

2016 Regular Session

SENATE BILL NO. 327

BY SENATOR LUNEAU

CIVIL PROCEDURE. Provides for Louisiana False Claims Act. (8/1/16)

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AN ACT

To enact Chapter 21 of Title 38 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 38:4501 through 4517, relative to false claims; to provide for certain terms, definitions, language, conditions, procedures, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 21 of Title 38 of the Louisiana Revised Statutes of 1950, comprised of R.S. 38:4501 through 4517 is hereby enacted to read as follows:

CHAPTER 21. LOUISIANA FALSE CLAIMS ACT

§4501. Short Title

This Chapter may be cited as the Louisiana False Claims Act.

§4502. Legislative intent and purpose

A. This Chapter is enacted to combat and prevent fraud and abuse committed by any person against state government and to negate the adverse effects such activities have on the state's fiscal integrity and monetary resources.

B. The legislature intends the attorney general to be the agent of the state with the ability, authority, and resources to pursue civil monetary penalties,

1 liquidated damages, or other remedies to protect the fiscal and programmatic
2 integrity of the state government's monetary resources from persons who
3 engage in fraud, misrepresentation, abuse, or other ill practices, as set forth in
4 this Chapter, to obtain payments to which these persons are not entitled.

5 C. In any litigation commenced under this Chapter, or under any other
6 statute or theory of liability seeking monetary or equitable relief for or relating
7 to a state funded project or program, the state of Louisiana shall be deemed to
8 be the real party in interest.

9 §4503. Definitions

10 As used in this Chapter, the following terms shall have the following
11 meanings:

12 (1) "Agency" means any official, officer, commission, board, authority,
13 council, committee, or department of any government body within the state.

14 (2) "Claim" means any request or demand, whether under a contract or
15 otherwise, for money or property and whether or not the state has title to the
16 money or property, that are either of the following:

17 (a) Is presented to an officer, employee, or agent of the state.

18 (b) Is made to a contractor, grantee, or other recipient, if the money or
19 property is to be spent or used on the state's behalf or to advance a state
20 program or interest, and if the state government does either of the following:

21 (i) Provides or has provided any portion of the money or property
22 requested or demanded.

23 (ii) Will reimburse such contractor, grantee, or other recipient for any
24 portion of the money or property which is requested or demanded.

25 (c) "Claim" does not include requests or demands for money or property
26 that the state has paid to an individual as compensation for state employment
27 or as an income subsidy with no restrictions on that individual's use of the
28 money or property.

29 (3) "Knowing" and "knowingly" means that a person, with respect to

1 information, has actual knowledge of the information and acts in deliberate
2 ignorance of the truth or falsity of the information. Proof of specific intent to
3 defraud is not required.

4 (4) "Obligation" means an established duty, whether or not fixed, arising
5 from an express or implied contractual grantor, grantee or licensor-licensee
6 relationship, from a free-based or similar relationships, from statute or
7 regulation, or from the retention of an overpayment.

8 (5) "State government" and "state" means the government of the state
9 or any department, division bureau, commission, regional planning agency,
10 board, district, authority, agency, or other instrumentality of the state. This
11 includes any contractor of the state and any of the contractor's subcontractors
12 when the claims to the contractor is in relation to a state contract, program or
13 any other program funded in whole or in part by state funds.

14 (6) "Material" means having a natural tendency to influence, or be
15 capable of influencing, the payment or receipt of money or property.

16 (7) "Person" includes any natural person, corporation, firm, association,
17 organization, partnership, limited liability company, business, or trust.

18 §4504. Settlement

19 The attorney general may agree to settle a matter for which recovery
20 may be sought on behalf of the state for a violation of this Chapter. The terms
21 of the settlement shall be reduced to writing and signed by the parties to the
22 agreement. The terms of the settlement shall be public record.

23 §4505. Injunctive relief; lis pendens; disclosure of property and liabilities

24 A.(1) Concurrently with a withholding of payment, a sanction being
25 imposed, or the institution of a criminal, civil, or departmental proceeding
26 against any person from whom a recovery under the provisions of this Chapter
27 is sought, the attorney general may bring an action for a temporary restraining
28 order or injunction under Code of Civil Procedure Articles 3601 through 3613
29 to prevent the transfer of property of any person from whom recovery is sought

1 to other persons.

