of  
7 this Chapter shall be recovered only once on behalf of the state spending  
8 program and shall not be waived by the court. Actual damages shall equal the  
9 difference between the amounts received by the person from the state spending  
10 program and the amounts that the person would have received had not a  
11 violation of this Chapter occurred plus interest at the maximum rate of legal  
12 interest provided by R.S. 13:4202 from the date the damage occurred to the date  
13 of repayment.

14 B. Except as limited by this Section, any person who is found to have  
15 violated any provision of this Chapter shall be subject to a civil fine in an  
16 amount not to exceed three times the amount of actual damages sustained by the  
17 state spending program as a result of the violation.

18 C. In addition to any other penalty or fine imposed herein, any person  
19 who is found to have violated any provision of this Chapter shall be subject to  
20 a civil monetary penalty of not more than ten thousand dollars for each false or  
21 fraudulent claim, misrepresentation, illegal remuneration, or other act  
22 prohibited by this Chapter.

23 D. Costs, expenses, fees, and attorney fees. (1) Any person who is found  
24 to have violated this Chapter shall be liable for all costs, expenses, and fees  
25 related to investigations and proceedings associated with the violation, including  
26 attorney fees.

27 (2) All awards of costs, expenses, fees, and attorney fees are subject to  
28 review by the court using a reasonable, necessary, and proper standard of  
29 review.

1                   **(3) The attorney general shall promptly remit awards for those costs,**  
2                   **expenses, and fees incurred by the various clerks of court or sheriffs involved**  
3                   **in the investigations or proceedings to the appropriate clerk or sheriff.**

4                   **§2165.6. Qui tam action; civil action filed by private person**

5                   **A. A private person may institute a civil action to seek recovery on behalf**  
6                   **of state spending programs and himself, except for the civil monetary penalty**  
7                   **provided in R.S. 39:2165.5(C), for a violation of this Chapter. The institutor**  
8                   **shall be known as a "qui tam plaintiff" and the civil action shall be known as**  
9                   **a "qui tam action".**

10                   **B.(1) A qui tam plaintiff shall be an original source of the information**  
11                   **which serves as the basis for the alleged violation. More than one person may**  
12                   **serve as a qui tam plaintiff in a qui tam action arising out of the same**  
13                   **information and allegations provided each person qualifies as an original**  
14                   **source.**

15                   **(2) For purposes of this Section, the term "original source" means a**  
16                   **person who has direct and independent knowledge of the alleged violation and**  
17                   **who has voluntarily provided the information to the attorney general before**  
18                   **filing a qui tam action with the court.**

19                   **C. No qui tam action shall be instituted later than one year after the date**  
20                   **a qui tam complaint is received by the attorney general.**

21                   **D.(1) No court shall have jurisdiction over a qui tam action based upon**  
22                   **a disclosure of allegations or transactions in a criminal, civil, or administrative**  
23                   **hearing or as the result of disclosure of a governmental audit report,**  
24                   **investigation, or hearing unless the person bringing the action is an original**  
25                   **source of the information.**

26                   **(2) No court shall have jurisdiction over a qui tam action based upon a**  
27                   **disclosure through the media unless the person bringing the action is an original**  
28                   **source of the information and that fact is confirmed by a person with knowledge**  
29                   **of who provided the information.**

1           E.(1) A person who is or was a public employee or public official or a  
2           person who is or was acting on behalf of the state shall not bring a qui tam  
3           action if the person has or had a duty or obligation to report, investigate, or  
4           pursue allegations of wrongdoing or misconduct by persons receiving funds  
5           pursuant to a state spending program.

6           (2) A person who is or was a public employee or public official or a  
7           person who is or was acting on behalf of the state shall not bring a qui tam  
8           action if the person has or had access to records of the state through the normal  
9           course and scope of his employment or other relationship with the state.

10           F. No employer of a qui tam plaintiff shall discharge, demote, suspend,  
11           threaten, harass, or discriminate against a qui tam plaintiff at any time arising  
12           out of the fact that the qui tam plaintiff brought an action pursuant to this  
13           Chapter unless the court finds that the qui tam plaintiff has instituted or  
14           proceeded with an action that is frivolous, vexatious, or harassing.

