

Regular Session, 2010

SENATE BILL NO. 531

BY SENATOR CLAITOR

CIVIL PROCEDURE. Creates the Oil Spill Relief 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 2165.12, relative to actions and qui tam actions; to authorize  
4 actions and qui tam actions for certain matters related to oil spill relief programs; to  
5 provide definitions, terms, procedures, conditions, and requirements; to provide  
6 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 2165.12, is hereby enacted to read as follows:

10 **CHAPTER 22-A. OIL SPILL RELIEF PROGRAMS INTEGRITY ACT**

11 **§2165. Short title**

12 **This Chapter may be cited as the "Oil Spill Relief 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 oil spill relief 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 they  
4 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 oil spill relief program funds for payment. Each claim may be treated as  
11 a 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 required on a claim or provider agreement or the making of a false  
24 or misleading statement to any local, state, or federal agency for the purpose of  
25 obtaining funds, property, use of property, or other compensation from oil spill  
26 relief programs.

27 (5) "Oil spill relief program" means any state or federal program or fund  
28 created for the purpose of assisting persons who incurred personal, business, or  
29 property damage or other losses due to the Deepwater Horizon Oil Spill. It shall

1 not include any matter specifically subject to other qui tam action by law,  
2 including qui tam actions on behalf of hurricane relief programs and on behalf  
3 of medical assistance programs.

4 (6) "Person" means a natural person or a juridical person.

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

7 (8) "Recovery" means the recovery of overpayments, damages, fines,  
8 penalties, costs, expenses, restitution, attorney fees, interest, or settlement  
9 amounts.

10 §2165.3. False or fraudulent claim; misrepresentation

11 A. No person shall knowingly present or cause to be presented a false or  
12 fraudulent claim for funds, property, use of property, or other compensation  
13 from an oil spill relief program.

14 B. No person shall knowingly engage in misrepresentation to obtain, or  
15 attempt to obtain, funds, property, use of property, or other compensation from  
16 an oil spill relief program.

17 C. No person shall conspire to defraud, or attempt to defraud, an oil spill  
18 relief program through misrepresentation or by obtaining, or attempting to  
19 obtain payment for a false or fraudulent claim.

20 D. No person shall knowingly make, use, or cause to be made or used a  
21 false, fictitious, or misleading statement on any form or document for the  
22 purpose of certifying or qualifying any person for eligibility for oil spill relief  
23 programs or receiving any funds, property, use of property, or other  
24 compensation from an oil spill relief program that that person is not authorized  
25 to receive.

26 E. Each violation of this Section may be treated as a separate violation or  
27 may be combined into one violation at the option of the attorney general.

28 F. No action brought pursuant to this Section shall be instituted later than  
29 ten years after the date upon which the alleged violation occurred; however, the

1 action shall be instituted within one year of when the attorney general knew that  
2 the prohibited conduct occurred.

3 §2165.4. Civil actions authorized

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

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

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

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

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

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

25 D. An action to recover costs, expenses, fees, and attorney fees may be  
26 brought no later than sixty days after the rendering of judgment by the district  
27 court, unless the district court decision is appealed. If the district court decision  
28 is appealed, such action may be brought no later than sixty days after the  
29 rendering of the final opinion on appeal by the court of appeal or, if applicable,

1 by the supreme court.

2 §2165.5. Damages; fines; penalties; interest

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

11 B. Except as limited by this Section, any person who is found to have  
12 violated any provision of this Chapter shall be subject to a civil fine in an amount  
13 not to exceed three times the amount of actual damages sustained by the oil spill  
14 relief program as a result of the violation.

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

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

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

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

1           §2165.6. Qui tam action; civil action filed by private person

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

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

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

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

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

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

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

1 an oil spill relief program.

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

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

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

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

21 §2165.7. Qui tam action procedures

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

23 (1) The complaint shall be captioned: "Oil Spill Relief Program Ex Rel.:  
24 [insert name of qui tam plaintiff(s)] v. [insert name of defendant(s)]".

25 (2)(a) A copy of the qui tam complaint and written disclosure of  
26 substantially all material evidence and information each qui tam plaintiff  
27 possesses shall be filed with the attorney general.