2 (2) To obtain such relief, the attorney general shall demonstrate all
3 necessary requirements for the relief to be granted.

4 (3) If an injunction is granted, the court may appoint a receiver to
5 protect the property and business of the person from whom recovery may be
6 sought. The court shall assess the cost of the receiver to the nonprevailing party.

7 B. Pursuant to Code of Civil Procedure Articles 3751 through 3753, the
8 attorney general may place a notice of pendency of action, lis pendens, on the
9 property of the person from whom recovery may be due during the pendency
10 of a civil, criminal or administrative proceeding.

11 C. When requested the court or the attorney general, a person from
12 whom recovery may be sought shall have an affirmative duty to fully disclose
13 all property and liabilities to the requester.

14 §4506. Forfeiture of property for payment of recovery

15 A. In accordance with the provisions of Subsection B of this Section, the
16 court may order the forfeiture of property to satisfy recovery under the
17 following circumstances:

18 (1) The court may order the person from whom recovery is due to forfeit
19 property which constitutes or was derived directly or indirectly from gross
20 proceeds traceable to the violation which forms the basis for the recovery.

21 (2) If the attorney general shows that property was transferred to a third
22 party to avoid paying of recovery, or in an attempt to protect the property from
23 forfeiture, the court may order the third party to forfeit the transferred
24 property.

25 B. Prior to the forfeiture of property, a contradictory hearing shall be
26 held during which the attorney general shall prove, by clear and convincing
27 evidence, that the property in question is subject to forfeiture pursuant to
28 Subsection A of this Section. No such contradictory hearing shall be required
29 if the owner of the property in question agrees to the forfeiture.

1 **C. If property is transferred to another person within six months prior**
2 **to the occurrence or after the occurrence of the violation for which recovery is**
3 **due or within six months prior to or after the institution of a criminal, civil, or**
4 **departmental investigation or proceeding, it shall be prima facie evidence that**
5 **the transfer was to avoid paying recovery or was an attempt to protect the**
6 **property from forfeiture.**

7 **D. The person from whom recovery is due shall have an affirmative duty**
8 **to fully disclose all property and liabilities, and all transfers of property which**
9 **meet the criteria of Subsection C of this Section to the court and the attorney**
10 **general.**

11 **§4507. Venue**

12 **An action instituted pursuant to the Louisiana False Claims Act may be**
13 **brought in any of the following courts:**

14 **(1) The Nineteenth Judicial District Court for the Parish of East Baton**
15 **Rouge.**

16 **(2) A district court in the parish in which a person from whom recovery**
17 **may be sought has its principal place of business or is domiciled.**

18 **§4508. Privilege; nondischargeability**

19 **A. Recovery shall be granted a privilege under state law as to all**
20 **property owned by the person from whom recovery is due and shall be effective**
21 **as to third parties only if notice of pendency, lis pendens, is placed on the**
22 **property, if recorded and reinscribed in accordance with Civil Code Articles**
23 **3320 through 3327, or if the conditions of Subsection C of this Section are**
24 **applicable.**

25 **B. As to the property owned by the person from whom recovery due, the**
26 **privilege provided in Subsection A of this Section shall rank ahead of any other**
27 **privilege, mortgage, or secured interest except the first mortgage executed upon**
28 **the property.**

29 **C. If property is transferred to a third party to avoid paying of recovery,**

1 or in an attempt to protect the property from forfeiture, the privilege provided
2 in Subsection A of this Section shall rank ahead of any other privilege,
3 mortgage, or secured interest on the transferred property obtained or possessed
4 by the person who obtains an ownership interest in the transferred property.

5 D. Recovery for a violation of the Louisiana False Claims Act shall be
6 considered a nondischargeable liability under the provisions of Title 11, U.S.C.
7 Chapters 7, 11, and 13.

8 §4509. Civil actions authorized

9 A. The attorney general may institute a civil action in the courts of this
10 state to seek recovery from persons who violate the provisions of this Chapter.

11 B. An action to recover costs, expenses, fees, and attorney fees shall be
12 ancillary to, and shall be brought and heard in the same court as the civil action
13 brought under the provision of Subsection A of this Section.

