

SENATE BILL NO. 531

BY SENATOR CLAITOR AND REPRESENTATIVES BOBBY BADON, BALDONE, BILLIOT, HENRY BURNS, CARMODY, CARTER, CONNICK, DIXON, FOIL, GISCLAIR, HARRISON, HENRY, HOFFMANN, HONORE, SAM JONES, LEGER, LOPINTO, SIMON, GARY SMITH, JANE SMITH, ST. GERMAIN AND WADDELL

1 AN ACT

2 To enact Chapter 22-A of Title 39 of the Louisiana Revised Statutes of 1950, comprised of R.S.
3 39:2165 through 2165.12, relative to actions and qui tam actions; to authorize actions and
4 qui tam actions for certain matters related to oil spill relief programs; to provide
5 definitions, terms, procedures, conditions, and requirements; to provide relative to
6 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, comprised
9 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 Act".**

13 **§2165.1. Legislative intent and purpose**

14 **The legislature intends the attorney general and private citizens of Louisiana**
15 **to be agents of this state with the ability, authority, and resources to pursue civil**
16 **monetary penalties or other remedies to protect the fiscal and programmatic**
17 **integrity of oil spill relief programs in Louisiana from persons who engage in fraud,**
18 **misrepresentation, abuse, or other ill practices, as set forth in this Chapter, and**
19 **obtain funds, property, or other compensation to which they are not entitled.**

20 **§2165.2. Definitions**

21 **As used in this Chapter, the following terms shall have the following**
22 **meanings:**

23 **(1) "Claim" includes any request or demand, including any and all**

1 documents or information required by federal or state law or by rule, made against
2 oil spill relief program funds for payment. Each claim may be treated as a separate
3 claim or several claims may be combined to form one claim.

4 (2) "False or fraudulent claim" means a claim which a person submits
5 knowing the claim to be false, fictitious, untrue, or misleading in regard to any
6 material information. "False or fraudulent claim" shall include a claim which is part
7 of a pattern of incorrect submissions in regard to material information or which is
8 otherwise part of a pattern in violation of applicable federal or state law or rule.

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

12 (4) "Misrepresentation" means the knowing failure to truthfully or fully
13 disclose any and all information required, or the concealment of any and all
14 information required on a claim or provider agreement or the making of a false or
15 misleading statement to any local, state, or federal agency for the purpose of
16 obtaining funds, property, use of property, or other compensation from oil spill
17 relief programs.

18 (5) "Oil spill relief program" means any state or federal program or fund
19 created for the purpose of assisting persons who incurred personal, business, or
20 property damage or other losses due to the Deepwater Horizon Oil Spill. It shall not
21 include any matter specifically subject to other qui tam action by law, including qui
22 tam actions on behalf of hurricane relief programs and on behalf of medical
23 assistance programs.

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

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

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

29 §2165.3. False or fraudulent claim; misrepresentation

30 A. No person shall knowingly present or cause to be presented a false or

1 fraudulent claim for funds, property, use of property, or other compensation from
2 an oil spill relief program.

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

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

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

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

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

20 §2165.4. Civil actions authorized

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

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

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

30 (a) The action was instituted by the attorney general pursuant to Subsection

1 A of this Section after it should have been determined by the attorney general to be
2 frivolous, vexatious, or brought primarily for the purpose of harassment.

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

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

10 D. An action to recover costs, expenses, fees, and attorney fees may be
11 brought no later than sixty days after the rendering of judgment by the district
12 court, unless the district court decision is appealed. If the district court decision is
13 appealed, such action may be brought no later than sixty days after the rendering
14 of the final opinion on appeal by the court of appeal or, if applicable, by the supreme
15 court.

16 **§2165.5. Damages; fines; penalties; interest**

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

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

28 C. In addition to any other penalty or fine imposed herein, any person who
29 is found to have violated any provision of this Chapter shall be subject to a civil
30 monetary penalty of not more than ten thousand dollars for each false or fraudulent

1 claim, misrepresentation, illegal remuneration, or other act prohibited by this
2 Chapter.

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

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

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

11 **§2165.6. Qui tam action; civil action filed by private person**

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

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

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

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

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

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

5 E.(1) A person who is or was a public employee or public official or a person
 6 who is or was acting on behalf of the state shall not bring a qui tam action if the
 7 person has or had a duty or obligation to report, investigate, or pursue allegations
 8 of wrongdoing or misconduct by persons receiving funds pursuant to an oil spill
 9 relief program.

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

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

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

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

29 §2165.7. Qui tam action procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 §2165.8. Administrative or civil action

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

14 §2165.9. Recovery awarded to a qui tam plaintiff

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

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

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

30 B. Except as provided by Subsection D of this Section, if the attorney general

1 does not intervene in the qui tam action, the qui tam plaintiff shall receive an
2 amount, not to exceed thirty percent of actual damages, civil fines, and the civil
3 monetary penalty provided for in R.S. 39:2165.5(C), which the court decides is
4 reasonable for the qui tam plaintiff pursuing the action to judgment or settlement.

5 C.(1) In addition to all other recovery to which he is entitled and if he
6 prevails in the qui tam action, the qui tam plaintiff shall be entitled to an award
7 against the defendant for costs, expenses, fees, and attorney fees, subject to review
8 by the court using a reasonable, necessary, and proper standard of 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 to
11 a prevailing defendant if the court finds that the allegations made by the qui tam
12 plaintiff were meritless or brought primarily for the purposes of harassment. A
13 finding by the court that qui tam allegations were meritless or brought primarily for
14 the purposes of harassment may be used by the prevailing defendant in the qui tam
15 action or any other civil proceeding to recover losses or damages sustained as a
16 result of the qui tam plaintiff filing and pursuing such a qui tam action.

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

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

29 F. In no instance shall the attorney general or the state be liable for any costs,
30 expenses, fees, or attorney fees incurred by the qui tam plaintiff or for any award

1 entered against the qui tam plaintiff.

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

7 §2165.10. Oil Spill Relief Programs Fraud Detection Fund

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

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

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

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

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

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

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

1 **§2165.11. Rewards for fraud and abuse information**

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

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

12 **§2165.12. Whistleblower protection and cause of action**

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

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

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

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

30 **D. A qui tam plaintiff shall not be entitled to recovery pursuant to this**

1 Section if the court finds that the qui tam plaintiff instituted or proceeded with an
2 action that was frivolous, vexatious, or harassing.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____