15           G. The court shall allow the attorney general to intervene and proceed  
16           with the qui tam action in the district court at any time during the qui tam  
17           action proceedings.

18           H. Notwithstanding any other law to the contrary, a qui tam complaint  
19           and information filed with the attorney general shall not be subject to discovery  
20           or become public record until judicial service of the qui tam action is made on  
21           any of the defendants, except that the information contained therein may be  
22           given to other governmental entities or their authorized agents for review and  
23           investigation. Such entities and their authorized agents shall maintain the  
24           confidentiality of the information provided to them under this Subsection.

25           §2165.7. Qui tam action procedures

26           A. The following procedures shall be applicable to a qui tam action:

27           (1) The complaint shall be captioned: "State Spending Program Ex Rel.:  
28           [insert name of qui tam plaintiff(s)] v. [insert name of defendant(s)]".

29           (2)(a) A copy of the qui tam complaint and written disclosure of

1 substantially all material evidence and information each qui tam plaintiff  
2 possesses shall be filed with the attorney general.

3 (b) The qui tam complaint and written disclosure of substantially all  
4 material evidence and information shall be filed with the attorney general  
5 within one year of the date the qui tam plaintiff knew or should have known of  
6 the information forming the basis of the complaint. No qui tam action shall be  
7 instituted by a qui tam plaintiff if he fails to timely file a complaint with the  
8 attorney general.

9 (3)(a) At least thirty days after filing with the attorney general, the qui  
10 tam complaint and information may be filed with the appropriate state district  
11 court. On the same date as the qui tam action is filed, the qui tam plaintiff shall  
12 serve the attorney general with notice of the filing.

13 (b) If more than one qui tam action arising out of the same information  
14 and allegations is filed, the court shall dismiss all qui tam actions where the  
15 complaint and information filed with the attorney general were filed thirty days  
16 or more after the first qui tam complaint and information which serve as the  
17 basis for the alleged violation were filed with the attorney general.

18 (4)(a) The complaint and information filed with the court shall be made  
19 under seal, shall remain under seal for at least ninety days from the date of  
20 filing, and shall be served on the defendant when the seal is removed.

21 (b) For good cause shown, the attorney general may request one  
22 extension of the ninety-day time period for the complaint and information to  
23 remain under seal and unserved on the defendant. This request shall be  
24 supported by affidavit or other submission in camera and under seal.

25 B.(1) If the attorney general elects to intervene in the action, the attorney  
26 general shall not be bound by any act of a qui tam plaintiff. The attorney  
27 general shall control the qui tam action proceedings on behalf of the state and  
28 the qui tam plaintiff may continue as a party to the action.

29 (2) The qui tam plaintiff and his counsel shall cooperate fully with the



1 attorney general during the pendency of the qui tam action.

2 (3) If requested by the attorney general and notwithstanding the  
3 objection of the qui tam plaintiff, the court may dismiss the qui tam action  
4 provided the qui tam plaintiff has been notified by the attorney general of the  
5 filing of the motion to dismiss and the court has provided the qui tam plaintiff  
6 a contradictory hearing on the motion.

7 (4) If the attorney general does not intervene, the qui tam plaintiff may  
8 proceed with the qui tam action unless the attorney general shows that  
9 proceeding would adversely affect the prosecution of any pending criminal  
10 actions or criminal investigations into the activities of the defendant. Such a  
11 showing shall be made to the court in camera and neither the qui tam plaintiff  
12 or the defendant shall be informed of the information revealed in camera. In  
13 which case, the qui tam action shall be stayed for no more than one year.

14 (5) If the qui tam plaintiff objects to a settlement of the qui tam action  
15 proposed by the attorney general, the court may authorize the settlement only  
16 after a hearing to determine whether the proposed settlement is fair, adequate,  
17 and reasonable under the circumstances.

18 C. If a qui tam plaintiff fails to comply with any provision of this  
19 Chapter, after a contradictory hearing, the court may dismiss the qui tam  
20 plaintiff on its own motion or on motion made by the attorney general.

21 D. A defendant shall have thirty days from the time a qui tam complaint  
22 is served on him to file a responsive pleading.

23 E. The qui tam plaintiff and the defendant shall serve all pleadings and  
24 papers filed, as well as discovery, in the qui tam action on the attorney general.

