

By: Mowery

H.B. No. 400

A BILL TO BE ENTITLED

AN ACT

relating to false claims against the state and actions by private persons to prosecute those claims; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2115 to read as follows:

CHAPTER 2115. FALSE CLAIMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2115.001. DEFINITIONS. In this chapter:

(1) "Qui tam action" means an action brought by a private person against a person for the commission of a false claim under Section 2115.051.

(2) "Qui tam plaintiff" means the person bringing a qui tam action.

(3) "State" means state government as defined by Section 101.001, Civil Practice and Remedies Code.

Sec. 2115.002. CERTAIN ACTIONS BARRED. (a) A person may not bring a qui tam action based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

(b) A person may not bring a qui tam action based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person

1 bringing the action is an original source of the information. In  
2 this subsection, "original source" means an individual who has  
3 direct and independent knowledge of the information on which the  
4 allegations are based and has voluntarily provided the information  
5 to the state before filing an action under this chapter that is  
6 based on the information.

7 Sec. 2115.003. CHAPTER NOT APPLICABLE TO MEDICAID  
8 FRAUD. This chapter does not apply to an unlawful act described by  
9 Section 36.002, Human Resources Code, relating to Medicaid fraud.

10 [Sections 2115.004-2115.050 reserved for expansion]

11 SUBCHAPTER B. FALSE CLAIMS

12 Sec. 2115.051. FALSE CLAIMS. (a) In this section:

13 (1) "Claim" includes any request or demand, under a  
14 contract or otherwise, for money or property that is made to a  
15 contractor, grantee, or other recipient if this state:

16 (A) provides any portion of the money or property  
17 that is requested or demanded; or

18 (B) will reimburse the contractor, grantee, or  
19 other recipient for any portion of the money or property that is  
20 requested or demanded.

21 (2) "Knowingly" means:

22 (A) actual knowledge of the information;

23 (B) deliberate ignorance of the truth or falsity  
24 of the information; or

25 (C) reckless disregard of the truth or falsity of  
26 the information.

27 (b) A person commits a false claim if the person:

1           (1) knowingly presents, or causes to be presented, to  
2 an officer or employee of this state a false or fraudulent claim for  
3 payment or approval;

4           (2) knowingly makes, uses, or causes to be made or used  
5 a false record or statement to get a false or fraudulent claim paid  
6 or approved by this state;

7           (3) conspires to defraud this state by getting a false  
8 or fraudulent claim allowed or paid;

9           (4) has possession, custody, or control of property or  
10 money used or to be used by this state and, intending to defraud  
11 this state or wilfully to conceal the property, delivers or causes  
12 to be delivered less property than the amount for which the person  
13 receives a certificate or receipt;

14           (5) is authorized to make or deliver a document  
15 certifying receipt of property used or to be used by this state and,  
16 intending to defraud this state, makes or delivers the receipt  
17 without completely knowing that the information on the receipt is  
18 true;

19           (6) knowingly buys or receives as a pledge of an  
20 obligation or debt public property from an officer or employee of  
21 this state who lawfully may not sell or pledge the property; or

22           (7) knowingly makes, uses, or causes to be made or used  
23 a false record or statement to conceal, avoid, or decrease an  
24 obligation to pay or transmit money or property to this state.

25           Sec. 2115.052. CIVIL PENALTY. (a) A person who commits a  
26 false claim under Section 2115.051 is liable to this state for a  
27 civil penalty equal to the sum of:

1           (1) an amount not less than \$5,000 and not more than  
2 \$10,000;

3           (2) except as provided by Subsection (b), three times  
4 the amount of damages that this state sustains because of the act of  
5 the person; and

6           (3) the costs of a civil action brought to recover the  
7 penalty.

8           (b) A court may assess not less than two times the amount of  
9 damages under Subsection (a)(2) if the court finds that the person  
10 committing a false claim:

11           (1) furnished the attorney general with all  
12 information known to the person about the false claim on or before  
13 the 30th day after the date the person first obtained the  
14 information;

15           (2) fully cooperated with any investigation of the  
16 false claim; and

17           (3) at the time the person furnished information about  
18 the false claim, a criminal prosecution, civil action, or  
19 administrative action had not commenced in relation to the false  
20 claim and the person did not have actual knowledge of the existence  
21 of an investigation into the false claim.