28 (b) The qui tam complaint and written disclosure of substantially all  
29 material evidence and information shall be filed with the attorney general within

1 one year of the date the qui tam plaintiff knew or should have known of the  
2 information forming the basis of the complaint. No qui tam action shall be  
3 instituted by a qui tam plaintiff if he fails to timely file a complaint with the  
4 attorney general.

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

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

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

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

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

25 (2) The qui tam plaintiff and his counsel shall cooperate fully with the  
26 attorney general during the pendency of the qui tam action.

27 (3) If requested by the attorney general and notwithstanding the objection  
28 of the qui tam plaintiff, the court may dismiss the qui tam action provided the  
29 qui tam plaintiff has been notified by the attorney general of the filing of the



1 motion to dismiss and the court has provided the qui tam plaintiff a  
2 contradictory hearing on the motion.

3 (4) If the attorney general does not intervene, the qui tam plaintiff may  
4 proceed with the qui tam action unless the attorney general shows that  
5 proceeding would adversely affect the prosecution of any pending criminal  
6 actions or criminal investigations into the activities of the defendant. Such a  
7 showing shall be made to the court in camera and neither the qui tam plaintiff  
8 nor the defendant shall be informed of the information revealed in camera. In  
9 which case, the qui tam action shall be stayed for no more than one year.

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

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

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

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

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

26 (2) Upon a further showing that federal or state authorities have pursued  
27 the criminal or civil investigation or proceeding with reasonable diligence and  
28 any proposed discovery in the qui tam action would unduly interfere with the  
29 criminal or civil investigation or proceeding, the court may stay the discovery for

1 an additional period, not to exceed one year.

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

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

7 §2165.8. Administrative or civil action

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

11 §2165.9. Recovery awarded to a qui tam plaintiff

12 A.(1) Except as provided by Subsection D of this Section and Paragraph  
13 (3) of this Subsection, if the attorney general intervenes in the action brought by  
14 a qui tam plaintiff, the qui tam plaintiff shall receive at least ten percent, but not  
15 more than twenty percent, of actual damages and civil fines awarded by the  
16 court, exclusive of the civil monetary penalty provided by R.S. 39:2165.5(C).

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

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

27 B. Except as provided by Subsection D of this Section, if the attorney  
28 general does not intervene in the qui tam action, the qui tam plaintiff shall  
29 receive an amount, not to exceed thirty percent of actual damages, civil fines, and

1 the civil monetary penalty provided for in R.S. 39:2165.5(C), which the court  
2 decides is reasonable for the qui tam plaintiff pursuing the action to judgment  
3 or settlement.

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

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

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

27 E. When more than one party serves as a qui tam plaintiff, the share of  
28 recovery each receives shall be determined by the court. In no case, however,  
29 shall the total award to multiple qui tam plaintiffs be greater than the total

1 award allowed to a single qui tam plaintiff under Subsection A or B of this  
2 Section.

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

6 G. The percentage of the share awarded to or settled for by the qui tam  
7 plaintiff shall be determined using the total amount of the award. However, the  
8 total amount of funds lost from the oil spill relief program must be made whole  
9 through the payment of any and all actual damages prior to the disbursement of  
10 any funds related to the percentage of the damages to be received by the qui tam  
11 plaintiff.

12 §2165.10. Oil Spill Relief Programs Fraud Detection Fund

13 A. The Oil Spill Relief Programs Fraud Detection Fund, hereafter  
14 referred to as the "fund", is created in the state treasury as a special fund. The  
15 monies in the fund shall be invested by the state treasurer in the same manner  
16 as monies in the state general fund and interest earned on the investment of  
17 monies in the fund shall be credited to the fund. All unexpended and  
18 unencumbered monies in the fund at the end of each fiscal year shall remain in  
19 the fund.

20 B. After compliance with the requirements of Article VII, Section 9(B) of  
21 the Constitution of Louisiana relative to the Bond Security and Redemption  
22 Fund, and prior to monies being placed in the state general fund, all monies  
23 received by the state pursuant to a civil award granted or settlement under the  
24 provisions of this Chapter, except for the amount to make oil spill relief  
25 programs whole, shall be deposited into the fund.