25 F.(1) Whether or not the attorney general proceeds with the action, upon  
26 showing by the attorney general that certain actions of discovery by the qui tam  
27 plaintiff or defendant would interfere with a criminal or civil investigation or  
28 proceeding arising out of the same facts, the court shall stay the discovery for  
29 a period of not more than ninety days.

1           **(2) Upon a further showing that federal or state authorities have pursued**  
2           **the criminal or civil investigation or proceeding with reasonable diligence and**  
3           **any proposed discovery in the qui tam action would unduly interfere with the**  
4           **criminal or civil investigation or proceeding, the court may stay the discovery**  
5           **for an additional period, not to exceed one year.**

6           **(3) Such showings shall be conducted in camera and neither the**  
7           **defendant nor the qui tam plaintiff shall be informed of the information**  
8           **presented to the court.**

9           **(4) If discovery is stayed pursuant to this Subsection, the trial and any**  
10           **motion for summary judgment in the qui tam action shall likewise be stayed.**

11           **§2165.8. Administrative or civil action**

12           **Notwithstanding any other provision of this Chapter, the attorney**  
13           **general may elect to pursue an administrative or civil action against a qui tam**  
14           **defendant through any alternative remedy available to the attorney general.**

15           **§2165.9. Recovery awarded to a qui tam plaintiff**

16           **A.(1) Except as provided by Subsection D of this Section and Paragraph**  
17           **(3) of this Subsection, if the attorney general intervenes in the action brought**  
18           **by a qui tam plaintiff, the qui tam plaintiff shall receive at least ten percent, but**  
19           **not more than twenty percent, of actual damages and civil fines awarded by the**  
20           **court.**

21           **(2) In making a determination of award to the qui tam plaintiff, the court**  
22           **shall consider the extent to which the qui tam plaintiff substantially contributed**  
23           **to investigations and proceedings related to the qui tam action.**

24           **(3) If the court finds the allegations in the qui tam action to be based**  
25           **primarily on disclosures of specific information other than information**  
26           **provided by the qui tam plaintiff, the court may award less than ten percent of**  
27           **actual damages and civil fines awarded by the court, exclusive of the civil**  
28           **monetary penalty provided in R.S. 39:2165.5(C), taking into account the**  
29           **significance of the information and the role of the qui tam plaintiff in advancing**

1 the qui tam action to judgment or settlement.

2 B. Except as provided by Subsection D of this Section, if the attorney  
3 general does not intervene in the qui tam action, the qui tam plaintiff shall  
4 receive an amount, not to exceed thirty percent of actual damages, civil fines,  
5 and the civil monetary penalty provided for in R.S. 39:2165.5(C), which the  
6 court decides is reasonable for the qui tam plaintiff pursuing the action to  
7 judgment or settlement.

8 C.(1) In addition to all other recovery to which he is entitled and if he  
9 prevails in the qui tam action, the qui tam plaintiff shall be entitled to an award  
10 against the defendant for costs, expenses, fees, and attorney fees, subject to  
11 review by the court using a reasonable, necessary, and proper standard of  
12 review.

13 (2) If the attorney general does not intervene and the qui tam plaintiff  
14 conducts the action, the court shall award costs, expenses, fees, and attorney  
15 fees to a prevailing defendant if the court finds that the allegations made by the  
16 qui tam plaintiff were meritless or brought primarily for the purposes of  
17 harassment. A finding by the court that qui tam allegations were meritless or  
18 brought primarily for the purposes of harassment may be used by the  
19 prevailing defendant in the qui tam action or any other civil proceeding to  
20 recover losses or damages sustained as a result of the qui tam plaintiff filing and  
21 pursuing such a qui tam action.

22 D. Whether or not the attorney general intervenes, if the court finds that  
23 the action was brought by a person who participated in the violation which is  
24 the subject of the action, then the court may, to the extent the court considers  
25 appropriate, reduce the share of the proceeds of the action which the qui tam  
26 plaintiff would otherwise receive under Subsection A or B of this Section, taking  
27 into account the role that the qui tam plaintiff played in advancing the case to  
28 judgment or settlement and any relevant circumstances pertaining to the qui  
29 tam plaintiff's participation in the violation. A person who planned the violation

1 shall not be entitled to recovery.

