

By: Wentworth

S.B. No. 496

A BILL TO BE ENTITLED

AN ACT

relating to certain unlawful acts involving state money or property and actions by the state and private persons to prosecute those acts; 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. UNLAWFUL ACTS INVOLVING STATE MONEY OR PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2116.001. DEFINITIONS. In this chapter:

(1) "Claim" includes any request or demand, under a contract or otherwise, for state money or property.

(2) "Documentary material" means:

(A) the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document;

(B) data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations; and

(C) any product of discovery.

(3) "Product of discovery" means:

(A) the original or a copy of a deposition, interrogatory, document, thing, result of inspection of land or

1 other property, examination, or admission that is obtained by any
2 method of discovery in a judicial or administrative proceeding of
3 an adversarial nature;

4 (B) a digest, analysis, selection, compilation,
5 or derivation of any item listed in Paragraph (A); and

6 (C) an index, instruction, or other aid or means
7 of access to any item listed in Paragraph (A).

8 (4) "Qui tam action" means an action brought by a
9 private person against a person for the commission of an unlawful
10 act under Section 2116.101.

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

13 (6) "State money or property" means money or property:

14 (A) that belongs to the state; or

15 (B) that:

16 (i) the state provides or has provided to a
17 contractor, grantee, or other recipient or for which the state will
18 reimburse the contractor, grantee, or other recipient; and

19 (ii) is to be spent or used on the state's
20 behalf or to advance a state program.

21 Sec. 2116.002. WHEN PERSON ACTS KNOWINGLY. (a) In this
22 chapter, a person acts "knowingly" with respect to information if
23 the person:

24 (1) has knowledge of the information;

25 (2) acts with conscious indifference to the truth or
26 falsity of the information; or

27 (3) acts in reckless disregard of the truth or falsity

1 of the information.

2 (b) Proof of the person's specific intent to commit an
3 unlawful act under Section 2116.101 is not required in a civil or
4 administrative proceeding under this chapter to show that the
5 person acted "knowingly" with respect to information.

6 Sec. 2116.003. CERTAIN ACTIONS BARRED. A person other than
7 the attorney general may not bring an action under this chapter
8 against an officer or employee of the state.

9 Sec. 2116.004. CHAPTER NOT APPLICABLE TO MEDICAID FRAUD.
10 This chapter does not apply to an unlawful act described by Section
11 36.002, Human Resources Code, relating to Medicaid fraud.

12 [Sections 2116.005-2116.050 reserved for expansion]

13 SUBCHAPTER B. INVESTIGATION BY THE ATTORNEY GENERAL

14 Sec. 2116.051. RESPONSIBILITY OF THE ATTORNEY GENERAL. The
15 attorney general shall diligently investigate the commission of an
16 unlawful act under Section 2116.101 and may bring an action against
17 the person committing the unlawful act in Travis County or a county
18 in which any part of the unlawful act occurred for civil remedies
19 under Section 2116.102 or 2116.201.

20 Sec. 2116.052. INVESTIGATION. (a) The attorney general
21 may take action under Subsection (b) if the attorney general has
22 reason to believe that:

23 (1) a person has information or custody or control of
24 documentary material relevant to the subject matter of an
25 investigation of an alleged unlawful act under Section 2116.101;

26 (2) a person is committing, has committed, or is about
27 to commit an unlawful act under Section 2116.101; or

1 (3) it is in the public interest to conduct an
2 investigation to ascertain whether a person is committing, has
3 committed, or is about to commit an unlawful act under Section
4 2116.101.

5 (b) In investigating an unlawful act under this section, the
6 attorney general may:

7 (1) require the person to file on a prescribed form a
8 statement in writing, under oath or affirmation, as to all the facts
9 and circumstances concerning the alleged unlawful act and other
10 information considered necessary by the attorney general;

11 (2) examine under oath a person in connection with the
12 alleged unlawful act; and

13 (3) execute in writing and serve on the person a civil
14 investigative demand requiring the person to produce the
15 documentary material and permit inspection and copying of the
16 material under Section 2116.053.

17 (c) The office of the attorney general may not release or
18 disclose information that is obtained under Subsection (b)(1) or
19 (2) or any documentary material or other record derived from the
20 information except:

21 (1) by court order for good cause shown;

22 (2) with the consent of the person who provided the
23 information;

24 (3) to an employee of the attorney general;

25 (4) to an agency of this state, the United States, or
26 another state;

27 (5) to any attorney representing the state under

1 Section 2116.055 or in a civil action brought under Subchapter D;
2 (6) to a political subdivision of this state; or
3 (7) to a person authorized by the attorney general to
4 receive the information.