14 C. (1) A prevailing defendant may only seek recovery for costs, expenses,
15 fees, and attorney fees if the court finds, following a contradictory hearing, that
16 either of the following applies:

17 (a) The action was instituted by the attorney general pursuant to
18 Subsection A of this Section after it should have been determined by the
19 attorney general to be frivolous, vexatious, or brought primarily for the purpose
20 of harassment.

21 (b) The attorney general proceeded with the action instituted pursuant
22 to Subsection A of this Section after it should have been determined by the
23 attorney general that proceeding would be frivolous, vexatious, or for the
24 purpose of harassment.

25 (2) Recovery awarded to a prevailing defendant shall be awarded only
26 for those reasonable, necessary, and proper costs, expenses, fees, and attorney
27 fees actually incurred by the prevailing defendant.

28 D. An action to recover costs, expenses, fees, and attorney fees may be
29 brought no later than sixty days after the rendering of judgment by the district

1 court, unless the district court decision is appealed. If the district court decision
2 is appealed, such action may be brought no later than sixty days after the
3 rendering of the final opinion on appeal by the court of appeal or, if applicable,
4 by the supreme court.

5 §4510. False or fraudulent claim; misrepresentation

6 A. No person shall knowingly present or cause to be presented a false or
7 fraudulent claim.

8 B. No person shall knowingly engage in misrepresentation to obtain, or
9 attempt to obtain, payment from the state or a political subdivision.

10 C. No person shall knowingly make, use or cause to be made or used a
11 false record or statement to obtain or attempt to obtain payment from the state.

12 D. No person shall knowingly make, use, or cause to be made or used, a
13 false record or statement to conceal, avoid, or decrease an obligation to pay or
14 transmit money or property to the state or a political subdivision.

15 E. No person shall conspire to defraud the state or a political subdivision.

16 F. No person shall defraud or attempt to defraud the state or a political
17 subdivision through misrepresentation.

18 G. No person shall knowingly submit a claim for goods, services, or
19 supplies which were of substandard quality or quantity.

20 H. Each violation of this Section may be treated as a separate violation
21 or may be combined into one violation at the option of the attorney general.

22 §4511. Recovery, assessment of civil fine and civil monetary penalty;
23 disgorgement

24 A. In any action brought under the provisions of this Chapter, the
25 attorney general shall recover all of the following:

26 (1) Actual damages.

27 (2) A civil fine in an amount of three times the actual damages sustained
28 by the state.

29 (3) A civil monetary penalty of not less than five thousand dollars but not

1 more than eleven thousand dollars for each false or fraudulent claim,
2 misrepresentation, or other prohibited act as contained in this Chapter.

3 (4) Payment of interest on the amount of the civil fine imposed pursuant
4 to Paragraph (A)(2) of this Section at the maximum rate of legal interest
5 provided by R.S. 13:4202 from the date the damage occurred to the date of
6 repayment

7 (5) Disgorgement of all profits obtained through a violation of R.S.
8 21:4510.

9 B. In addition to the recovery awarded by Subsection A of this Section,
10 any person who is found to have violated this Chapter shall be liable for all
11 costs, expenses, and fees related to investigations and proceedings associated
12 with the violation, including attorney fees.

13 (1) All awards of costs, expenses, fees, and attorney fees are subject to
14 review by the court using a reasonable, necessary, and proper standard of
15 review.

16 (2) The attorney general shall promptly remit awards for those costs,
17 expenses, and fees incurred by the various clerks of court or sheriffs involved
18 in the investigations or proceedings to the appropriate clerk or sheriff.

19 §4512. Burden of proof; prima facie evidence; standard of review

20 A. The burden of proof in an action instituted pursuant to this Chapter
21 shall be on the state and by a preponderance of the evidence, except that the
22 defendant shall carry the burden of proving that goods, services, or supplies
23 were actually provided in the quantity and quality submitted on a claim. In all
24 other aspects, the burden of proof shall be as set forth in the Code of Civil
25 Procedure and other applicable laws.

