

1 SB183
2 148303-1
3 By Senator Orr
4 RFD: Finance and Taxation General Fund
5 First Read: 12-FEB-13

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8 SYNOPSIS: Existing law does not provide a specific
9 remedy for the state to pursue damages sustained
10 when a person or entity commits false or fraudulent
11 acts against the state.

12 This bill would establish the Alabama False
13 Claims Act, to provide a remedy for fraudulent
14 claims in government programs.

15 This bill would provide that certain persons
16 who make false claims or commit fraud against the
17 state shall be liable to the state for three times
18 the amount of damage sustained, a civil penalty,
19 and any associated costs, including attorney's
20 fees.

21 This bill would provide for the
22 responsibilities of the Attorney General and
23 individuals, as qui tam plaintiffs, in
24 investigating and proceeding against violators in
25 civil actions.

26 This bill would prohibit any employer from
27 taking retaliatory action or preventing an employee

1 from disclosing information to government or law
2 enforcement agencies investigating false or
3 fraudulent claims actions.

4 This bill would also provide for the
5 limitation of actions.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To create the Alabama False Claims Act, relating to
12 false or fraudulent claims made upon state government; to
13 subject certain violators, making false claims or committing
14 fraud against the state to treble damages and civil penalties;
15 to provide for the award of attorney's fees; to provide for
16 the responsibilities of the Attorney General and individuals,
17 as qui tam plaintiffs, in investigating and proceeding against
18 violators in civil actions; to prohibit retaliatory actions by
19 employers against employees who disclose information to
20 government or law enforcement agencies investigating false
21 claims actions; and to provide for the limitation of actions.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall be known and may be cited
24 as the Alabama False Claims Act.

25 Section 2. For the purposes of this act, the
26 following terms have the following meanings:

1 (1) CLAIM. Includes any request or demand for money
2 or property made to any employee, officer, or agent of the
3 state, or to any contractor, grantee, or other recipient,
4 whether under contract or not, if any portion of the money,
5 property, or services requested or demanded issued from, or
6 was provided by, the state, regardless of whether the state
7 has title to the money or property. The term does not include
8 a request or demand for money or property that the state has
9 paid to an individual as compensation for state employment or
10 as an income subsidy with no restrictions on that individual's
11 use of the money or property.

12 (2) KNOWING and KNOWINGLY.

13 a. When a person, with respect to information, does
14 any of the following:

15 1. Has actual knowledge of the information.

16 2. Acts in deliberate ignorance of the truth or
17 falsity of the information.

18 3. Acts in reckless disregard of the truth or
19 falsity of the information.

20 b. Proof of specific intent to defraud is not
21 required.

22 (3) MATERIAL. Having a natural tendency to
23 influence, or be capable of influencing, the payment or
24 receipt of money or property.

25 (4) OBLIGATION. An established duty, whether or not
26 fixed, arising from an express or implied contractual,
27 grantor-grantee, or licensor-licensee relationship, from a

1 fee-based or similar relationship, from statute or regulation,
2 or from the retention of any overpayment.

3 Section 3. (a) A person shall be liable to the state
4 for three times the amount of damages sustained by the state
5 as a result of the person committing any of the following
6 acts:

7 (1) Knowingly presents or causes to be presented to
8 an officer or employee of the state a false claim for payment
9 or approval.

10 (2) Knowingly makes, uses, or causes to be made or
11 used a false record or statement to get a false claim paid or
12 approved by the state.

13 (3) Conspires to commit a violation under this
14 subsection.

15 (4) Has possession, custody, or control of public
16 property or money used or to be used by the state and
17 knowingly delivers or causes to be delivered less property
18 than the amount for which the person receives a certificate or
19 receipt.

20 (5) Is authorized to make or deliver a document
21 certifying receipt of property used or to be used by the state
22 and knowingly makes or delivers a receipt that falsely
23 represents the property used or to be used.

24 (6) Knowingly buys, or receives as a pledge of an
25 obligation or debt, public property from any person who
26 lawfully may not sell or pledge the property.

1 (7) Knowingly makes, uses, or causes to be made or
2 used, a false record or statement material to an obligation to
3 pay or transmit money or property to the state, or knowingly
4 conceals or knowingly and improperly avoids or decreases an
5 obligation to pay or transmit money or property to the state.

6 (b) A person who violates subsection (a) shall also
7 be liable to the state for the costs of a civil action brought
8 to recover any penalties or damages under this section,
9 including attorney's fees, and may be liable to the state for
10 a civil penalty of not less than five thousand dollars
11 (\$5,000) and not more than ten thousanddollars (\$10,000) for
12 each false claim.

