

Amendment No. 229

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| Assembly Amendment to Assembly Bill No. 48 | (BDR 14-154) |
| Proposed by: Assembly Committee on Judiciary | |
| Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes | |

| ASSEMBLY ACTION | | Initial and Date | SENATE ACTION | | Initial and Date |
|-----------------|--------------------------|-------------------------------|---------------|--------------------------|-------------------------------|
| Adopted | <input type="checkbox"/> | Lost <input type="checkbox"/> | Adopted | <input type="checkbox"/> | Lost <input type="checkbox"/> |
| Concurred In | <input type="checkbox"/> | Not <input type="checkbox"/> | Concurred In | <input type="checkbox"/> | Not <input type="checkbox"/> |
| Receded | <input type="checkbox"/> | Not <input type="checkbox"/> | Receded | <input type="checkbox"/> | Not <input type="checkbox"/> |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MKM/BAW



Date: 4/3/2015

A.B. No. 48—Makes various changes relating to fraudulent acts committed against the State or a political subdivision. (BDR 14-154)



ASSEMBLY BILL NO. 48—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to fraudulent acts committed against the State or a political subdivision. (BDR 14-154)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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 crimes; ~~making the instrumentalities used to commit certain offenses relating to Medicaid fraud subject to forfeiture;~~ extending the period during which criminal records may not be sealed if the crime is related to certain crimes involving Medicaid; revising provisions relating to incentives for bringing certain actions for false or fraudulent Medicaid claims; revising provisions governing the distribution of amounts collected to private plaintiffs in actions for false claims; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Existing law provides that all personal property which is used as an instrumentality in the commission of certain specified crimes is subject to forfeiture. (NRS 179.121) Section 1 of this bill expands the list of such crimes to include fraud and certain other offenses committed in connection with the State Plan for Medicaid.~~

Existing law provides that a person convicted of a crime may, after the passage of specified periods, petition the court in which he or she was convicted for the sealing of all records of the conviction. Upon receiving such a petition, the court is required to notify the law enforcement agency that arrested the petitioner and the prosecuting attorney for the city or county who prosecuted the petitioner that the petitioner is seeking to have the records of the conviction sealed. The prosecuting attorney is authorized to testify and present evidence at any hearing concerning the petition. (NRS 179.245) **Section 2** of this bill provides that a person who is convicted of a misdemeanor or gross misdemeanor for fraud or certain other offenses committed in connection with the State Plan for Medicaid is not entitled to file a petition for the sealing of records relating to his or her conviction until at least 7 years after the date of the person's release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later. **Section 2** also requires the court to provide notice of such a petition to the Attorney General if he or she was the prosecuting attorney who prosecuted the person for the crime.

The federal Deficit Reduction Act of 2005, Public Law 109-171, enacted certain provisions concerning state plans for Medicaid. Section 6031 of the Act provides financial incentives for states that enact laws establishing liability for false or fraudulent claims made to the State Plan for Medicaid. (42 U.S.C. § 1396h) To be eligible for these financial incentives,

the laws of a state must contain provisions that are at least as effective at rewarding and facilitating certain qui tam actions for false or fraudulent claims as those described in the federal False Claims Act. (31 U.S.C. §§ 3730-3732) **Sections 3-8 and 10** of this bill amend existing law concerning the filing of false or fraudulent claims so that the laws of this State are at least as effective at rewarding and facilitating such actions as the provisions described in federal law.

Under existing law, a private plaintiff who initiates a civil action against a person for filing a false claim or otherwise defrauding the State or one of its political subdivisions, commonly called a qui tam action, is entitled to receive a percentage of the amount of any penalty recovered from the defendant according to the extent of the private plaintiff's contribution to the conduct of the action or an amount the court trying the action otherwise determines to be reasonable. (NRS 357.210) **Section 9** of this bill reduces from 33 percent to 25 percent the maximum share of any recovery to which a private plaintiff is entitled in certain qui tam actions if the Attorney General or the Attorney General's designee intervenes in the action at its outset. **Section 9** also reduces from 50 percent to 33 percent the maximum share of any recovery to which a private plaintiff is entitled in certain qui tam actions if the Attorney General or the Attorney General's designee does not intervene in the action at its outset.