26 B. Proof by a preponderance of the evidence of a false or fraudulent
27 claim shall be deemed to exist under the following circumstances:

28 (1) If the defendant has pled guilty to, been convicted of, or entered a
29 nolo contendere plea to a criminal charge in any federal or state court to

1 charges arising out of the same circumstances as would be a violation of the
2 Louisiana False Claims Act.

3 (2) If an order has been rendered against a defendant finding the
4 defendant to have violated the Louisiana False Claims Act.

5 C.(1) The submission of a certified or true copy of an order, civil
6 judgment, or criminal conviction or plea shall be prima facie evidence of the
7 same.

8 (2) The submission of the bill of information or of the indictment and the
9 minutes of the court shall be prima facie evidence as to the circumstances
10 underlying a criminal conviction or plea.

11 §4513. Disposition of recovery

12 A. After compliance with the requirements of Article VII, Section 9(B)
13 of the Constitution of Louisiana relative to the Bond Security and Redemption
14 Fund, and prior to monies being placed in the state general fund, all monies
15 received by the state pursuant to a civil award granted or settled under the
16 provisions of this Chapter, except for the amount to make the state whole, may
17 be designated by the attorney general to be placed in the Legal Support Fund.

18 B. To the extent that a recovery under Louisiana False Claims Act
19 relates to the medical assistance programs, the attorney general may designate
20 a portion of the recovery, except for the amount to make the medical assistance
21 programs whole, to be deposited in the Medical Assistance Programs Fraud
22 Detection Fund.

23 §4514. Qui tam action; civil action filed by private person

24 A. A private person may institute a civil action in the courts of this state
25 on behalf of the medical assistance programs and himself to seek recovery for
26 a violation of R.S. 38:4510 pursuant to the provisions of this Chapter. The
27 institutor shall be known as a "qui tam plaintiff" and the civil action shall be
28 known as a "qui tam action".

29 B. No qui tam action shall be instituted no more than ten years after the

1 date on which the violation is committed.

2 C. The burden of proof in a qui tam action instituted pursuant to this
3 Chapter shall be the same as that set forth in R.S. 38:4512.

4 D. (1) Unless the action is brought by the attorney general or the person
5 bringing the action is an original source of the information, the court shall
6 dismiss an action or claim in accordance with this Section, unless opposed by
7 the government, if substantially the same allegations or transactions as alleged
8 in the action or claim were publicly disclosed in any of the following:

9 (a) A criminal, civil, or administrative hearing in which the government
10 or its agent is a party.

11 (b) A congressional or government accountability office or other federal
12 or state report, hearing, audit, or investigation.

13 (c) The news media.

14 (2) For the purposes of this Subsection, "original source" means an
15 individual who, prior to a public disclosure in accordance with this Subsection,
16 has voluntarily disclosed to the government the information on which
17 allegations or transactions in a claim are based or who has knowledge that is
18 independent of and materially adds to the publicly disclosed allegations or
19 transactions, and who has voluntarily provided the information to the
20 government before filing an action in accordance with this Chapter.

21 E. Any employee, contractor, or agent shall be entitled to all relief
22 necessary to make that employee, contractor, or agent whole, if the employee,
23 contractor, or agent is discharged, demoted, suspended, threatened, harassed,
24 or in any other manner discriminated against in the terms and conditions of
25 employment because of lawful acts done by the employee, contractor, agent, or
26 associated others in furtherance of an action in accordance with this Chapter
27 or other efforts to stop one or more violations of this Chapter.

28 (1) Relief in accordance with this Subsection shall include reinstatement
29 with the same seniority status the employee, contractor, or agent would have

1 had but for the discrimination, two times the amount of back pay, interest on
2 the back pay, and compensation for any special damages sustained as a result
3 of the discrimination, including litigation costs and reasonable attorney fees. An
4 action in accordance with this Section may be brought in the appropriate
5 district court of competent jurisdiction for the relief provided in this Section.

6 (2) A civil action in accordance with this Section may not be brought
7 more than three years after the date the retaliation occurred.

8 F. The court shall allow the attorney general to intervene and proceed
9 with the qui tam action in the district court at any time during the qui tam
10 action proceedings.

