

By: Haggerty

H.B. No. 2690

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 2116 to read as follows:

CHAPTER 2116. FALSE CLAIMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2116.001. 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 2116.051.

(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. 2116.002. 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 against a member of the legislature, a member of the judiciary, or a senior official of the executive branch if the action is based on evidence or information known to the state when the action was brought.

1 (c) On motion of the attorney general, a court may, after
2 considering all the equities, dismiss a qui tam action if the
3 elements of the actionable false claims alleged in the qui tam
4 complaint have been publicly disclosed specifically in the news
5 media or in a publicly disseminated governmental report, at the
6 time the complaint is filed.

7 Sec. 2116.003. CHAPTER NOT APPLICABLE TO MEDICAID FRAUD.
8 This chapter does not apply to an unlawful act described by Section
9 36.002, Human Resources Code, relating to Medicaid fraud.

10 [Sections 2116.004-2116.050 reserved for expansion]

11 SUBCHAPTER B. FALSE CLAIMS

12 Sec. 2116.051. 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" does not require specific intent to
22 defraud. "Knowingly" means:

23 (A) actual knowledge of the information;

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

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

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

2 (1) knowingly presents, or causes to be presented, to
3 an officer, employee, or agent of this state, or to any contractor,
4 grantee, or other recipient of state funds, a false or fraudulent
5 claim for payment or approval;

6 (2) knowingly makes, uses, or causes to be made or used
7 a false record or statement to get a false or fraudulent claim paid
8 or approved;

9 (3) conspires to defraud this state by getting a false
10 or fraudulent claim allowed or paid, or conspires to defraud this
11 state by knowingly making, using, or causing to be made or used, a
12 false record or statement to conceal, avoid, or decrease an
13 obligation to pay or transmit money or property to this state;

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

18 (5) is authorized to make or deliver a document
19 certifying receipt of property used or to be used by this state and
20 knowingly makes or delivers a receipt that falsely represents the
21 property used or to be used;

22 (6) knowingly buys, or receives as a pledge of an
23 obligation or debt, public property from any person who lawfully
24 may not sell or pledge the property;

25 (7) knowingly makes, uses, or causes to be made or used
26 a false record or statement to conceal, avoid, or decrease an
27 obligation to pay or transmit money or property to this state; or

1 (8) is a beneficiary of an inadvertent submission of a
2 false claim to any employee, officer, or agent of this state, or to
3 any contractor, grantee, or other recipient of state funds,
4 subsequently discovers the falsity of the claim, and fails to
5 disclose the false claim to this state within a reasonable time
6 after discovery of the false claim.

7 Sec. 2116.052. CIVIL PENALTY. (a) A person who commits a
8 false claim under Section 2116.051 is liable to this state for a
9 civil penalty equal to the sum of:

10 (1) an amount not less than \$5,000 and not more than
11 \$10,000;

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

15 (3) the costs of a civil action brought to recover the
16 penalty.

17 (b) A court may assess not less than two times the amount of
18 damages under Subsection (a)(2) if the court finds:

19 (1) that the person committing a false claim furnished
20 the attorney general with all information known to the person about
21 the false claim on or before the 30th day after the date the person
22 first obtained the information;

23 (2) that the person committing a false claim fully
24 cooperated with any investigation of the false claim; and

25 (3) at the time the person furnished information about
26 the false claim, a criminal prosecution, civil action, or
27 administrative action had not commenced in relation to the false

1 claim and the person did not have actual knowledge of the existence
2 of an investigation into the false claim.

3 Sec. 2116.053. EXCLUSION. This subchapter does not apply
4 to a claim, record, or statement made under the Tax Code.

5 [Sections 2116.054-2116.100 reserved for expansion]

6 SUBCHAPTER C. ACTIONS BY PRIVATE PERSONS

7 Sec. 2116.101. DEFINITION. In this subchapter, "proceeds
8 of the action" means the amount of money awarded to the state in a
9 final judgment or agreed to be paid to the state in a settlement
10 agreement as a result of the qui tam action. The term does not
11 include attorney's fees, costs, or expenses incurred in bringing
12 the action.