5 (d) The attorney general may use documentary material
6 derived from information obtained under Subsection (b)(1) or (2),
7 or copies of that material, as the attorney general determines
8 necessary in the enforcement of this chapter, including
9 presentation before a court.

10 (e) If a person fails to file a statement as required by
11 Subsection (b)(1) or fails to submit to an examination as required
12 by Subsection (b)(2), the attorney general may file in a district
13 court of Travis County a petition for an order to compel the person
14 to file the statement or submit to the examination within a period
15 stated by court order. Failure to comply with an order entered
16 under this subsection is punishable as contempt.

17 (f) An order issued by a district court under this section
18 is subject to appeal to the court of appeals.

19 Sec. 2116.053. CIVIL INVESTIGATIVE DEMAND. (a) An
20 investigative demand must:

21 (1) state the rule or statute under which the alleged
22 unlawful act is being investigated and the general subject matter
23 of the investigation;

24 (2) describe the class or classes of documentary
25 material to be produced with reasonable specificity to fairly
26 indicate the documentary material demanded;

27 (3) prescribe a return date within which the

1 documentary material is to be produced; and

2 (4) identify an authorized employee of the attorney
3 general to whom the documentary material is to be made available for
4 inspection and copying.

5 (b) A civil investigative demand may require disclosure of
6 any documentary material that is discoverable under the Texas Rules
7 of Civil Procedure.

8 (c) Service of an investigative demand may be made by:

9 (1) delivering an executed copy of the demand to the
10 person to be served or to a partner, an officer, or an agent
11 authorized by appointment or by law to receive service of process on
12 behalf of that person;

13 (2) delivering an executed copy of the demand to the
14 principal place of business in this state of the person to be
15 served; or

16 (3) mailing by registered or certified mail an
17 executed copy of the demand addressed to the person to be served at
18 the person's principal place of business in this state or, if the
19 person has no place of business in this state, to the person's
20 principal office or place of business.

21 (d) Documentary material demanded under this section shall
22 be produced for inspection and copying during normal business hours
23 at the office of the attorney general or as agreed by the person
24 served and the attorney general.

25 (e) The office of the attorney general may not produce for
26 inspection or copying or otherwise disclose the contents of
27 documentary material obtained under this section except:

1 (1) by court order for good cause shown;
2 (2) with the consent of the person who produced the
3 information;
4 (3) to an employee of the attorney general;
5 (4) to an agency of this state, the United States, or
6 another state;
7 (5) to any attorney representing the state under
8 Section 2116.055 or in a civil action brought under Subchapter D;
9 (6) to a political subdivision of this state; or
10 (7) to a person authorized by the attorney general to
11 receive the information.

12 (f) The attorney general shall prescribe reasonable terms
13 and conditions allowing the documentary material to be available
14 for inspection and copying by the person who produced the material
15 or by an authorized representative of that person. The attorney
16 general may use the documentary material or copies of it as the
17 attorney general determines necessary in the enforcement of this
18 chapter, including presentation before a court.

19 (g) A person may file a petition, stating good cause, to
20 extend the return date for the demand or to modify or set aside the
21 demand. A petition under this section shall be filed in a district
22 court of Travis County and must be filed before the earlier of:

- 23 (1) the return date specified in the demand; or
24 (2) the 20th day after the date the demand is served.

25 (h) Except as provided by court order, a person on whom a
26 demand has been served under this section shall comply with the
27 terms of an investigative demand.

1 (i) A person who has committed an unlawful act under Section
2 2116.101 has submitted to the jurisdiction of this state, and
3 personal service of an investigative demand under this section may
4 be made on the person outside of this state.

5 (j) This section does not limit the authority of the
6 attorney general to conduct investigations or to access a person's
7 documentary materials or other information under another state or
8 federal law, the Texas Rules of Civil Procedure, or the Federal
9 Rules of Civil Procedure.

10 (k) If a person fails to comply with an investigative
11 demand, or if copying and reproduction of the documentary material
12 demand cannot be satisfactorily accomplished and the person
13 refuses to surrender the documentary material, the attorney general
14 may file in a district court of Travis County a petition for an
15 order to enforce the investigative demand.

16 (l) If a petition is filed under Subsection (k), the court
17 may determine the matter presented and may enter an order to
18 implement this section.

