

Senate Bill No. 418—Senators Titus, Wiener and Care

CHAPTER.....

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:

Section 1. Title 31 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 30, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Claim” means a request or demand for money, property or services made to:*

1. An officer, employee or agent of this state or of a political subdivision of this state; or

2. A contractor, grantee or other recipient of money from the state or a political subdivision of this state if any part of the money, property or services requested or demanded was provided by the state or political subdivision.

Sec. 4. *“Political subdivision” means a county, city, assessment district or any other local government as defined in NRS 354.474.*

Sec. 5. (Deleted by amendment.)

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

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

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

(c) Conspires to defraud by obtaining allowance or payment of a false claim.

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

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

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

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

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

2. As used in this section, a person acts "knowingly" with respect to information if he:

(a) Has knowledge of the information;

(b) Acts in deliberate ignorance of whether the information is true or false; or

(c) Acts in reckless disregard of the truth or falsity of the information.

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

1. The person against who the judgment is entered:

(a) Furnished all information known to him concerning the act, within 30 days after becoming aware of the information, to the attorney general; and

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

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

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

Sec. 9. The attorney general may investigate any alleged liability pursuant to this chapter and may bring a civil action pursuant to this chapter against the person liable.

Sec. 10. (Deleted by amendment.)

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

an action is commenced, it may be dismissed only with leave of the court, taking into account the public purposes of this chapter and the best interests of the parties.

2. A complaint filed pursuant to this section must be placed under seal and so remain until the attorney general has elected whether to intervene. No service may be made upon the defendant until the complaint is unsealed.

3. On the date the private plaintiff files his complaint, he shall send a copy of the complaint to the attorney general by mail with return receipt requested. He shall send with each copy of the complaint a written disclosure of substantially all material evidence and information he possesses.

Sec. 12. 1. Within 120 days after receiving a complaint and disclosure, the attorney general may intervene and proceed with the action or he may, for good cause shown, move the court to extend the time for his election whether to proceed. The motion may be supported by affidavits or other submissions in chambers.

2. If the attorney general elects to intervene, the complaint must be unsealed. If the attorney general elects not to intervene, the private plaintiff may proceed and the complaint must be unsealed.

Secs. 13 and 14. (Deleted by amendment.)

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

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

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

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

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

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

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

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

Sec. 17. 1. *If the attorney general elects not to intervene in an action pursuant to section 11 of this act, the private plaintiff has the same rights in conducting the action as the attorney general would have had. A copy of each pleading or other paper filed in the action, and a copy of the transcript of each deposition taken, must be mailed to the attorney general if the attorney general so requests and pays the cost thereof.*

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

3. *If the attorney general so intervenes, the private plaintiff retains primary responsibility for conducting the action and any recovery must be apportioned as if the attorney general had not intervened.*

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

Sec. 19. *If the attorney general initiates an action pursuant to this chapter, 33 percent of any recovery must be paid into the state general fund to the credit of a special account, for use by the attorney general as appropriated or authorized by the legislature in the investigation and prosecution of false claims.*

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

2. *If the attorney general does not intervene in the action at the outset, the private plaintiff is entitled, except as otherwise provided in section 21 of this act, to receive not less than 25 percent or more than 50 percent of any recovery, as the court determines to be reasonable.*

Sec. 21. 1. *If the action is one described in section 26 of this act, the present or former employee of the state or political subdivision is not entitled to any minimum percentage of any recovery, but the court may award him no more than 33 percent of the recovery if the attorney general intervenes in the action at the outset, or no more than 50 percent if the attorney general does not intervene, according to the significance of his information, the extent of his contribution to the conduct of the action and the response to his efforts to report the false claim and gain recovery through other official channels.*

2. *If the private plaintiff is a present or former employee of the state or a political subdivision and benefited financially from the fraudulent activity, he is not entitled to any minimum percentage of any recovery,*

but the court may award him no more than 33 percent of the recovery if the attorney general intervenes in the action at the outset, or no more than 50 percent if the attorney general does not intervene, according to the significance of his information, the extent of his contribution to the conduct of the action, the extent of his involvement in the fraudulent activity, his attempts to avoid or resist the activity and the other circumstances of the activity.

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

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

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

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

2. The court may extend the stay upon a further showing that the attorney general has pursued the civil or criminal investigation or proceeding with reasonable diligence and the proposed discovery would interfere with its continuation. Discovery may not be stayed for a total of more than 6 months over the objection of the private plaintiff, except for good cause shown by the attorney general.

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

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

1. The number of witnesses he may call;

2. The length of the testimony of the witnesses; or
3. His cross-examination of witnesses.

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

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

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

- (a) Who has direct and independent knowledge of the information on which the allegations were based;
- (b) Who voluntarily provided the information to the state or political subdivision before bringing an action based on the information; and
- (c) Whose information provided the basis or caused the making of the investigation, hearing, audit or report that led to the public disclosure.

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

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

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

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

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

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

Sec. 30. 1. *An action pursuant to this chapter may not be commenced more than 3 years after the date of discovery of the fraudulent activity by the attorney general or more than 5 years after the fraudulent activity occurred, whichever is earlier. Within those limits, an action may be based upon fraudulent activity that occurred before October 1, 1999.*

2. In an action pursuant to this chapter, the standard of proof is a preponderance of the evidence. A finding of guilt in a criminal proceeding charging false statement or fraud, whether upon a verdict of guilty or a plea of guilty or nolo contendere, estops the person found guilty from denying an essential element of that offense in an action pursuant to this chapter based upon the same transaction as the criminal proceeding.

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