22           [Sections 2115.053-2115.100 reserved for expansion]

23           SUBCHAPTER C. ACTIONS BY PRIVATE PERSONS

24           Sec. 2115.101. DEFINITION. In this subchapter, "proceeds  
25 of the action" means the amount of money awarded to the state in a  
26 final judgement or agreed to be paid to the state in a settlement  
27 agreement as a result of the qui tam action. The term does not

1 include attorney's fees, costs, or expenses incurred in bringing  
2 the action.

3 Sec. 2115.102. ACTIONS BY PRIVATE PERSON AUTHORIZED;  
4 ALTERNATIVE REMEDY SOUGHT BY STATE. (a) Subject to Section  
5 2115.151, a private person may bring a civil action against a person  
6 committing a false claim under Section 2115.051.

7 (b) The action is a qui tam action on behalf of both the  
8 person and the state.

9 (c) The qui tam action must be brought in the name of this  
10 state.

11 Sec. 2115.103. INITIATION OF ACTION. (a) A qui tam  
12 plaintiff shall serve a copy of the petition and a written  
13 disclosure of substantially all material evidence and information  
14 the person possesses on the attorney general in compliance with the  
15 Texas Rules of Civil Procedure.

16 (b) The petition shall be filed in camera and shall remain  
17 under seal until at least the 60th day after the date the petition  
18 is filed. The attorney general is entitled to access to the  
19 petition. The petition may not be served on the defendant until the  
20 court orders service on the defendant.

21 (c) The state may elect to intervene and proceed with the  
22 action not later than the 60th day after the date the attorney  
23 general receives the petition and the material evidence and  
24 information.

25 (d) The state may, for good cause shown, move the court to  
26 extend the time during which the petition remains under seal under  
27 Subsection (b). A motion under this subsection may be supported by

1 affidavits or other submissions in camera.

2 (e) An action under this subchapter may be dismissed before  
3 the end of the period prescribed by Subsection (b), as extended as  
4 provided by Subsection (d), if applicable, only if the court and the  
5 attorney general consent in writing to the dismissal and state  
6 their reasons for consenting.

7 Sec. 2115.104. ANSWER BY DEFENDANT. A defendant is not  
8 required to file an answer to a petition filed under this subchapter  
9 until the 20th day after the date the petition is unsealed and  
10 served on the defendant in compliance with the Texas Rules of Civil  
11 Procedure.

12 Sec. 2115.105. CHOICE OF STATE. (a) On or before the last  
13 day of the period described by Section 2115.103(c), the state  
14 shall:

15 (1) take over the qui tam action and proceed to conduct  
16 it; or

17 (2) notify the court that it declines to take over the  
18 action and allow the qui tam plaintiff to conduct it.

19 (b) The court shall not permit any person other than the  
20 attorney general to intervene in the action or bring a related  
21 action based on the facts underlying the pending action.

22 Sec. 2115.106. ACTION CONDUCTED BY STATE. (a) This  
23 section applies to a qui tam action the state takes over under  
24 Section 2115.105(a)(1).

25 (b) The state has the primary responsibility for  
26 prosecuting the action and is not bound by an act of the qui tam  
27 plaintiff.

1        (c) Subject to this section, the qui tam plaintiff is  
2 entitled to continue as a party to the action.

3        (d) Notwithstanding the objection of the qui tam plaintiff,  
4 the state may dismiss the action if:

5            (1) the state notifies the qui tam plaintiff that a  
6 motion to dismiss has been filed; and

7            (2) the court provides the qui tam plaintiff with an  
8 opportunity for a hearing on the motion.

9        (e) Notwithstanding the objection of the qui tam plaintiff,  
10 the state may settle the action if the court determines, after a  
11 hearing, that the proposed settlement is fair, adequate, and  
12 reasonable under all the circumstances. On a showing of good cause,  
13 the court may hold the hearing in camera.

14        (f) On a showing by the state that unrestricted  
15 participation in the litigation of the action by the qui tam  
16 plaintiff would interfere with or unduly delay the state's  
17 prosecution of the case or would be repetitious, irrelevant, or for  
18 purposes of harassment, the court may impose limitations on the  
19 person's participation, including:

20            (1) limiting the number of witnesses the qui tam  
21 plaintiff may call;

22            (2) limiting the length of the testimony of witnesses  
23 called by the qui tam plaintiff;

24            (3) limiting the qui tam plaintiff's cross-examination  
25 of witnesses; or

26            (4) otherwise limiting the participation by the qui  
27 tam plaintiff in the litigation.

