
SENATE BILL NO. 418—SENATORS TITUS, WIENER AND CARE

MARCH 15, 1999

Referred to Committee on Government Affairs

SUMMARY—Provides civil penalty for submission of false claim to state or local government.
(BDR 31-1474)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to governmental administration; providing a civil penalty for the submission of a false claim to the state or to a local government; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Title 31 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 30,
3 inclusive, of this act.
- 4 **Sec. 2.** *As used in this chapter, unless the context otherwise requires,*
5 *the words and terms defined in sections 3, 4 and 5 of this act have the*
6 *meanings ascribed to them in those sections.*
- 7 **Sec. 3.** *“Claim” means a request or demand for money, property or*
8 *services made to:*
- 9 1. *An officer, employee or agent of this state or of a political*
10 *subdivision of this state; or*
- 11 2. *A contractor, grantee or other recipient of money from the state or*
12 *a political subdivision of this state if any part of the money, property or*
13 *services requested or demanded was provided by the state or political*
14 *subdivision.*
- 15 **Sec. 4.** *“Political subdivision” means a county, city, assessment*
16 *district or any other local government as defined in NRS 354.474.*

1 **Sec. 5.** *“Prosecuting authority” means the district attorney, city*
2 *attorney or other attorney responsible for civil proceedings on behalf of a*
3 *political subdivision, and includes the general counsel of the University*
4 *and Community College System of Nevada.*

5 **Sec. 6.** 1. *Except as otherwise provided in section 7 of this act, a*
6 *person who, with or without specific intent to defraud, does any of the*
7 *following listed acts is liable to the state or a political subdivision,*
8 *whichever is affected, for three times the amount of damages sustained*
9 *by the state or political subdivision because of the act of that person, for*
10 *the costs of a civil action brought to recover those damages and for a*
11 *civil penalty of not less than \$2,000 or more than \$10,000 for each act:*

12 (i) *Knowingly presents or causes to be presented a false claim for*
13 *payment or approval.*

14 (ii) *Knowingly makes or uses, or causes to be made or used, a false*
15 *record or statement to obtain payment or approval of a false claim.*

16 (iii) *Conspires to defraud by obtaining allowance or payment of a false*
17 *claim.*

18 (iv) *Has possession, custody or control of public property or money*
19 *and knowingly delivers or causes to be delivered to the state or a political*
20 *subdivision less money or property than the amount for which he*
21 *receives a receipt.*

22 (v) *Is authorized to prepare or deliver a receipt for money or property*
23 *to be used by the state or a political subdivision and knowingly prepares*
24 *or delivers a receipt that falsely represents the money or property.*

25 (vi) *Knowingly buys, or receives as security for an obligation, public*
26 *property from a person who is not authorized to sell or pledge the*
27 *property.*

28 (vii) *Knowingly makes or uses, or causes to be made or used, a false*
29 *record or statement to conceal, avoid or decrease an obligation to pay or*
30 *transmit money or property to the state or a political subdivision.*

31 (viii) *Is a beneficiary of an inadvertent submission of a false claim and,*
32 *after discovering the falsity of the claim, fails to disclose the falsity to the*
33 *state or political subdivision within a reasonable time.*

34 2. *As used in this section, a person acts “knowingly” with respect to*
35 *information if he:*

36 (i) *Has knowledge of the information;*

37 (ii) *Acts in deliberate ignorance of whether the information is true or*
38 *false; or*

39 (iii) *Acts in reckless disregard of the truth or falsity of the information.*

40 **Sec. 7.** *In a civil action pursuant to this chapter, the court may give*
41 *judgment for not less than twice or more than three times the amount of*
42 *damages sustained, and no civil penalty, if it finds that:*

43 1. *The person against who the judgment is entered:*

1 (a) *Furnished all information known to him concerning the act,*
2 *within 30 days after becoming aware of the information, to the attorney*
3 *general or a prosecuting authority; and*

4 (b) *Fully cooperated with any investigation of the act by the state or*
5 *political subdivision; and*

6 2. *At the time the information was furnished, no criminal*
7 *prosecution or civil or administrative proceeding had commenced with*
8 *respect to the act and the person had no knowledge of the existence of*
9 *any investigation with respect to the act.*

10 **Sec. 8.** *Liability pursuant to this chapter is joint and several for an*
11 *act done by two or more persons.*