19 (m) Failure to comply with a final order entered under
20 Subsection (k) is punishable by contempt.

21 (n) A final order issued by a district court under
22 Subsection (k) is subject to appeal to the court of appeals.

23 Sec. 2116.054. INJUNCTIVE RELIEF. (a) If the attorney
24 general has reason to believe that a person is committing, has
25 committed, or is about to commit an unlawful act under Section
26 2116.101, the attorney general may institute an action for an
27 appropriate order to restrain the person from committing or

1 continuing the unlawful act.

2 (b) An action under this section shall be brought in a
3 district court of Travis County, or in a county in which any part of
4 the unlawful act occurred, is occurring, or is about to occur.

5 Sec. 2116.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL
6 ACTION. To the extent permitted by 31 U.S.C. Sections 3729-3733,
7 the attorney general may bring an action as relator under 31 U.S.C.
8 Section 3730 with respect to an act for which a person may be held
9 liable under 31 U.S.C. Section 3729. The attorney general may
10 contract with a private attorney to represent the state under this
11 section.

12 Sec. 2116.056. STANDARD OF PROOF. The standard of proof for
13 all elements of a cause of action under this chapter is
14 preponderance of the evidence.

15 Sec. 2116.057. CHAPTER 41, CIVIL PRACTICE AND REMEDIES
16 CODE, INAPPLICABLE TO ACTION UNDER THIS CHAPTER. Chapter 41, Civil
17 Practice and Remedies Code, is not applicable to a cause of action
18 under this chapter.

19 [Sections 2116.058-2116.100 reserved for expansion]

20 SUBCHAPTER C. UNLAWFUL ACTS

21 Sec. 2116.101. LIABILITY FOR CERTAIN UNLAWFUL ACTS. (a) A
22 person is liable to the state for civil remedies as provided by
23 Section 2116.102 if the person:

24 (1) knowingly presents or causes to be presented for
25 payment or approval a false or fraudulent claim for state money or
26 property;

27 (2) knowingly makes, uses, or causes to be made or used

1 a false record or statement to get a false or fraudulent claim for
2 state money or property paid or approved;

3 (3) has possession, custody, or control of state money
4 or property and, with the intent to defraud the state or retain a
5 known overpayment or to knowingly convert the money or property,
6 permanently or temporarily, to an unauthorized use:

7 (A) fails to deliver or return, or cause the
8 delivery or return of, the money or property; or

9 (B) delivers, returns, or causes to be delivered
10 or returned less money or property than the amount due or owed;

11 (4) is authorized to make or deliver a document
12 certifying receipt of property used or to be used by the state and
13 knowingly makes or delivers a receipt that falsely represents the
14 property used or to be used;

15 (5) knowingly buys, or receives as a pledge of an
16 obligation or debt, state property from a state officer or employee
17 who lawfully may not sell or pledge the property;

18 (6) knowingly makes, uses, or causes to be made or used
19 a false record or statement to conceal, avoid, or decrease an
20 obligation to pay or transmit money or property to the state;

21 (7) knowingly pays, directly or indirectly, overtly or
22 covertly, any remuneration, including any bribe, kickback, or
23 rebate, in cash or in kind, to a person for the purpose of
24 influencing a decision regarding the selection, by contract or
25 otherwise, of a supplier, provider, or vendor of goods or services
26 to the state;

27 (8) knowingly obstructs an investigation by the

1 attorney general of any alleged violation set forth in this
2 subsection; or

3 (9) conspires to commit any violation set forth in
4 this subsection.

5 (b) All elements of the statutory cause of action created by
6 this section are set forth in Subsection (a). No proof of any
7 additional element of common law fraud or other cause of action is
8 implied or required to establish liability for a violation of this
9 section.

10 Sec. 2116.102. CIVIL REMEDIES. (a) Except as provided by
11 Subsection (c), a person who commits an unlawful act under Section
12 2116.101 is liable to the state for:

13 (1) the amount of any payment or the value of any
14 monetary or in-kind benefit realized, directly or indirectly, as a
15 result of the unlawful act, including any payment made to a third
16 party;

17 (2) interest on the amount of the payment or the value
18 of the benefit described by Subdivision (1) at the prejudgment
19 interest rate in effect on the day the payment or benefit was
20 received or paid, for the period from the date the payment or
21 benefit was received or paid to the date the state recovers the
22 amount of the payment or value of the benefit;

23 (3) a civil penalty of not less than \$5,000 and not
24 more than \$15,000 for each unlawful act committed by the person
25 under Section 2116.101;

26 (4) two times the amount of the payment or the value of
27 the benefit described by Subdivision (1); and

1 (5) if the defendant has been found liable in an action
2 under this chapter or has settled an action under this chapter,
3 fees, expenses, and costs reasonably incurred in obtaining relief
4 or civil remedies or conducting investigations under this chapter,
5 including court costs, reasonable attorney's fees, witness fees,
6 and deposition fees as determined by the court only after the
7 defendant is found liable or settles the action.