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

Section 1. ~~NRS 179.121 is hereby amended to read as follows:~~

~~179.121 1. All personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes is subject to forfeiture:~~

~~(a) The commission of or attempted commission of the crime of murder, robbery, kidnapping, burglary, invasion of the home, grand larceny or theft if it is punishable as a felony;~~

~~(b) The commission of or attempted commission of any felony with the intent to commit, cause, aid, further or conceal an act of terrorism;~~

~~(c) A violation of NRS 202.445 or 202.446;~~

~~(d) The commission of any crime by a criminal gang, as defined in NRS 213.1263; or~~

~~(e) A violation of NRS 200.463 to 200.468, inclusive, 201.300, 201.320, 202.265, 202.287, 205.473 to 205.513, inclusive, 205.610 to 205.810, inclusive, 370.380, 370.382, 370.395, 370.405, 422.540 to 422.570, inclusive, 465.070 to 465.085, inclusive, 630.400, 630A.600, 631.400, 632.285, 632.291, 632.315, 633.741, 634.227, 634A.230, 635.167, 636.145, 637.090, 637A.352, 637B.200, 639.100, 639.2813, 640.169, 640A.230, 644.190 or 654.200.~~

~~2. Except as otherwise provided for conveyances forfeitable pursuant to NRS 453.301 or 501.3857, all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony or a violation of NRS 202.287, 202.300 or 465.070 to 465.085, inclusive, are subject to forfeiture except that:~~

~~(a) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the felony or violation;~~

~~(b) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge, consent or willful blindness;~~

~~(c) A conveyance is not subject to forfeiture for a violation of NRS 202.200 if the firearm used in the violation of that section was not loaded at the time of the violation; and~~

~~(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the felony. If a conveyance is forfeited, the appropriate law enforcement agency may pay the existing balance and retain the conveyance for official use.~~

~~2. For the purposes of this section, a firearm is loaded if:~~

~~(a) There is a cartridge in the chamber of the firearm;~~

~~(b) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver; or~~

~~(c) There is a cartridge in the magazine and the magazine is in the firearm or there is a cartridge in the chamber, if the firearm is a semiautomatic firearm.~~

~~4. As used in this section, "act of terrorism" has the meaning ascribed to it in NRS 202.4115.~~ **(Deleted by amendment.)**

Sec. 2. NRS 179.245 is hereby amended to read as follows:

179.245 1. Except as otherwise provided in subsection 5 and NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a person may petition the court in which the person was convicted for the sealing of all records relating to a conviction of:

(a) A category A or B felony after 15 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(b) A category C or D felony after 12 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(c) A category E felony after 7 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

~~(d) **Any**~~ **Except as otherwise provided in paragraph (e), any** gross misdemeanor after 5 years from the date of release from actual custody or discharge from probation, whichever occurs later;

(e) A violation of **NRS 422.540 to 422.570, inclusive, other than a felony, a violation of** NRS 484C.110 or 484C.120 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later; or

(f) Any other misdemeanor after 2 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later.

2. A petition filed pursuant to subsection 1 must:

(a) Be accompanied by the petitioner's current, verified records received from:

(1) The Central Repository for Nevada Records of Criminal History; and

(2) All agencies of criminal justice which maintain such records within the city or county in which the conviction was entered;

(b) If the petition references NRS 453.3365 or 458.330, include a certificate of acknowledgment or the disposition of the proceedings for the records to be sealed from all agencies of criminal justice which maintain such records;

(c) Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed; and

(d) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed, including, without limitation, the:

(1) Date of birth of the petitioner;
(2) Specific conviction to which the records to be sealed pertain; and
(3) Date of arrest relating to the specific conviction to which the records to be sealed pertain.

3. Upon receiving a petition pursuant to this section, the court shall notify the law enforcement agency that arrested the petitioner for the crime and ~~the~~:

~~(a) If the person was convicted in a district court or justice court, the prosecuting attorney for the county; or~~

~~(b) If the person was convicted in a municipal court, the prosecuting attorney for the city.~~

→, including, without limitation, the Attorney General, who prosecuted the petitioner for the crime. The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

4. If, after the hearing, the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of any agency of criminal justice or any public or private agency, company, official or other custodian of records in the State of Nevada, and may also order all such records of the petitioner returned to the file of the court where the proceeding was commenced from, including, without limitation, the Federal Bureau of Investigation, the California Bureau of Criminal Identification and Information and all other agencies of criminal justice which maintain such records and which are reasonably known by either the petitioner or the court to have possession of such records.

5. A person may not petition the court to seal records relating to a conviction of:

(a) A crime against a child;

(b) A sexual offense;

(c) A violation of NRS 484C.110 or 484C.120 that is punishable as a felony pursuant to paragraph (c) of subsection 1 of NRS 484C.400;

(d) A violation of NRS 484C.430;

(e) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;

(f) A violation of NRS 488.410 that is punishable as a felony pursuant to NRS 488.427; or

(g) A violation of NRS 488.420 or 488.425.

6. If the court grants a petition for the sealing of records pursuant to this section, upon the request of the person whose records are sealed, the court may order sealed all records of the civil proceeding in which the records were sealed.

7. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.0357.

(b) "Sexual offense" means:

(1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368, if punishable as a felony.

(4) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.

(6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.

(7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

(8) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(9) Incest pursuant to NRS 201.180.

(10) Open or gross lewdness pursuant to NRS 201.210, if punishable as a felony.

(11) Indecent or obscene exposure pursuant to NRS 201.220, if punishable as a felony.

(12) Lewdness with a child pursuant to NRS 201.230.

(13) Sexual penetration of a dead human body pursuant to NRS 201.450.

(14) Luring a child or a person with mental illness pursuant to NRS 201.560, if punishable as a felony.

(15) An attempt to commit an offense listed in this paragraph.

Sec. 3. NRS 357.026 is hereby amended to read as follows:

357.026 "Original source" means a person:

1. Who voluntarily discloses to the State or a political subdivision the information on which the allegations *or transactions* in an action for a false claim are based before the public disclosure of the information; or

2. Who has knowledge of information that is independent of and materially adds to the publicly disclosed allegations or transactions and who voluntarily provides such information to the State or political subdivision before bringing an action for a false claim based on the information.

Sec. 4. NRS 357.040 is hereby amended to read as follows:

357.040 1. Except as otherwise provided in NRS 357.050, 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 the amounts set forth in subsection 2:

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

(b) Knowingly makes or uses, or causes to be made or used, a false record or statement that is material to a false or fraudulent claim.

(c) Has possession, custody or control of public property or money used or to be used by the State or a political subdivision and knowingly delivers or causes to be delivered to the State or a political subdivision less money or property than the amount of which the person has possession, custody or control.

(d) Is authorized to prepare or deliver a document that certifies receipt of money or property used or to be used by the State or a political subdivision and knowingly prepares or delivers such a document without knowing that the information on the document is true.

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

(f) Knowingly makes or uses, or causes to be made or used, a false record or statement that is material to an obligation to pay or transmit money or property to the State or a political subdivision.

(g) Knowingly conceals or knowingly and improperly avoids or decreases 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.

(i) Conspires to commit any of the acts set forth in this subsection.

2. For each act described in subsection 1 that is committed by a person, the person is liable for:

(a) Three times the amount of damages sustained by the State or political subdivision, whichever is affected, because of the act of the person;

(b) The costs of a civil action brought to recover the damages described in paragraph (a); and

(c) ~~Except as otherwise provided in this paragraph, a~~ civil penalty of not less than \$5,500 or more than \$11,000. *A civil penalty imposed pursuant to this paragraph must correspond to any adjustments in the monetary amount of a civil penalty for a violation of the federal False Claims Act, 31 U.S.C. § 3729(a), made by the Attorney General of the United States in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended.*

3. As used in this section, a person acts “knowingly” with respect to information if he or she:

(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. 5. NRS 357.080 is hereby amended to read as follows:

357.080 1. Except as otherwise provided in this section and NRS 357.100, a private plaintiff may bring an action pursuant to this chapter for a violation of NRS 357.040 on his or her own account and that of the State or a political subdivision, or both the State and a political subdivision. The action must be brought in the name of the State or the political subdivision, or both. After such an action is commenced, it may be dismissed only with written consent of the court and the Attorney General. The court and the Attorney General shall take into account the public purposes of this chapter and the best interests of the parties in dismissing the action or consenting to the dismissal, as applicable, and provide the reasons for dismissing the action or consenting to the dismissal, as applicable.

2. If a private plaintiff brings an action pursuant to this chapter, no person other than the Attorney General or the Attorney General’s designee may intervene or bring a related action pursuant to this chapter based on the facts underlying the first action.

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.

4. A complaint filed pursuant to this section must be placed under seal and so remain for at least 60 days or until the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 has elected whether to intervene. No service may be made upon the defendant until so ordered by the court.

5. On the date the private plaintiff files a complaint, he or she shall send a copy of the complaint to the Attorney General by mail with return receipt requested. The private plaintiff shall send with each copy of the complaint a written disclosure of substantially all **material** evidence and information he or she possesses. If a district attorney or city attorney has accepted a designation from the Attorney General pursuant to NRS 357.070, the Attorney General shall forward a copy of the complaint to the district attorney or city attorney, as applicable.

6. An action pursuant to this chapter may be brought in any judicial district in this State in which the defendant can be found, resides, transacts business or in which any of the alleged fraudulent activities occurred.

