

## **BILL ANALYSIS**

C.S.H.B. 3082  
By: Krause  
Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In recent years, some law firms have misused the qui tam process by filing suits in which the private plaintiff "whistleblower" has no actual knowledge of a defendant's unlawful acts. In these cases, suit is filed so that the private plaintiff can use the civil discovery process in an attempt to find fraud. The costs of discovery in these lawsuits is very high, usually covering thousands of patients treated over many years. As a result, defendants are forced to either settle with a private plaintiff who has no evidence of wrongdoing or suffer through an expensive fishing expedition brought in the name of the state. C.S.H.B. 3082 seeks to stop this misuse of the qui tam process as it relates to Medicaid fraud by allowing defendants to recover reasonable attorney's fees and expenses from private plaintiffs who did not possess personal knowledge of fraud before filing suit if the court finds that the action is frivolous.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3082 amends the Human Resources Code to authorize a court in which a civil action is brought by a private person for Medicaid fraud in the name of the person and the state, if the state does not proceed with the action but the person does proceed with the action, to award the defendant reasonable attorney's fees and expenses to the same extent the defendant would be entitled to recover those fees and expenses for a frivolous action brought by or against a state agency if the state had proceeded with that action, provided the following:

- the court finds that the action for Medicaid fraud is frivolous; and
- the person who brought the action was not the original source of the information on which the action is based.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3082 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the original and substitute relate to Medicaid fraud actions, the substitute provides for the award of reasonable attorney's fees and expenses to the defendant for a frivolous action under certain circumstances and does not include any provisions from the original, which did the following:

- established that Medicaid fraud must be material to the state's decision regarding payment under the Medicaid program in order to be actionable under applicable state law;
- changed the nature of the liability of a person who commits Medicaid fraud to the state and subjected an action brought by the attorney general for civil remedy of Medicaid fraud to Civil Practice and Remedies Code provisions relating to proportionate responsibility; and
- set a limitations period within which the attorney general must bring an action to address Medicaid fraud.