2 E. When more than one party serves as a qui tam plaintiff, the share of  
3 recovery each receives shall be determined by the court. In no case, however,  
4 shall the total award to multiple qui tam plaintiffs be greater than the total  
5 award allowed to a single qui tam plaintiff under Subsection A or B of this  
6 Section.

7 F. In no instance shall the attorney general or the state be liable for any  
8 costs, expenses, fees, or attorney fees incurred by the qui tam plaintiff or for any  
9 award entered against the qui tam plaintiff.

10 G. The percentage of the share awarded to or settled for by the qui tam  
11 plaintiff shall be determined using the total amount of the award. However, the  
12 total amount of funds lost from the state spending program must be made whole  
13 through the payment of any and all actual damages prior to the disbursement  
14 of any funds related to the percentage of the damages to be received by the qui  
15 tam plaintiff.

16 §2165.10. Whistleblower protection and cause of action

17 A. No employee shall be discharged, demoted, suspended, threatened,  
18 harassed, or discriminated against in any manner in the terms and conditions  
19 of his employment because of any lawful act engaged in by the employee or on  
20 behalf of the employee in furtherance of any action taken pursuant to this  
21 Chapter in regard to a person from whom recovery is or could be sought. Such  
22 an employee may seek any and all relief for his injury to which he is entitled  
23 under state or federal law.

24 B. No individual shall be threatened, harassed, or discriminated against  
25 in any manner by a business organization, government agency, or other person  
26 because of any lawful act engaged in by the individual or on behalf of the  
27 individual in furtherance of any action taken pursuant to this Chapter in regard  
28 to a person from whom recovery is or could be sought. Such an individual may  
29 seek any and all relief for his injury to which he is entitled under state or federal

- 1            **law.**
- 2                    **C.(1) An employee of a private entity may bring his action for relief**
- 3                    **against his employer in the same court as the action or actions were brought**
- 4                    **pursuant to this Chapter.**
- 5                    **(2) A person aggrieved of a violation of Subsection A or B of this Section**
- 6                    **shall be entitled to treble damages.**
- 7                    **D. A qui tam plaintiff shall not be entitled to recovery pursuant to this**
- 8                    **Section if the court finds that the qui tam plaintiff instituted or proceeded with**
- 9                    **an action that was frivolous, vexatious, or harassing.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry G. Jones.

#### DIGEST

Proposed law creates State Spending Programs Integrity Act authorizing certain actions and qui tam actions.

Proposed law provides certain findings. Provides that the legislature intends the attorney general and private citizens of Louisiana to be agents of this state with the ability, authority, and resources to pursue civil monetary penalties or other remedies to protect the fiscal and programmatic integrity of state spending programs in Louisiana from persons who engage in fraud, misrepresentation, abuse, or other ill practices, and obtain funds, property, or other compensation to which they are not entitled.

Proposed law provides definitions. Provides that "state spending program" means a program under which funds are expended by a department or other public entity for contracts or projects, including but not limited to, contract or project awards made under the state public bid law or state procurement law, projects for the construction or maintenance of, or improvements to, highways or other public facilities, contracts for professional services, and other contracts for services, materials or supplies whether let by bid or otherwise awarded. It shall not include any matter specifically subject to other qui tam action by law, including qui tam actions on behalf of hurricane relief programs and on behalf of medical assistance programs.

Proposed law provides that no person shall knowingly present or cause to be presented a false or fraudulent claim for funds, property, use of property, or other compensation from a state spending program; that no person shall knowingly engage in misrepresentation to obtain, or attempt to obtain, funds, property, use of property, or other compensation from a state spending program; that no person shall conspire to defraud, or attempt to defraud, a spending program through misrepresentation or by obtaining, or attempting to obtain, payment that he is not authorized to receive; and that no person shall knowingly make, use, or cause to be made or used a false, fictitious, or misleading statement on any form or document for the purpose of receiving any funds, property, use of property, or other compensation from a state spending program that he is not authorized to receive.

Proposed law provides that in addition to any other civil, criminal, or administrative action authorized by law, the attorney general may institute a civil action in the courts of this state to seek recovery from persons who violate the provisions of the proposed law.