12 **Sec. 9. 1.** *The attorney general shall investigate any alleged*
13 *liability pursuant to this chapter if money, property or services provided*
14 *by the state are involved, and may bring a civil action pursuant to this*
15 *chapter against a person liable.*

16 2. *If money, property or services provided by a political subdivision*
17 *are also involved, the attorney general shall, on the date the state*
18 *commences a civil action, send a copy of the complaint to the appropriate*
19 *prosecuting authority by mail with return receipt requested.*

20 3. *The prosecuting authority may intervene in the action*
21 *unconditionally within 60 days after receiving the copy of the complaint.*
22 *The court may permit the prosecuting authority to intervene later if the*
23 *prosecuting authority shows cause for permissive intervention pursuant*
24 *to the Nevada Rules of Civil Procedure.*

25 **Sec. 10. 1.** *The prosecuting authority of a political subdivision*
26 *shall investigate any alleged liability pursuant to this chapter if money,*
27 *property or services provided by the political subdivision are involved,*
28 *and may bring a civil action pursuant to this chapter against a person*
29 *liable.*

30 2. *If money, property or services provided by the state are also*
31 *involved, the prosecuting authority shall, on the date he commences a*
32 *civil action, send a copy of the complaint to the attorney general by mail*
33 *with return receipt requested.*

34 3. *Within 60 days after receiving the copy of the complaint, the*
35 *attorney general shall notify the court:*

36 (a) *That he will assume primary responsibility for the action, and the*
37 *prosecuting authority may remain as a party; or*

38 (b) *That he declines to proceed with the action, and the prosecuting*
39 *authority may conduct the action.*

40 **Sec. 11. 1.** *Except as otherwise provided in sections 26 and 27 of*
41 *this act, a private plaintiff may maintain an action pursuant to this*
42 *chapter on his own account and that of the state if money, property or*
43 *services provided by the state are involved, or on his own account and*

1 *that of a political subdivision if money, property or services provided by*
2 *the political subdivision are involved, or on his own account and that of*
3 *both the state and a political subdivision if both are involved. After such*
4 *an action is commenced, it may be dismissed only with leave of the court,*
5 *taking into account the public purposes of this chapter and the best*
6 *interests of the parties.*

7 *2. A complaint filed pursuant to this section must be placed under*
8 *seal and so remain until the attorney general, or in a proper case the*
9 *prosecuting authority, has elected whether to intervene. No service may*
10 *be made upon the defendant until the complaint is unsealed.*

11 *3. On the date the private plaintiff files his complaint, he shall send a*
12 *copy of the complaint to the attorney general by mail with return receipt*
13 *requested, and to the appropriate prosecuting authority if one is involved.*
14 *He shall send with each copy of the complaint a written disclosure of*
15 *substantially all material evidence and information he possesses.*

16 **Sec. 12. 1.** *Within 60 days after receiving a complaint and*
17 *disclosure that involve only money, property or services provided by the*
18 *state, the attorney general may intervene and proceed with the action or*
19 *he may, for good cause shown, move the court to extend the time for his*
20 *election whether to proceed. The motion may be supported by affidavits*
21 *or other submissions in chambers.*

22 *2. Within 15 days after receiving a complaint and disclosure that*
23 *involve only money, property or services provided by a political*
24 *subdivision, the attorney general shall elect whether to take primary*
25 *responsibility for the action or defer to the prosecuting authority, and*
26 *shall notify the private plaintiff and prosecuting authority of his decision.*

27 *3. If the attorney general elects to intervene or take primary*
28 *responsibility, the complaint must be unsealed. If the attorney general*
29 *elects not to intervene, the private plaintiff may proceed and the*
30 *complaint must be unsealed.*

31 **Sec. 13. 1.** *If the attorney general elects to defer to a prosecuting*
32 *authority in an action brought by a private plaintiff, the prosecuting*
33 *authority may within 45 days elect to intervene or he may, for good cause*
34 *shown, move the court to extend the time for his election. The motion*
35 *may be supported by affidavits or other submissions in chambers.*

36 *2. If the prosecuting authority elects to intervene, the complaint must*
37 *be unsealed. If the prosecuting authority elects not to intervene, the*
38 *private plaintiff may proceed and the complaint must be unsealed.*

39 **Sec. 14. 1.** *If an action brought by a private plaintiff involves*
40 *money, property or services provided by both the state and a political*
41 *subdivision, the attorney general and the prosecuting authority shall*
42 *coordinate their review and investigation. Within 60 days after receiving*
43 *the complaint and disclosure, either may elect to intervene and proceed*

1 with the action or he may, for good cause shown, move the court to
2 extend the time for his election. The motion may be supported by
3 affidavits or other submissions in chambers.