13 (c) Notwithstanding subsection (a), the court may
14 assess not less than two times the amount of damages which the
15 state sustains because of the act of the person described in
16 that subsection if the court finds all of the following:

17 (1) The person committing the violation furnished
18 officials of the state responsible for investigating false
19 claims violations with all information known to that person
20 about the violation within 30 days after the date on which the
21 person first obtained the information.

22 (2) The person fully cooperated with any
23 investigation by the state regarding the violation.

24 (3) At the time the person furnished the state with
25 information about the violation, no criminal prosecution,
26 civil action, or administrative action had commenced with
27 respect to the violation, and the person did not have actual

1 knowledge of the existence of an investigation regarding the
2 violation.

3 (d) Any information furnished pursuant to subsection
4 (c) shall be exempt from disclosure under Section 36-12-40,
5 Code of Alabama 1975.

6 (e) This section does not apply to claims, records,
7 or statements made under Title 40, Code of Alabama 1975,
8 relating to taxation.

9 Section 4. (a) The Attorney General shall diligently
10 investigate violations under Section 3. If the Attorney
11 General finds that a person has violated or is violating
12 Section 3, the Attorney General may bring a civil action
13 against that person pursuant to this section.

14 (b) (1) A person may bring a civil action for a
15 violation of Section 3 in the name of the person and the State
16 of Alabama. The person bringing the action shall be known as
17 the qui tam plaintiff. Once filed, the action may be dismissed
18 only with the written consent of the court and the Attorney
19 General, taking into account the best interests of the parties
20 involved and the public purposes behind this act.

21 (2) A copy of the complaint and written disclosure
22 of substantially all material evidence and information the
23 person possesses shall be served on the Attorney General by
24 mail on the same date the complaint is filed. The complaint
25 filed by a person shall be filed in the circuit court of the
26 Fifteenth Judicial Circuit in camera and shall remain under

1 seal for 60 days. The complaint shall not be served on the
2 defendant until after the complaint is unsealed.

3 (3) Within 60 days after receiving a complaint
4 alleging violations, the Attorney General shall do either of
5 the following:

6 a. Notify the court that the office of the Attorney
7 General intends to proceed with the action, in which case the
8 action shall be conducted by the state.

9 b. Notify the court that the office of the Attorney
10 General declines to proceed with the action, in which case the
11 qui tam plaintiff may proceed with the action.

12 (4) Any information or documents furnished by the
13 qui tam plaintiff to the Attorney General in connection with
14 the initiation of a qui tam action or investigation under this
15 section is not a public record and is exempt from public
16 disclosure under state law.

17 (5) Upon a showing of good cause and reasonable
18 diligence in an investigation, the Attorney General may move
19 the court for extensions of the time during which the
20 complaint remains under seal. The motion may be supported by
21 affidavits or other submissions in camera.

22 (6) When a person brings an action pursuant to this
23 subsection, no other person, other than the state, may bring a
24 related action based on the facts underlying the pending
25 action.

26 (c) (1) If the state proceeds with the action, it
27 shall have the primary responsibility for prosecuting the

1 action, and shall not be bound by an act of the person
2 bringing the action. The qui tam plaintiff shall have the
3 right to continue as a full party to the action subject to the
4 limitations described in subdivision (2).

5 (2)a. The state may seek to dismiss the action
6 notwithstanding the objections of the qui tam plaintiff if the
7 qui tam plaintiff has been notified by the state of the filing
8 of the motion and the court has provided the qui tam plaintiff
9 with an opportunity to oppose the motion at a hearing.

10 b. The state may settle the action with the
11 defendant notwithstanding the objections of the qui tam
12 plaintiff if the court determines, after a hearing, that the
13 proposed settlement is fair, adequate, and reasonable under
14 all of the circumstances. Upon a showing of good cause, the
15 hearing may be held in camera.

16 c. Upon a showing by the state that unrestricted
17 participation during the course of the litigation by the qui
18 tam plaintiff would interfere with or unduly delay the state's
19 prosecution of the case, or would be repetitious, irrelevant,
20 or for purposes of harassment, the court, in its discretion,
21 may impose any of the following limitations on the person's
22 participation:

23 1. Limiting the number of witnesses the person may
24 call.

25 2. Limiting the length of the testimony of
26 witnesses.

1 3. Limiting the person's cross-examination of
2 witnesses.

3 4. Otherwise limiting the participation by the
4 person in the litigation.