Proposed law provides relative to recovery of damages, costs, expenses, fees, and attorney fees, including recovery by the defendant if the court determines the action was frivolous.

Proposed law further provides that, subject to certain limitations, a person who is found to have violated the proposed law shall be subject to a civil fine in an amount not to exceed three times the amount of actual damages sustained by the state spending programs as a result of the violation, and a civil monetary penalty of not more than ten thousand dollars for each false or fraudulent claim, misrepresentation, illegal remuneration, or other act prohibited by the proposed law.

Proposed law further provides that a private person may institute a civil action to seek recovery on behalf of state spending programs and himself, except for the civil monetary penalty provided, for a violation of the proposed law. The institutor shall be known as a "qui tam plaintiff" and the civil action shall be known as a "qui tam action".

Proposed law provides that a qui tam plaintiff shall be an original source of the information which serves as the basis for the alleged violation. More than one person may serve as a qui tam plaintiff in a qui tam action arising out of the same information and allegations provided each person qualifies as an original source.

Proposed law provides that no court shall have jurisdiction over a qui tam action based upon a disclosure of allegations or transactions in a criminal, civil, or administrative hearing or as the result of disclosure of a governmental audit report, investigation, or hearing unless the person bringing the action is an original source of the information.

Proposed law provides that no court shall have jurisdiction over a qui tam action based upon a disclosure through the media unless the person bringing the action is an original source of the information and that fact is confirmed by a person with knowledge of who provided the information.

Proposed law provides that a person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a qui tam action if the person has or had a duty or obligation to report, investigate, or pursue allegations of wrongdoing or misconduct by persons receiving funds from state spending programs.

Proposed law provides that a person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a qui tam action if the person has or had access to records of the state through the normal course and scope of his employment or other relationship with the state.

Proposed law provides that no employer of a qui tam plaintiff shall discharge, demote, suspend, threaten, harass, or discriminate against a qui tam plaintiff at any time arising out of the fact that the qui tam plaintiff brought an action under the proposed law unless the court finds that the qui tam plaintiff has instituted or proceeded with an action that is frivolous, vexatious, or harassing.

Proposed law provides that the court shall allow the attorney general to intervene and proceed with the qui tam action in the district court at any time during the qui tam action proceedings. Also provides that a qui tam complaint and information filed with the attorney general shall not be subject to discovery or become public record until judicial service of the qui tam action is made on any of the defendants, except that the information contained therein may be given to other governmental entities or their authorized agents for review and investigation.

Proposed law provides qui tam action procedures.

Proposed law provides that, subject to certain limitations, if the attorney general intervenes in the action brought by a qui tam plaintiff, the qui tam plaintiff shall receive at least 10%

percent, but not more than 20%, of actual damages and civil fines awarded by the court. The court may award less if it finds the action to be based primarily on disclosures of specific information other than information provided by the qui tam plaintiff. If the attorney general does not intervene in the action, the court may award up to 30% of damages. Also provides for award of costs, expenses, fees, and attorney fees. Further provides for the making whole of the state spending program.

Proposed law further provides that a qui tam plaintiff shall not be entitled to recovery if the court finds that the plaintiff instituted or proceeded with an action that was frivolous, vexatious, or harassing. Provides for recovery by the defendant against a qui tam plaintiff under certain circumstances. Also provides that in no instance shall the attorney general or the state be liable for any costs, expenses, fees, or attorney fees incurred by the qui tam plaintiff or for any award entered against the qui tam plaintiff.

Proposed law provides that no employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to the proposed law in regard to a person from whom recovery is or could be sought. Such an employee may seek any and all relief for his injury to which he is entitled under state or federal law.

Proposed law provides that no individual shall be threatened, harassed, or discriminated against in any manner by a business organization, government agency, or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to the proposed law in regard to a person from whom recovery is or could be sought. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law.

Proposed law provides that an employee of a private entity may bring his action for relief against his employer in the same court as the action or actions were brought pursuant to the proposed law. Further provides for treble damages. Also provides for no recovery if court finds action was frivolous, vexatious, or harassing.

Effective August 15, 2010.

(Adds R.S. 39:2165 - 2165.10)