13 Sec. 2116.102. ACTIONS BY PRIVATE PERSON AUTHORIZED;
14 ALTERNATIVE REMEDY SOUGHT BY STATE. (a) Subject to Section
15 2116.151, a private person may bring a civil action against a person
16 committing a false claim under Section 2116.051.

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

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

21 Sec. 2116.103. INITIATION OF ACTION. (a) A qui tam
22 plaintiff shall serve a copy of the petition and a written
23 disclosure of substantially all material evidence and information
24 the person possesses on the attorney general in compliance with the
25 Texas Rules of Civil Procedure.

26 (b) The petition shall be filed in camera and shall remain
27 under seal until at least the 60th day after the date the petition

1 is filed. The attorney general is entitled to access to the
2 petition. The petition may not be served on the defendant until the
3 court orders service on the defendant.

4 (c) The state may elect to intervene and proceed with the
5 action not later than the 60th day after the date the attorney
6 general receives the petition and the material evidence and
7 information.

8 (d) The state may, for good cause shown, move the court to
9 extend the time during which the petition remains under seal under
10 Subsection (b). A motion under this subsection may be supported by
11 affidavits or other submissions in camera.

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

17 Sec. 2116.104. ANSWER BY DEFENDANT. A defendant is not
18 required to file an answer to a petition filed under this subchapter
19 until the 20th day after the date the petition is unsealed and
20 served on the defendant in compliance with the Texas Rules of Civil
21 Procedure.

22 Sec. 2116.105. CHOICE OF STATE. (a) On or before the last
23 day of the period described by Section 2116.103(c), the state
24 shall:

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

27 (2) notify the court that it declines to take over the

1 action and allow the qui tam plaintiff to conduct it.

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

5 Sec. 2116.106. ACTION CONDUCTED BY STATE. (a) This
6 section applies to a qui tam action the state takes over under
7 Section 2116.105(a)(1).

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

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

13 (d) Notwithstanding the objection of the qui tam plaintiff,
14 the state may dismiss the action for good cause if:

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

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

19 (e) Notwithstanding the objection of the qui tam plaintiff,
20 the state may settle the action if the court determines, after a
21 hearing, that the proposed settlement is fair, adequate, and
22 reasonable under all the circumstances.

23 (f) On a showing by the state that unrestricted
24 participation in the litigation of the action by the qui tam
25 plaintiff would interfere with or unduly delay the state's
26 prosecution of the case or would be repetitious, irrelevant, or for
27 purposes of harassment, the court may impose limitations on the

1 person's participation, including:

2 (1) limiting the number of witnesses the qui tam
3 plaintiff may call;

4 (2) limiting the length of the testimony of witnesses
5 called by the qui tam plaintiff;

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

8 (4) otherwise limiting the participation by the qui
9 tam plaintiff in the litigation.

10 (g) On a showing by the defendant that unrestricted
11 participation in the litigation of the action by the qui tam
12 plaintiff would be for purposes of harassment or would cause the
13 defendant undue burden or unnecessary expense, the court may limit
14 the participation by the qui tam plaintiff in the litigation.

15 Sec. 2116.107. ACTION CONDUCTED BY QUI TAM PLAINTIFF. (a)
16 This section applies to a qui tam action the state declines to take
17 over under Section 2116.105(a)(2).

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

19 (c) At the request of the state, the qui tam plaintiff shall
20 serve the state with a copy of each pleading filed in the action,
21 each motion filed related to discovery, and all documents related
22 to discovery, including interrogatories and deposition
23 transcripts. The state is responsible for the expense of making and
24 serving the copies.

25 (d) On a showing of good cause, the court may, during the
26 course of the action, permit the state to intervene. The court may
27 not, as a result of the intervention, limit the status or

1 entitlement of the qui tam plaintiff to conduct the action.

2 Sec. 2116.108. STAY OF CERTAIN DISCOVERY. (a) This
3 section applies without regard to whether the state takes over or
4 declines to take over the qui tam action.

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

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

12 (d) The court may extend the period prescribed by Subsection
13 (b) on a further showing in camera that the state has pursued the
14 criminal or civil investigation or proceedings with reasonable
15 diligence and that any proposed discovery in the civil action will
16 interfere with the ongoing criminal or civil investigation or
17 proceedings.