8 (b) In determining the amount of the civil penalty under
9 Subsection (a)(3), the trier of fact shall consider:

10 (1) whether the person has previously violated this
11 chapter;

12 (2) the seriousness of the unlawful act committed by
13 the person, including the nature, circumstances, extent, and
14 gravity of the unlawful act;

15 (3) whether the health or safety of the public or an
16 individual was threatened by the unlawful act; and

17 (4) the amount necessary to deter future unlawful
18 acts.

19 (c) The trier of fact may assess a total of not more than two
20 times the amount of a payment or benefit described by Subsection
21 (a)(1) if the trier of fact finds:

22 (1) that the person committing the unlawful act
23 furnished the attorney general with all information known to the
24 person about the unlawful act not later than the 30th day after the
25 date the person first obtained the information;

26 (2) that the person committing the unlawful act fully
27 cooperated with any investigation of the unlawful act; and

1 (3) at the time the person furnished information about
2 the unlawful act, a criminal prosecution, civil action, or
3 administrative action had not commenced in relation to the unlawful
4 act and the person did not have actual knowledge of the existence of
5 an investigation into the unlawful act.

6 (d) The attorney general may:

7 (1) bring an action for civil remedies under this
8 section or Section 2116.201 together with a suit for injunctive
9 relief under Section 2116.054; or

10 (2) bring an action for civil remedies independently
11 of an action for injunctive relief.

12 [Sections 2116.103-2116.150 reserved for expansion]

13 SUBCHAPTER D. ACTIONS BY PRIVATE PERSONS

14 Sec. 2116.151. ACTION BY PRIVATE PERSON AUTHORIZED. (a)
15 Subject to Section 2116.201, a private person may bring a civil
16 action against a person committing an unlawful act under Section
17 2116.101.

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

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

22 (d) The qui tam action must be brought in the district court
23 of Travis County.

24 (e) No person other than the attorney general may intervene
25 or bring a related action based on the facts underlying a pending
26 action under this subchapter or a pending administrative penalty
27 proceeding in which the state is a party.

1 Sec. 2116.152. INITIATION OF ACTION. (a) A qui tam
2 plaintiff shall serve a copy of the petition and a written
3 disclosure of substantially all material evidence and information
4 the person possesses on the attorney general in compliance with the
5 Texas Rules of Civil Procedure.

6 (b) The petition shall be filed in camera and, except as
7 provided by Subsection (d) or (e), shall remain under seal until at
8 least the 180th day after the date the petition is filed or the date
9 on which the state elects to intervene, whichever is earlier. The
10 petition may not be served on the defendant until the court orders
11 service on the defendant.

12 (c) The state may elect to intervene and proceed with the
13 action not later than the 180th day after the date the attorney
14 general receives the petition and the material evidence and
15 information.

16 (d) At the time the state intervenes, the attorney general
17 may file a motion with the court requesting that the petition remain
18 under seal for an extended period.

19 (e) The state may, for good cause shown, move the court to
20 extend the 180-day deadline under Subsection (b) or (c). A motion
21 under this subsection may be supported by affidavits or other
22 submissions in camera.

23 (f) An action under this subchapter may be dismissed before
24 the end of the period during which the petition remains under seal
25 only if the court and the attorney general consent in writing to the
26 dismissal and state their reasons for consenting.

27 Sec. 2116.153. ANSWER BY DEFENDANT. A defendant is not

1 required to file in accordance with the Texas Rules of Civil
2 Procedure an answer to a petition filed under this subchapter until
3 the petition is unsealed and served on the defendant.

4 Sec. 2116.154. STATE'S ELECTION TO PROCEED. (a) Not later
5 than the last day of the period described by Section 2116.152(c) or
6 an extension of that period as provided by Section 2116.152(e), the
7 state shall:

8 (1) proceed with the action; or

9 (2) notify the court that the state declines to take
10 over the action.