11 G. Notwithstanding any other law to the contrary, a qui tam complaint
12 and information filed with the attorney general shall not be subject to discovery
13 or become public record until judicial service of the qui tam action is made on
14 any of the defendants, except that the information contained therein may be
15 given to other governmental entities or their authorized agents for review and
16 investigation. The entities and their authorized agents shall maintain the
17 confidentiality of the information provided to them under this Chapter.

18 §4515. Qui tam action procedures

19 A. The following procedures shall be applicable to a qui tam action:

20 (1) The complaint shall be captioned: "State of Louisiana: [insert name
21 of qui tam plaintiff(s)] v. [insert name of defendant(s)]". The qui tam complaint
22 shall be filed with the appropriate state or federal district court.

23 (2) A copy of the qui tam complaint and written disclosure of
24 substantially all material evidence and information each qui tam plaintiff
25 possesses shall be served upon the attorney general in accordance with the
26 applicable rules of civil procedure.

27 (3) When a person brings an action in accordance with this Chapter, no
28 person other than the attorney general may intervene or bring a related action
29 based on the same facts underlying the pending action.

1 **(4)(a) The complaint and information filed with the court shall be made**
2 **under seal, shall remain under seal for at least ninety days from the date of**
3 **filing, and shall be served on the defendant when the seal is removed.**

4 **(b) For good cause shown, the attorney general may move the court for**
5 **extensions of time during which the petition remains under seal. Any such**
6 **motions may be supported by affidavits or other submissions in camera and**
7 **under seal.**

8 **B.(1) If the attorney general elects to intervene in the action, the attorney**
9 **general shall not be bound by any act of a qui tam plaintiff. The attorney**
10 **general shall control the qui tam action proceedings on behalf of the state and**
11 **the qui tam plaintiff may continue as a party to the action. For prescription**
12 **purposes, any government complaint in intervention, whether filed separately**
13 **or as an amendment to the relator's complaint, shall relate back to the filing**
14 **date of the complaint, to the extent that the claim of the government arises out**
15 **of the conduct, transactions, or occurrences set forth, or attempted to be set**
16 **forth, in the relator's complaint.**

17 **(2) The qui tam plaintiff and his counsel shall cooperate fully with the**
18 **attorney general during the pendency of the qui tam action.**

19 **(3) If requested by the attorney general and notwithstanding the**
20 **objection of the qui tam plaintiff, the court may dismiss the qui tam action**
21 **provided the qui tam plaintiff has been notified by the attorney general of the**
22 **filing of the motion to dismiss and the court has provided the qui tam plaintiff**
23 **a contradictory hearing on the motion.**

24 **(4)(a) If the attorney general does not intervene, the qui tam plaintiff**
25 **may proceed with the qui tam action unless the attorney general shows that**
26 **proceeding would adversely affect the prosecution of any pending criminal**
27 **actions or criminal investigations into the activities of the defendant. Such a**
28 **showing shall be made to the court in camera and neither the qui tam plaintiff**
29 **nor the defendant shall be informed of the information revealed in camera. In**

1 which case, the qui tam action shall be stayed for not more than one year.

2 (b) When a qui tam plaintiff proceeds with the action, the court, without
3 limiting the status and rights of the qui tam plaintiff, may nevertheless permit
4 the attorney general to intervene at a later date upon a showing of good cause.

5 (5) If the qui tam plaintiff objects to a settlement of the qui tam action
6 proposed by the attorney general, the court may authorize the settlement only
7 after a hearing to determine whether the proposed settlement is fair, adequate,
8 and reasonable under the circumstances.

9 D. A defendant shall have thirty days from the time a qui tam complaint
10 is served on him to file a responsive pleading.

11 E. The qui tam plaintiff and the defendant shall serve all pleadings and
12 papers filed, as well as discovery, in the qui tam action on the attorney general.

13 F.(1) Whether or not the attorney general proceeds with the action, upon
14 showing by the attorney general that certain actions of discovery by the qui tam
15 plaintiff or defendant would interfere with a criminal, civil, or departmental
16 investigation or proceeding arising out of the same facts, the court shall stay the
17 discovery for a period of not more than ninety days.

18 (2) Upon a further showing that federal or state authorities have pursued
19 the criminal, civil, or departmental investigation or proceeding with reasonable
20 diligence and any proposed discovery in the qui tam action would unduly
21 interfere with the criminal, civil, or departmental investigation or proceeding,
22 the court may stay the discovery for an additional period, not to exceed one
23 year.