Sec. 6. NRS 357.100 is hereby amended to read as follows:

357.100 Unless the Attorney General objects, a court shall dismiss an action or a claim made pursuant to this chapter that is substantially based on **the same** allegations or transactions that have been disclosed publicly:

1. In a criminal, civil or administrative hearing to which the State, a political subdivision, or an agent of the State or a political subdivision is a party;

2. 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

3. By the news media,

unless the action or claim is brought by the Attorney General, a designee of the Attorney General pursuant to NRS 357.070 or an original source of the information.

Sec. 7. NRS 357.120 is hereby amended to read as follows:

357.120 1. If the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 intervenes, the private plaintiff remains a party to an action pursuant to NRS 357.080.

2. The Attorney General or the Attorney General's designee 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 or the Attorney General's designee may settle the action. If the Attorney General or the Attorney General's designee intends to settle the action, the Attorney General or the Attorney General's designee shall notify the private plaintiff of that fact. Upon the request of the private plaintiff, the court shall determine **, after a hearing,** whether the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing for good cause, the court may ~~hear the proposed settlement~~ **conduct such hearing** in camera.

Sec. 8. NRS 357.170 is hereby amended to read as follows:

357.170 1. An action pursuant to this chapter may not be commenced ~~more~~ :

(a) **More** than 3 years after the date on which the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 discovers, or reasonably should have discovered, the fraudulent activity **, for more than 6 years after the fraudulent activity occurred,** but in no event more than 10 years after the fraudulent activity occurred ~~;~~ **or**

(b) **More than 6 years after the fraudulent activity occurred,**

whichever occurs later. Within those limits, an action may be based upon fraudulent activity that occurred before ~~July 1, 2007~~ **the effective date of this act.**

2. In an action pursuant to this chapter, the standard of proof is a preponderance of the evidence. A finding of guilty or guilty but mentally ill in a criminal proceeding charging false statement or fraud, whether upon a verdict of guilty or guilty but mentally ill or a plea of guilty, guilty but mentally ill or nolo contendere, estops the person found guilty or guilty but mentally ill from denying

an essential element of that offense in an action pursuant to this chapter based upon the same transaction as the criminal proceeding.

Sec. 9. NRS 357.210 is hereby amended to read as follows:

357.210 1. Except as otherwise provided in subsection 3, if the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 intervenes at the outset in an action pursuant to NRS 357.080, the private plaintiff is entitled to receive not less than 15 percent or more than ~~13 1/3~~ 25 percent of any recovery, according to the extent of his or her contribution to the conduct of the action.

2. Except as otherwise provided in subsection 3, if the Attorney General or the Attorney General's designee does not intervene in the action at the outset, the private plaintiff is entitled to receive not less than 25 percent or more than ~~15~~ 30 percent of any recovery, as the court determines to be reasonable.

3. Regardless of whether the Attorney General or the Attorney General's designee intervenes in the action, if the court finds that the action was brought by a private plaintiff who planned or initiated the violation of NRS 357.040 upon which the action is based, the court may reduce the recovery to which the private plaintiff is otherwise entitled pursuant to subsection 1 or 2. The court shall consider the role of the private plaintiff in advancing the action and any other relevant circumstances. If the private plaintiff is convicted of criminal conduct arising from his or her role in the violation of NRS 357.040, the private plaintiff must be dismissed from the civil action and must not receive any share of the recovery pursuant to subsection 1 or 2. Any such dismissal does not prejudice the right of the Attorney General or the Attorney General's designee to continue the action.

Sec. 10. NRS 357.250 is hereby amended to read as follows:

357.250 1. If an employee, contractor or agent is discharged, demoted, suspended, threatened, harassed or discriminated against in the terms and conditions of employment as a result of any lawful act of the employee, contractor, ~~or~~ agent *or associated others* in furtherance of an action brought pursuant to this chapter ~~or any other effort to stop a violation of this chapter~~, the employee, contractor or agent is entitled to all relief necessary to make the employee, contractor or agent whole, including, without limitation, reinstatement with the same seniority as if the discharge, demotion, suspension, threat, harassment or 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 discharge, demotion, suspension, threat, harassment or discrimination and punitive damages if appropriate. The employee, contractor or agent may also receive compensation for expenses recoverable pursuant to NRS 357.180, costs and attorney's fees.

2. A civil action brought pursuant to this section may not be brought more than 3 years after the date on which the discharge, demotion, suspension, threat, harassment or discrimination occurred.

Sec. 11. NRS 357.225 is hereby repealed.

Sec. 12. This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTION

357.225 Distribution to original source in action based upon certain public disclosures. In an action brought pursuant to NRS 357.100 by an original source, the court may award not more than 10 percent of the recovery to the original source. In determining the amount to be awarded pursuant to this section,

the court shall consider the role of the original source in advancing the claim to litigation.