5 d. Upon a showing by the defendant that unrestricted
6 participation during the course of the litigation by the qui
7 tam plaintiff would be for purposes of harassment or would
8 cause the defendant undue burden or unnecessary expense, the
9 court may limit the participation by the person in the
10 litigation.

11 (d) (1) If the state elects not to proceed, the qui
12 tam plaintiff shall have the same right to proceed in the
13 action as the Attorney General would have had if the Attorney
14 General had chosen to proceed pursuant to subsection (b). If
15 the state requests, and at its expense, the state shall be
16 served with copies of all pleadings filed in the action and
17 supplied with copies of all deposition transcripts. When a
18 person proceeds with the action, the court, without limiting
19 the status and rights of the qui tam plaintiff, may permit the
20 state to intervene at a later date upon a showing of good
21 cause.

22 (2) Whether or not the state proceeds with the
23 action, upon a showing by the state that certain actions of
24 discovery by the qui tam plaintiff would interfere with the
25 state's investigation or prosecution of a criminal or civil
26 matter arising out of the same facts, the court may stay such
27 discovery for a period of not more than 60 days. The showing

1 shall be conducted in camera. The court may extend the 60-day
2 period upon a further showing in camera that the state has
3 pursued the criminal or civil investigation or proceedings
4 with reasonable diligence and any proposed discovery in the
5 civil action will interfere with the ongoing criminal or civil
6 investigation or proceedings.

7 (3) Notwithstanding subsection (b), the state may
8 elect to pursue its claim through any alternate remedy
9 available to the state, including any administrative
10 proceeding to determine a civil money penalty. If any
11 alternate remedy is pursued in another proceeding, the qui tam
12 plaintiff shall have the same rights in such proceeding as
13 such person would have had if the action had continued under
14 this section. Any finding of fact or conclusion of law made in
15 such other proceeding that has become final shall be
16 conclusive on all parties to an action under this section. For
17 purposes of the preceding sentence, a finding or conclusion is
18 final if it has been finally determined on appeal to the
19 appropriate court of this state or the United States, if all
20 time for filing such an appeal with respect to the finding or
21 conclusion has expired, or if the finding or conclusion is not
22 subject to judicial review.

23 (e) (1) If the state proceeds with an action brought
24 by a qui tam plaintiff pursuant to subsection (b), the qui tam
25 plaintiff shall receive at least 15 percent, but not more than
26 25 percent, of the proceeds of the action or settlement of the
27 claim, depending upon the extent to which the qui tam

1 plaintiff substantially contributed to the prosecution of the
2 action.

3 (2) Where the action is one which the court finds to
4 be based primarily on disclosures of specific information,
5 other than information provided by the qui tam plaintiff,
6 relating to allegations or transactions specifically in a
7 criminal, civil, or administrative hearing, in a legislative
8 or administrative report, hearing, audit, or investigation, or
9 from the news media, the court may award such sums as it
10 considers appropriate, but in no case more than 10 percent of
11 the proceeds, taking into account the significance of the
12 information and the role of the person bringing the action in
13 advancing the case to litigation. Any payment under this
14 subdivision shall be made from the proceeds. The person shall
15 also receive an amount for reasonable expenses which the court
16 finds to have been necessarily incurred, plus reasonable
17 attorney's fees and costs. All expenses, fees, and costs shall
18 be awarded against the defendant.

19 (3) If the state does not proceed with an action
20 pursuant to subsection (b), the qui tam plaintiff shall
21 receive an amount which the court decides is reasonable for
22 collecting the civil penalty and damages on behalf of the
23 state. The amount shall be at least 25 percent, but not more
24 than 30 percent, of the proceeds of the action or settlement
25 and shall be paid out of those proceeds. The person shall also
26 receive an amount for reasonable expenses which the court
27 finds to have been necessarily incurred, plus reasonable

1 attorney's fees and costs. All expenses, fees, and costs shall
2 be awarded against the defendant.

3 (4) Whether or not the state proceeds with the
4 action, if the court finds that the action was brought by a
5 person who planned and initiated the violation of Section 3
6 upon which the action was brought, then the court may, to the
7 extent the court considers appropriate, reduce the share of
8 the proceeds of the action which the person would otherwise
9 receive under subdivision (1) or (2), taking into account the
10 role of that person in advancing the case to litigation and
11 any relevant circumstances pertaining to the violation. If the
12 person bringing the action is convicted of criminal conduct
13 arising from his or her role in the violation of Section 3,
14 that person shall be dismissed from the civil action and shall
15 not receive any share of the proceeds of the action. The
16 dismissal shall not prejudice the right of the state to
17 continue the action.