4 2. Before the expiration of the time for those elections, the attorney
5 general shall notify the court whether he or the prosecuting authority or
6 both have elected to intervene. If the attorney general elects to intervene,
7 he shall take primary responsibility for the action. If only the prosecuting
8 authority elects to intervene, he shall proceed with the action. If neither
9 elects to intervene, the private plaintiff may proceed with the action. In
10 any case, the complaint must be unsealed.

11 **Sec. 15.** 1. If the attorney general or prosecuting authority
12 intervenes, the private plaintiff remains a party to an action pursuant to
13 section 11 of this act.

14 2. The attorney general or the prosecuting authority may move to
15 dismiss the action for good cause. The private plaintiff must be notified
16 of the filing of the motion and is entitled to oppose it and present
17 evidence at the hearing.

18 3. Except as otherwise provided in this subsection, the attorney
19 general or the prosecuting authority may settle the action. If the attorney
20 general or the prosecuting authority intends to settle the action, he shall
21 notify the private plaintiff of that fact. Upon the request of the private
22 plaintiff, the court shall determine whether settlement of the action is
23 consistent with the public purposes of this chapter and shall not approve
24 the settlement of the action unless it determines that such settlement is
25 consistent with the public purposes of this chapter.

26 **Sec. 16.** 1. The defendant is entitled to 30 days in which to respond
27 after a complaint filed pursuant to section 11 of this act is unsealed and
28 served upon him.

29 2. If a private plaintiff brings an action pursuant to this chapter, no
30 other person may bring another action pursuant to this chapter based on
31 the same facts.

32 3. An action may not be maintained by a private plaintiff pursuant to
33 this chapter:

34 (a) Against a member of the legislature or the judiciary, an elected
35 officer of the executive department of the state government, or a member
36 of the governing body of a political subdivision, if the action is based
37 upon evidence or information known to the state or political subdivision
38 at the time the action was brought.

39 (b) If the action is based upon allegations or transactions that are the
40 subject of a civil action or an administrative proceeding for a monetary
41 penalty to which the state or political subdivision is already a party.

1 **Sec. 17. 1.** *If the state or a political subdivision, or both if both are*
2 *involved, elect not to intervene in an action pursuant to section 11 of this*
3 *act, the private plaintiff has the same rights in conducting the action as*
4 *the attorney general would have had. A copy of each pleading or other*
5 *paper filed in the action, and a copy of the transcript of each deposition*
6 *taken, must be mailed to the state or a political subdivision thereof if the*
7 *state or political subdivision so requests and pays the cost thereof.*

8 2. *Upon timely application, the state or a political subdivision may*
9 *intervene in an action in which it has previously declined to intervene, if*
10 *the interest of the state or political subdivision in recovery of the money*
11 *or property involved is not being adequately represented by the private*
12 *plaintiff.*

13 3. *If the state or a political subdivision so intervenes, the private*
14 *plaintiff retains primary responsibility for conducting the action and any*
15 *recovery must be apportioned as if the state or political subdivision had*
16 *not intervened.*

17 **Sec. 18.** *As used in sections 19 to 22, inclusive, of this act,*
18 *“recovery” includes civil penalties and does not include any allowance of*
19 *expenses or attorney’s fees.*

20 **Sec. 19. 1.** *If the attorney general initiates an action or assumes*
21 *primary responsibility for conducting an action initiated by a prosecuting*
22 *authority, 33 percent of any recovery must be paid into the state general*
23 *fund to the credit of a special account, for use by the attorney general as*
24 *appropriated or authorized by the legislature in the investigation and*
25 *prosecution of false claims.*

26 2. *If a prosecuting authority initiates and conducts an action, 33*
27 *percent of any recovery must be paid into the general fund of the political*
28 *subdivision, for use by the prosecuting authority as appropriated or*
29 *authorized by the governing body in the investigation and prosecution of*
30 *false claims.*