24 (3) Such showings shall be conducted in camera and neither the
25 defendant nor the qui tam plaintiff shall be informed of the information
26 presented to the court.

27 (4) If discovery is stayed pursuant to this Subsection, the trial and any
28 motion for summary judgment in the qui tam action shall likewise be stayed.

29 §4516. Qui tam action procedures; alternative remedies

1 Notwithstanding any other provision of this Chapter to the contrary, the
2 attorney general may elect to refer the matter to the appropriate department
3 for an administrative action, or the attorney general may elect to pursue a civil
4 action against a qui tam defendant through any alternative remedy available to
5 the attorney general. If an alternate remedy is pursued in another proceeding,
6 the person initiating the action shall have the same rights he would have had if
7 the action had continued in accordance with this Chapter. Any finding of fact
8 or conclusion of law made in the other proceeding that has become final shall
9 be conclusive on all parties to an action in accordance with this Chapter. A
10 finding or conclusion is final if it has been finally determined on appeal, if all
11 delays for the filing of an appeal regarding the finding or conclusion have
12 expired, or if the finding or conclusion is not subject to judicial review.

13 §4517. Recovery awarded to a qui tam plaintiff

14 A. (1) Except as provided by Subsection D of this Section and
15 Paragraph(A)(3) of this Section, if the attorney general intervenes in the action
16 brought by a qui tam plaintiff, the qui tam plaintiff shall receive at least fifteen
17 percent, but not more than twenty-five percent, of recovery.

18 (2) In making a determination of award to the qui tam plaintiff, the court
19 shall consider the extent to which the qui tam plaintiff substantially contributed
20 to the prosecution of the action.

21 (3) If the court finds the allegations in the qui tam action to be based
22 primarily on disclosures of specific information, other than information
23 provided by the qui tam plaintiff, relating to allegations or transactions in
24 criminal, civil, or administrative hearings, or from the news media, the court
25 may award such sum it considers appropriate, but in no case may the court
26 award more than ten percent of the proceeds, considering the significance of the
27 information and the role of the person bringing the action in advancing the case
28 to litigation. Any payment to a person in accordance with this Subsection shall
29 be made from the proceeds recovered.

1 B. Except as provided by Subsection D of this Section, if the attorney
2 general does not intervene in the qui tam action, the qui tam plaintiff shall
3 receive an amount, not less than twenty-five percent but not more than thirty
4 percent of recovery, which the court decides is reasonable for the qui tam
5 plaintiff pursuing the action to judgment or settlement.

6 C. (1) In addition to all other recovery to which he is entitled and if he
7 prevails in the qui tam action through litigation or settlement, the qui tam
8 plaintiff shall be entitled to an award against the defendant for costs, expenses,
9 fees, and attorney fees, subject to review by the court using a reasonable,
10 necessary, and proper standard of review.

11 (2) If the attorney general does not intervene and the qui tam plaintiff
12 conducts the action, the court shall award costs, expenses, fees, and attorney
13 fees to a prevailing defendant if the court finds that the allegations made by the
14 qui tam plaintiff were meritless or brought primarily for the purposes of
15 harassment. A finding by the court that qui tam allegations were meritless or
16 brought primarily for the purposes of harassment may be used by the
17 prevailing defendant in the qui tam action or any other civil proceeding to
18 recover losses or damages sustained as a result of the qui tam plaintiff filing and
19 pursuing such a qui tam action.

20 D. Whether or not the attorney general intervenes, if the court finds that
21 the action was brought by a person who planned and initiated the violation
22 which is the subject of the action, then the court may, to the extent the court
23 considers appropriate, reduce the share of the proceeds of the action which the
24 qui tam plaintiff would otherwise receive under Subsection A or B of this
25 Section, taking into account the role the qui tam plaintiff played in advancing
26 the case to judgment or settlement and any relevant circumstances pertaining
27 to the qui tam plaintiff's participation in the violation.

28 E. When more than one party serves as a qui tam plaintiff, the share of
29 recovery each receives shall be determined by the court. In no case, however,