18 (5) If the state does not proceed with the action
19 and the person bringing the action conducts the action, the
20 court may award to the defendant its reasonable attorney's
21 fees and expenses if the defendant prevails in the action and
22 the court finds that the claim of the person bringing the
23 action was clearly frivolous, clearly vexatious, or brought
24 primarily for purposes of harassment.

25 (f) The state is not liable for expenses that a qui
26 tam plaintiff incurs in bringing an action under this section.

1 Section 5. (a) A court shall not have jurisdiction
2 over an action brought pursuant to Section 4 against a member
3 of the Legislature, a member of the state judiciary, or an
4 elected official in the executive branch of the state, if the
5 action is based on evidence or information known to the state
6 when the action was brought.

7 (b) A person may not bring an action under Section 4
8 which is based upon allegations or transactions which are the
9 subject of a civil suit or an administrative proceeding in
10 which the state is already a party.

11 (c) (1) A court shall not have jurisdiction over an
12 action brought pursuant to this act based upon the public
13 disclosure of allegations or transactions in a criminal,
14 civil, or administrative hearing, in an investigation, report,
15 hearing, or audit conducted by or at the request of the
16 Legislature, or the Examiners of Public Accounts, or from the
17 news media, unless the action is brought by the Attorney
18 General or the person bringing the action is an original
19 source of the information.

20 (2) For purposes of this subsection, the term
21 "original source" means an individual who voluntarily
22 discloses to the state information on which the allegations
23 are based prior to public disclosure of the information as
24 provided in this subsection, or who has knowledge that is
25 independent of and materially adds to the publicly disclosed
26 allegations or transactions and has voluntarily provided the

1 information to the state before filing an action or claim
2 under this section.

3 Section 6. (a) An employer may not make, adopt, or
4 enforce any rule, regulation, or policy preventing an employee
5 from disclosing information to a government or law enforcement
6 agency or from acting in furtherance of a false claims action,
7 including investigating, initiating, testifying, or assisting
8 in an action filed or to be filed pursuant to Section 4.

9 (b) No employer may discharge, demote, suspend,
10 threaten, harass, deny promotion to, or in any other manner
11 discriminate against, an employee in the terms and conditions
12 of employment because of lawful acts done by the employee on
13 behalf of the employee or others in disclosing information to
14 a government or law enforcement agency or in furthering a
15 false claims action, including investigation for, initiation
16 of, testimony for, or assistance in, an action filed or to be
17 filed pursuant to Section 4.

18 (c) An employer who violates subsection (b) shall be
19 liable for all relief necessary to make the employee whole,
20 including reinstatement with the same seniority status, two
21 times the amount of back pay, interest on the back pay, and
22 compensation for any special damage sustained as a result of
23 the discrimination. In addition, the defendant shall be
24 required to pay litigation costs and reasonable attorney's
25 fees. An employee may bring an action in the appropriate
26 circuit court of the state for the relief provided in this
27 subsection.

1 (d) An action may not be brought under this section
2 more than three years after the last act of the employer that
3 is alleged to violate this section.

4 Section 7. (a) A civil action pursuant to Section 4
5 may not be filed more than six years after the date on which
6 the violation of Section 3 is committed, or more than three
7 years after the date when facts material to the right of
8 action are known or reasonably should have been known by the
9 official of the state charged with responsibility to act in
10 the circumstances, but in no event more than 10 years after
11 the date on which the violation is committed, whichever occurs
12 last.

13 (b) In any action brought pursuant to Section 4 the
14 state or the qui tam plaintiff shall be required to prove all
15 essential elements of the cause of action, including damages,
16 by a preponderance of the evidence.

17 (c) Notwithstanding any other provision of law, a
18 guilty verdict rendered in a criminal proceeding charging
19 false statements or fraud, whether upon a verdict after trial
20 or upon a plea of guilty or nolo contendere, except for a plea
21 of nolo contendere made prior to the effective date of this
22 act, shall estop the defendant from denying the essential
23 elements of the offense in any action which involves the same
24 transaction as in the criminal proceeding and which is brought
25 pursuant to subsection (a) or subsection (b) of Section 4.

26 Section 8. (a) The provisions of this act are not
27 exclusive, and the remedies provided for in this act shall be

1 in addition to any other remedies provided for in any other
2 law or available under common law.

3 (b) This act shall be liberally construed and
4 applied to promote the public interest.

5 Section 9. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor, or its otherwise becoming law.