11 (b) If the state declines to take over the action, the court
12 shall dismiss the action.

13 Sec. 2116.155. ACTION CONDUCTED BY STATE. (a) This section
14 applies to a qui tam action the state takes over under Section
15 2116.154(a)(1).

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

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

21 (d) The attorney general may contract with a private
22 attorney to represent the state in an action under this section with
23 which the state elects to proceed.

24 (e) Notwithstanding the objection of the qui tam plaintiff,
25 the state may dismiss the action for good cause if:

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

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

3 (f) Notwithstanding the objection of the qui tam plaintiff,
4 the state may settle the action if the court determines, after
5 notice and a hearing, that the proposed settlement is fair,
6 adequate, and reasonable under all the circumstances. On a showing
7 of good cause, the court may hold the hearing in camera.

8 (g) On a showing by the state that unrestricted
9 participation in the litigation of the action by the qui tam
10 plaintiff would interfere with or unduly delay the state's
11 prosecution of the case or would be repetitious, irrelevant, or for
12 purposes of harassment, the court may impose limitations on the qui
13 tam plaintiff's participation, including:

14 (1) limiting the number of witnesses the qui tam
15 plaintiff may call;

16 (2) limiting the length of the testimony of witnesses
17 called by the qui tam plaintiff;

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

20 (4) otherwise limiting the participation by the qui
21 tam plaintiff in the litigation.

22 (h) On a showing by the defendant that unrestricted
23 participation in the litigation of the action by the qui tam
24 plaintiff would be for purposes of harassment or would cause the
25 defendant undue burden or unnecessary expense, the court may limit
26 the participation by the qui tam plaintiff in the litigation.

27 Sec. 2116.156. STAY OF CERTAIN DISCOVERY. (a) On a

1 showing by the state that certain actions of discovery by the qui
2 tam plaintiff would interfere with the state's investigation or
3 prosecution of a criminal or civil matter arising out of the same
4 facts, the court may stay the discovery for a period not to exceed
5 60 days.

6 (b) The court shall hear a motion to stay discovery under
7 this section in camera.

8 (c) The court may extend the period prescribed by Subsection
9 (a) on a further showing in camera that the state has pursued the
10 criminal or civil investigation or proceedings with reasonable
11 diligence and that any proposed discovery in the civil action will
12 interfere with the ongoing criminal or civil investigation or
13 proceedings.

14 Sec. 2116.157. AWARD TO QUI TAM PLAINTIFF. (a) If the
15 state proceeds with an action under this subchapter, the qui tam
16 plaintiff is entitled, except as provided by Subsection (b), to
17 receive an award of at least 15 percent, but not more than 25
18 percent, of the proceeds of the action, depending on the extent to
19 which the person substantially contributed to the prosecution of
20 the action.

21 (b) If the court finds on motion of the attorney general
22 that the action is based primarily on disclosures of specific
23 information, other than information provided by the qui tam
24 plaintiff, relating to allegations or transactions in a civil or
25 criminal hearing, in a legislative or administrative report,
26 hearing, audit, or investigation, or from the news media, the court
27 may award the amount the court considers appropriate but not more

1 than 10 percent of the proceeds of the action. The court shall
 2 consider the significance of the information and the role of the qui
 3 tam plaintiff in advancing the case to litigation.

4 (c) A payment to a qui tam plaintiff under this section
 5 shall be made from the proceeds of the action. A qui tam plaintiff
 6 receiving a payment under this section is also entitled to receive
 7 from the defendant an amount for reasonable expenses, reasonable
 8 attorney's fees, and costs that the court finds to have been
 9 necessarily incurred. The court's determination of expenses, fees,
 10 and costs to be awarded under this subsection shall be made only
 11 after the defendant is found liable in the action or settles the
 12 action.

13 (d) In this section, "proceeds of the action" means the
 14 amount recovered by the state under a judgment or settlement of the
 15 qui tam action or the resolution of an alternate remedy pursued by
 16 the state under Section 2116.201. The term does not include
 17 attorney's fees, costs, and expenses incurred in bringing the
 18 action.

19 Sec. 2116.158. REDUCTION OF AWARD. (a) If the court finds
 20 that the qui tam plaintiff planned and initiated the unlawful act
 21 that is the basis of the qui tam action, the court may, to the extent
 22 the court considers appropriate, reduce the share of the proceeds
 23 of the action the qui tam plaintiff would otherwise receive under
 24 Section 2116.157, taking into account the qui tam plaintiff's role
 25 in advancing the case to litigation and any relevant circumstances
 26 pertaining to the violation.