1       (g) On a showing by the defendant that unrestricted  
2 participation in the litigation of the action by the qui tam  
3 plaintiff would be for purposes of harassment or would cause the  
4 defendant undue burden or unnecessary expense, the court may limit  
5 the participation by the qui tam plaintiff in the litigation.

6       Sec. 2115.107. ACTION CONDUCTED BY QUI TAM PLAINTIFF. (a)  
7 This section applies to a qui tam action the state declines to take  
8 over under Section 2115.105(a)(2).

9       (b) The qui tam plaintiff is entitled to conduct the action.

10       (c) At the request of the state, the qui tam plaintiff shall  
11 serve the state with a copy of each pleading filed in the action,  
12 each motion filed related to discovery, and all documents related  
13 to discovery, including interrogatories and deposition  
14 transcripts. The state is responsible for the expense of making and  
15 serving the copies.

16       (d) On a showing of good cause, the court may, during the  
17 course of the action, permit the state to intervene. The court may  
18 not, as a result of the intervention, limit the status or  
19 entitlement of the qui tam plaintiff to conduct the action.

20       Sec. 2115.108. STAY OF CERTAIN DISCOVERY. (a) This  
21 section applies without regard to whether the state takes over or  
22 declines to take over the qui tam action.

23       (b) On a showing by the state that certain actions of  
24 discovery by the qui tam plaintiff would interfere with the state's  
25 investigation or prosecution of a criminal or civil matter arising  
26 out of the same facts, the court may stay the discovery for a period  
27 not to exceed 60 days.



1       (c) The court shall hear a motion to stay discovery under  
2 this section in camera.

3       (d) The court may extend the period prescribed by Subsection  
4 (b) on a further showing in camera that the state has pursued the  
5 criminal or civil investigation or proceedings with reasonable  
6 diligence and that any proposed discovery in the civil action will  
7 interfere with the ongoing criminal or civil investigation or  
8 proceedings.

9       Sec. 2115.109. AWARD TO QUI TAM PLAINTIFF WHEN STATE  
10 PROCEEDS WITH ACTION. (a) This section applies to a qui tam action  
11 the state takes over under Section 2115.105(a)(1).

12       (b) Except as provided by Subsection (c), the court shall  
13 award the qui tam plaintiff at least 10 percent but not more than 25  
14 percent of the proceeds of the action, depending on the extent to  
15 which the court determines the person substantially contributed to  
16 the prosecution of the action.

17       (c) If the court finds that the action is based primarily on  
18 disclosures of specific information, other than information  
19 provided by the qui tam plaintiff, relating to allegations or  
20 transactions in a criminal or civil hearing, in a legislative or  
21 administrative report, hearing, audit, or investigation, or from  
22 the news media, the court may award the amount the court considers  
23 appropriate but not more than 10 percent of the proceeds of the  
24 action. The court shall consider the significance of the  
25 information and the role of the qui tam plaintiff in advancing the  
26 case to litigation.

27       (d) A payment to a person under this section shall be made

1 from the proceeds of the action. A person receiving a payment under  
2 this section is also entitled to receive an amount for reasonable  
3 expenses that the court finds to have been necessarily incurred,  
4 plus reasonable attorney's fees and costs. Expenses, fees, and  
5 costs shall be awarded against the defendant.

6 Sec. 2115.110. AWARD TO QUI TAM PLAINTIFF WHEN STATE DOES  
7 NOT PROCEED WITH ACTION. (a) This section applies to a qui tam  
8 action the state declines to take over under Section  
9 2115.105(a)(2).

10 (b) The court shall award the qui tam plaintiff an amount  
11 the court decides is reasonable for collecting the civil penalty  
12 and damages but not less than 25 percent and not more than 30  
13 percent of the proceeds of the action.

14 (c) A payment to a person under this section shall be made  
15 from the proceeds of the action. A person receiving a payment under  
16 this section is also entitled to receive an amount for reasonable  
17 expenses that the court finds to have been necessarily incurred,  
18 plus reasonable attorney's fees and costs. Expenses, fees, and  
19 costs shall be awarded against the defendant.