26 C. Except as provided in this Subsection, the monies in the fund shall be  
27 appropriated by the legislature for the following purposes only:

28 (1) To pay costs or expenses incurred by the attorney general relative to  
29 an action instituted pursuant to this Chapter.

1           (2) To enhance fraud and abuse detection and prevention activities  
2 related to oil spill relief programs.

3           (3) To pay rewards for information concerning fraud and abuse as  
4 provided in this Chapter.

5           (4) To provide a source of revenue for oil spill relief programs in this state  
6 to help citizens who were affected by the Deepwater Horizon Oil Spill recover  
7 from the damages they sustained.

8 **§2165.11. Rewards for fraud and abuse information**

9           A. The attorney general may provide a reward of up to two thousand  
10 dollars to an individual who submits information to the attorney general which  
11 results in recovery pursuant to the provisions of this Chapter, provided such  
12 individual is not himself subject to recovery under this Chapter.

13           B. The attorney general shall grant rewards only to the extent monies are  
14 appropriated for this purpose from the Oil Spill Relief Programs Fraud  
15 Detection Fund. The attorney general shall determine the amount of a reward,  
16 not to exceed two thousand dollars per individual per action, and establish a  
17 process to grant the reward in accordance with rules and regulations  
18 promulgated in accordance with the Administrative Procedure Act.

19 **§2165.12. Whistleblower protection and cause of action**

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

27           B. No individual shall be threatened, harassed, or discriminated against  
28 in any manner by a business organization, government agency, or other person  
29 because of any lawful act engaged in by the individual or on behalf of the

1           **individual in furtherance of any action taken pursuant to this Chapter in regard**  
 2           **to a person from whom recovery is or could be sought. Such an individual may**  
 3           **seek any and all relief for his injury to which he is entitled under state or federal**  
 4           **law.**

5           **C.(1) An employee of a private entity may bring his action for relief**  
 6           **against his employer in the same court as the action or actions were brought**  
 7           **pursuant to this Chapter.**

8           **(2) A person aggrieved of a violation of Subsection A or B of this Section**  
 9           **shall be entitled to treble damages.**

10           **D. A qui tam plaintiff shall not be entitled to recovery pursuant to this**  
 11           **Section if the court finds that the qui tam plaintiff instituted or proceeded with**  
 12           **an action that was frivolous, vexatious, or harassing.**

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The original instrument was prepared by Jerry G. Jones. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

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#### DIGEST

Claitor (SB 531)

Proposed law creates Oil Spill Relief 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 oil spill relief 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 "oil spill relief program" means any state or federal program or fund created for the purpose of assisting persons who incurred personal, business, or property damage or other losses due to the Deepwater Horizon Oil Spill. 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 oil spill relief 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 oil spill relief program; that no person shall conspire to defraud, or attempt to defraud, an oil spill relief program through misrepresentation or by obtaining, or attempting to obtain, payment for a false or fraudulent claim; 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 certifying or qualifying any person for eligibility for oil spill relief programs or receiving any funds, property, use of property, or other compensation from a oil spill relief

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 oil spill relief 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 oil spill relief 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 oil spill relief 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, exclusive of the civil monetary penalty provided by the proposed law. 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 oil spill relief 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 creates Oil Spill Relief Programs Fraud Detection Fund, and provides for purposes of the fund. Provides that monies in the fund shall be appropriated to pay costs or expenses incurred by the attorney general relative to an action instituted pursuant to the proposed law, to enhance fraud and abuse detection and prevention activities, to pay rewards for information, and to provide a source of revenue for oil spill relief programs.

Proposed law authorizes attorney general to provide a reward of up to \$2000 to an individual for fraud and abuse information, subject to funds being appropriated for such purpose. Provides for attorney general to develop reward process in accordance with APA.

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 - 2165.12)



Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Changed proposed law from "State Spending Programs Integrity Act" to "Oil Spill Relief Integrity Act".
2. Added definition of "oil spill relief program" and deleted definition of "state spending program".
3. Added Oil Spill Relief Programs Fraud Detection Fund.
4. Added provisions relative to reward for fraud and abuse information.

Senate Floor Amendments to engrossed bill.

1. Technical Legislative Bureau amendments.