27 (b) If the qui tam plaintiff is convicted of criminal

1 conduct arising from the person's role in the unlawful act, the
2 court shall dismiss the qui tam plaintiff from the civil action and
3 the qui tam plaintiff may not receive any share of the proceeds of
4 the action. A dismissal under this subsection does not prejudice
5 the right of the state to continue the qui tam action.

6 Sec. 2116.159. STATE NOT LIABLE FOR CERTAIN EXPENSES. The
7 state is not liable for expenses that a qui tam plaintiff incurs in
8 bringing an action under this subchapter.

9 Sec. 2116.160. RETALIATION BY EMPLOYER AGAINST PERSON
10 BRINGING SUIT PROHIBITED. (a) A person who is discharged, demoted,
11 suspended, threatened, harassed, or in any other manner
12 discriminated against in the terms of employment by the person's
13 employer because of a lawful act taken by the person in furtherance
14 of a qui tam action under this chapter, including investigation
15 for, initiation of, testimony for, or assistance in a qui tam action
16 filed or to be filed, is entitled to all relief necessary to make
17 the person whole, including:

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

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

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

26 Sec. 2116.161. AWARD TO DEFENDANT FOR FRIVOLOUS ACTION;
27 SOVEREIGN IMMUNITY. (a) Chapter 105, Civil Practice and Remedies

1 Code, applies in an action under this subchapter with which the
2 state proceeds.

3 (b) Except as provided by Subsection (a), this subchapter
4 does not waive sovereign immunity.

5 Sec. 2116.162. CERTAIN CONTRACTS, AGREEMENTS, AND
6 CONDITIONS OF EMPLOYMENT VOID. (a) Any contract, private
7 agreement, or private term or condition of employment that has the
8 purpose or effect of limiting or circumventing the right of a person
9 to take otherwise lawful steps to initiate, prosecute, or support
10 an action under Section 2116.151 is void to the full extent of that
11 purpose or effect.

12 (b) Subsection (a) does not preclude a contract or private
13 agreement that is entered into:

14 (1) with the state and a qui tam plaintiff under
15 Section 2116.151 to settle claims of the state and the qui tam
16 plaintiff under Section 2116.151; or

17 (2) to settle a retaliation or discrimination claim
18 under Section 2116.160 of a qui tam plaintiff under Section
19 2116.151.

20 [Sections 2116.163-2116.200 reserved for expansion]

21 SUBCHAPTER E. ACTION BY STATE

22 Sec. 2116.201. STATE MAY PURSUE ALTERNATE REMEDY. (a)
23 Notwithstanding Section 2116.151, after a qui tam action is filed
24 the state may elect to prosecute the unlawful act that is the
25 subject of the action through any alternate remedy available to the
26 state, including any administrative proceeding to determine an
27 administrative penalty.

1 (b) The attorney general may contract with a private
2 attorney to represent the state under this section.

3 (c) The qui tam plaintiff has the same rights in the other
4 proceeding as the qui tam plaintiff would have had if the action had
5 continued in the original forum, including a monetary award as
6 provided by Subchapter D.

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

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

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

16 (3) the finding or conclusion is not subject to
17 judicial review.

18 SECTION 2. Section 41.002(d), Civil Practice and Remedies
19 Code, is amended to read as follows:

20 (d) Notwithstanding any provision to the contrary, this
21 chapter does not apply to:

22 (1) Section 15.21, Business & Commerce Code (Texas
23 Free Enterprise and Antitrust Act of 1983);

24 (2) an action brought under the Deceptive Trade
25 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
26 Business & Commerce Code) except as specifically provided in
27 Section 17.50 of that Act;

1 (3) an action brought under Chapter 36, Human
2 Resources Code; ~~[or]~~

3 (4) an action brought under Chapter 21, Insurance
4 Code; or

5 (5) an action brought under Chapter 2116, Government
6 Code.

7 SECTION 3. This Act applies only to an unlawful act as
8 described by Section 2116.101, Government Code, as added by this
9 Act, that takes place on or after the effective date of this Act. An
10 unlawful act takes place on or after the effective date of this Act
11 only if all elements of the unlawful act take place on or after the
12 effective date of this Act or all elements of the unlawful act took
13 place before the effective date of this Act and are repeated in a
14 continuing course of conduct after the effective date of this Act.

15 SECTION 4. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2009.