20 (d) The court may award to the defendant reasonable  
21 attorney's fees and expenses incurred in defending against the  
22 action if:

23 (1) the defendant prevails in the action; and

24 (2) the court finds that the claim of the qui tam  
25 plaintiff was clearly frivolous or vexatious, or brought primarily  
26 for purposes of harassment.

27 Sec. 2115.111. REDUCTION OF AWARD. (a) This section

1 applies without regard to whether the state takes over or declines  
2 to take over the qui tam action.

3 (b) If the court finds that the qui tam plaintiff planned  
4 and initiated the false claim that is the basis of the qui tam  
5 action, the court may, to the extent the court considers  
6 appropriate, reduce the share of the proceeds of the action the  
7 person would otherwise receive under Section 2115.109 or 2115.110,  
8 taking into account the qui tam plaintiff's role in advancing the  
9 case to litigation and any relevant circumstances pertaining to the  
10 violation.

11 (c) If the qui tam plaintiff is convicted of criminal  
12 conduct arising from the person's role in the false claim, the court  
13 shall dismiss the plaintiff from the civil action and the plaintiff  
14 may not receive any share of the proceeds of the action. A  
15 dismissal under this subsection does not prejudice the right of the  
16 state to continue the qui tam action.

17 Sec. 2115.112. STATE NOT LIABLE FOR CERTAIN EXPENSES. The  
18 state is not liable for expenses that a qui tam plaintiff incurs in  
19 bringing an action under this subchapter, including any award the  
20 court may make on behalf of the defendant under Section  
21 2115.110(d).

22 Sec. 2115.113. RETALIATION BY EMPLOYER AGAINST PERSON  
23 BRINGING SUIT PROHIBITED. (a) A person who is discharged,  
24 demoted, suspended, threatened, harassed, or in any other manner  
25 discriminated against in the terms of employment by the person's  
26 employer because of a lawful act taken by the person in furtherance  
27 of a qui tam action, including investigation for, initiation of,

1 testimony for, or assistance in a qui tam action filed or to be  
2 filed, is entitled to:

3 (1) reinstatement with the same seniority status the  
4 person would have had but for the discrimination; and

5 (2) not less than two times the amount of back pay,  
6 interest on the back pay, and compensation for any special damages  
7 sustained as a result of the discrimination, including litigation  
8 costs and reasonable attorney's fees.

9 (b) A person may bring an action in the appropriate district  
10 court for the relief provided in this section.

11 [Sections 2115.114-2115.150 reserved for expansion]

12 SUBCHAPTER D. ACTION BY STATE

13 Sec. 2115.151. STATE MAY PURSUE AN ALTERNATE REMEDY. (a)  
14 After a qui tam action is filed, the state may elect to prosecute  
15 the false claim that is the subject of the action through any  
16 alternate remedy available to the state, including any  
17 administrative proceeding to determine an administrative penalty.

18 (b) The qui tam plaintiff has the same rights in the other  
19 proceeding as the person would have had if the action had continued  
20 in the original forum, including a monetary award as provided by  
21 Subchapter C.

22 (c) A finding of fact or conclusion of law made in the other  
23 proceeding that has become final is conclusive on all parties to the  
24 qui tam action. For purposes of this subsection, a finding or  
25 conclusion is final if:

26 (1) the finding or conclusion has been finally  
27 determined on appeal to the appropriate court;

1           (2) no appeal has been filed with respect to the  
2 finding or conclusion and all time for filing an appeal has expired;  
3 or

4           (3) the finding or conclusion is not subject to  
5 judicial review.

6           Sec. 2115.152. RESPONSIBILITIES OF THE ATTORNEY  
7 GENERAL. The attorney general shall diligently investigate the  
8 commission of a false claim under Section 2115.051 and may bring a  
9 civil action against the person committing the false claim.

10           SECTION 2. (a) This Act takes effect immediately if it  
11 receives a vote of two-thirds of all the members elected to each  
12 house, as provided by Section 39, Article III, Texas Constitution.  
13 If this Act does not receive the vote necessary for immediate  
14 effect, this Act takes effect September 1, 2003.

15           (b) This Act applies only to a false claim as described by  
16 Section 2115.051, Government Code, as added by this Act, that takes  
17 place on or after the effective date of this Act. A false claim  
18 takes place on or after the effective date of this Act only if all  
19 elements of the false claim take place on or after the effective  
20 date of this Act.