18 Sec. 2116.109. AWARD TO QUI TAM PLAINTIFF WHEN STATE
19 PROCEEDS WITH ACTION. (a) This section applies to a qui tam action
20 the state takes over under Section 2116.105(a)(1).

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

26 (c) If the court finds that the action is based primarily on
27 disclosures of specific information, other than information

1 provided by the qui tam plaintiff, relating to allegations or
2 transactions in a criminal or civil hearing, in a legislative or
3 administrative report, hearing, audit, or investigation, or from
4 the news media, the court may award the amount the court considers
5 appropriate but not more than 10 percent of the proceeds of the
6 action. The court shall consider the significance of the
7 information and the role of the qui tam plaintiff in advancing the
8 case to litigation.

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

15 Sec. 2116.110. AWARD TO QUI TAM PLAINTIFF WHEN STATE DOES
16 NOT PROCEED WITH ACTION. (a) This section applies to a qui tam
17 action the state declines to take over under Section
18 2116.105(a)(2).

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

23 (c) A payment to a person under this section shall be made
24 from the proceeds of the action. A person receiving a payment under
25 this section is also entitled to receive an amount for reasonable
26 expenses that the court finds to have been necessarily incurred,
27 plus reasonable attorney's fees and costs. Expenses, fees, and

1 costs shall be awarded against the defendant.

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

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

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

9 Sec. 2116.111. REDUCTION OF AWARD. (a) This section
10 applies without regard to whether the state takes over or declines
11 to take over the qui tam action.

12 (b) If the court finds that the qui tam plaintiff planned
13 and initiated the false claim that is the basis of the qui tam
14 action, the court may, to the extent the court considers
15 appropriate, reduce the share of the proceeds of the action the
16 person would otherwise receive under Section 2116.109 or 2116.110,
17 taking into account the qui tam plaintiff's role in advancing the
18 case to litigation and any relevant circumstances pertaining to the
19 violation.

20 (c) If the qui tam plaintiff is convicted of criminal
21 conduct arising from the person's role in the false claim, the court
22 shall dismiss the plaintiff from the civil action and the plaintiff
23 may not receive any share of the proceeds of the action. A
24 dismissal under this subsection does not prejudice the right of the
25 state to continue the qui tam action.

26 Sec. 2116.112. STATE NOT LIABLE FOR CERTAIN EXPENSES. The
27 state is not liable for expenses that a qui tam plaintiff incurs in

1 bringing an action under this subchapter, including any award the
2 court may make on behalf of the defendant under Section
3 2116.110(d).

4 Sec. 2116.113. RETALIATION BY EMPLOYER AGAINST PERSON
5 BRINGING SUIT PROHIBITED. (a) A person who is discharged, demoted,
6 suspended, threatened, harassed, or in any other manner
7 discriminated against in the terms of employment by the person's
8 employer because of a lawful act taken by the person in furtherance
9 of a qui tam action, including investigation for, initiation of,
10 testimony for, or assistance in a qui tam action filed or to be
11 filed, is entitled to all relief necessary to make the person whole,
12 including:

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

15 (2) two times the amount of back pay, interest on the
16 back pay, and compensation for any special damages sustained as a
17 result of the discrimination, including litigation costs and
18 reasonable attorney's fees.

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

21 [Sections 2116.114-2116.150 reserved for expansion]

22 SUBCHAPTER D. ACTION BY STATE

23 Sec. 2116.151. STATE MAY PURSUE AN ALTERNATE REMEDY. (a)
24 After a qui tam action is filed, the state may elect to prosecute
25 the false claim that is the subject of the action through any
26 alternate remedy available to the state, including any
27 administrative proceeding to determine an administrative penalty.

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

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

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

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

14 (3) the finding or conclusion is not subject to
15 judicial review.

16 Sec. 2116.152. RESPONSIBILITIES OF THE ATTORNEY GENERAL.
17 The attorney general shall diligently investigate the commission of
18 a false claim under Section 2116.051 and may bring a civil action
19 against the person committing the false claim.

20 SECTION 2. This Act applies only to a false claim as
21 described by Section 2116.051, Government Code, as added by this
22 Act, that takes place on or after the effective date of this Act. A
23 false claim takes place on or after the effective date of this Act
24 only if all elements of the false claim take place on or after the
25 effective date of this Act.

26 SECTION 3. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2007.