31 3. *If a prosecuting authority intervenes in an action initiated by the*
32 *attorney general or participates in an action for the conduct of which the*
33 *attorney general has assumed primary responsibility, the court may*
34 *award a portion of the 33 percent otherwise apportioned pursuant to*
35 *subsection 1 to be apportioned in the manner provided in subsection 2,*
36 *according to the extent of the prosecuting authority’s contribution to the*
37 *investigation and conduct of the action.*

38 **Sec. 20. 1.** *If the attorney general or a prosecuting authority*
39 *intervenes at the outset in an action pursuant to section 11 of this act, the*
40 *private plaintiff is entitled, except as otherwise provided in section 21 of*
41 *this act, to receive not less than 15 percent or more than 33 percent of*
42 *any recovery, according to the extent of his contribution to the conduct of*
43 *the action. If the attorney general or a prosecuting authority assumes*

1 *primary responsibility for conducting the action, or if both participate, 33*
2 *percent of any recovery must be apportioned as provided in section 19 of*
3 *this act.*

4 *2. If neither the state or a prosecuting authority intervenes in the*
5 *action at the outset, the private plaintiff is entitled, except as otherwise*
6 *provided in section 21 of this act, to receive not less than 25 percent or*
7 *more than 50 percent of any recovery, as the court determines to be*
8 *reasonable.*

9 **Sec. 21.** *1. If the action is one described in section 26 of this act,*
10 *the present or former employee of the state or political subdivision is not*
11 *entitled to any minimum percentage of any recovery, but the court may*
12 *award him no more than 33 percent of the recovery if the state or*
13 *political subdivision intervenes in the action at the outset, or no more*
14 *than 50 percent if neither the state nor the political subdivision so*
15 *intervenes, according to the significance of his information, the extent of*
16 *his contribution to the conduct of the action and the response to his*
17 *efforts to report the false claim and gain recovery through other official*
18 *channels.*

19 *2. If the private plaintiff is a present or former employee of the state*
20 *or a political subdivision and benefited financially from the fraudulent*
21 *activity, he is not entitled to any minimum percentage of any recovery,*
22 *but the court may award him no more than 33 percent of the recovery if*
23 *the state or political subdivision intervenes in the action at the outset, or*
24 *no more than 50 percent if neither the state nor the political subdivision*
25 *so intervenes, according to the significance of his information, the extent*
26 *of his contribution to the conduct of the action, the extent of his*
27 *involvement in the fraudulent activity, his attempts to avoid or resist the*
28 *activity and the other circumstances of the activity.*

29 **Sec. 22.** *The portion of any recovery not apportioned pursuant to*
30 *sections 19, 20 and 21 of this act must be paid into the state general fund*
31 *if the money, property or services were provided only by the state, or into*
32 *the general fund of the political subdivision if they were provided only by*
33 *a political subdivision. If the action involved both the state and a political*
34 *subdivision, the court shall apportion the remaining portion of any*
35 *recovery between them according to the respective values of the money,*
36 *property or services provided by each.*

37 **Sec. 23.** *1. If the state, a political subdivision or a private plaintiff*
38 *prevails in or settles an action pursuant to section 11 of this act, the*
39 *private plaintiff is entitled to a reasonable amount for expenses that the*
40 *court finds were necessarily incurred, including reasonable costs,*
41 *attorney's fees and the fees of expert consultants and expert witnesses.*
42 *Those expenses must be awarded against the defendant, and may not be*
43 *allowed against the state or a political subdivision.*

1 2. If the defendant prevails in the action, the court may award him
2 reasonable expenses and attorney's fees against the party or parties who
3 participated in the action if it finds that the action was clearly frivolous
4 or vexatious or brought solely for harassment.

5 **Sec. 24. 1.** The court may stay discovery by a private plaintiff for
6 not more than 60 days if the attorney general or a prosecuting authority
7 shows that the proposed discovery would interfere with the investigation
8 or prosecution of a civil or criminal matter arising out of the same facts,
9 whether or not the attorney general or prosecuting authority participates
10 in the action.

11 2. The court may extend the stay upon a further showing that the
12 attorney general or prosecuting authority has pursued the civil or
13 criminal investigation or proceeding with reasonable diligence and the
14 proposed discovery would interfere with its continuation. Discovery may
15 not be stayed for a total of more than 6 months over the objection of the
16 private plaintiff.

17 3. A showing made pursuant to this section must be made in
18 chambers.

19 **Sec. 25.** Upon a showing by the attorney general or a prosecuting
20 authority that unrestricted participation by a private plaintiff would
21 interfere with or unduly delay the conduct of an action, or would be
22 repetitious, irrelevant or solely for harassment, the court may limit his
23 participation by, among other measures, limiting:

- 24 1. The number of witnesses he may call;
- 25 2. The length of the testimony of the witnesses; or
- 26 3. His cross-examination of witnesses.

27 **Sec. 26.** No action may be maintained pursuant to section 11 of this
28 act that is based upon information discovered by a present or former
29 employee of the state or a political subdivision during his employment,
30 unless he first in good faith exhausted internal procedures for reporting
31 and seeking recovery of the proceeds of the fraudulent activity through
32 official channels and the state or political subdivision failed to act on the
33 information provided for at least 6 months.

34 **Sec. 27. 1.** No action may be maintained pursuant to this chapter
35 that is based upon the public disclosure of allegations or transactions in
36 a criminal, civil or administrative hearing, in an investigation, report,
37 hearing or audit conducted by or at the request of a house of the
38 legislature, an auditor or the governing body of a political subdivision, or
39 from the news media, unless the action is brought by the attorney
40 general, a prosecuting authority or an original source of the information.

41 2. As used in this section, "original source" means a person:

42 (a) Who has direct and independent knowledge of the information on
43 which the allegations were based;

1 (b) Who voluntarily provided the information to the state or political
2 subdivision before bringing an action based on the information; and

3 (c) Whose information provided the basis or caused the making of the
4 investigation, hearing, audit or report that led to the public disclosure.

5 **Sec. 28. 1.** An employer shall not adopt or enforce any rule or
6 policy forbidding an employee to disclose information to the state, a
7 political subdivision or a law enforcement agency or to act in furtherance
8 of an action pursuant to this chapter, including investigation for,
9 bringing or testifying in such an action.

10 2. An employer shall not discharge, demote, suspend, threaten,
11 harass, deny promotion to or otherwise discriminate against an employee
12 in the terms or conditions of his employment because of lawful acts done
13 by him on his own behalf or on behalf of others in disclosing information
14 to the state, a political subdivision or a law enforcement agency in
15 furtherance of an action pursuant to this chapter, including investigation
16 for, bringing or testifying in such an action.

17 **Sec. 29. 1.** An employer who violates subsection 2 of section 28 of
18 this act is liable to the affected employee in a civil action for all relief
19 necessary to make him whole, including, without limitation,
20 reinstatement with the same seniority as if the discrimination had not
21 occurred or damages in lieu of reinstatement if appropriate, twice the
22 amount of lost compensation, interest on the lost compensation, any
23 special damage sustained as a result of the discrimination and punitive
24 damages if appropriate. The employer is also liable for expenses
25 recoverable pursuant to section 23 of this act, costs and attorney's fees.

26 2. An employee is entitled to the remedies provided in subsection 1
27 only if:

28 (a) He voluntarily disclosed information to the state or a political
29 subdivision or voluntarily acted in furtherance of an action pursuant to
30 this chapter; and

31 (b) He was harassed, threatened with termination or demotion, or
32 otherwise coerced by his employer into any participation in fraudulent
33 activity.

34 **Sec. 30. 1.** An action pursuant to this chapter may not be
35 commenced more than 3 years after the date of discovery of the
36 fraudulent activity by the attorney general or prosecuting authority or
37 more than 10 years after the fraudulent activity occurred, whichever is
38 earlier. Within those limits, an action may be based upon fraudulent
39 activity that occurred before October 1, 1999.

40 2. In an action pursuant to this chapter, the standard of proof is a
41 preponderance of the evidence. A finding of guilt in a criminal
42 proceeding charging false statement or fraud, whether upon a verdict of
43 guilty or a plea of guilty or nolo contendere, estops the person found

- 1 *guilty from denying an essential element of that offense in an action*
- 2 *pursuant to this chapter based upon the same transaction as the criminal*
- 3 *proceeding.*

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