
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

SB 352 Original	DIGEST 2016 Regular Session	Riser
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Proposed law provides for the Louisiana False Claims Act.

Proposed law provides for legislative intent and purpose as follows:

- (1) The provisions of proposed law are 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 fiscal integrity on state government's monetary resources.
- (2) The legislature intends the attorney general to be the agent of the state with the ability, authority, and resources to pursue civil monetary penalties, liquidated damages, or other remedy to protect the fiscal and programmatic integrity of the state government's monetary resources from persons who engage in fraud, misrepresentation, abuse, or other ill practices, as set forth in proposed law, to obtain payments to which these persons are not entitled.
- (3) In any litigation commenced under proposed law, or under any other statute or theory of liability seeking monetary or equitable relief for relating to a state-funded project or program, the state of Louisiana shall be deemed to be the real party in interest.

Proposed law provides for definitions as follows:

- (1) "Agency" means any official, officer, commission, board, authority, council, committee, or department of any government body within the state.
- (2) "Claim" means any request or demand, whether under a contract or otherwise, for money or property and whether or not the state has title to the money or property, that meets any of the following criteria:
 - (a) Is presented to an officer, employee, or agent of the state.
 - (b) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if state government does any of the following:
 - (i) Provides or has provided any portion of the money or property requested or demanded.
 - (ii) Reimburses or contracts to reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or

demanded.

- (c) Does not include a claim, requests or demands for money or property that the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.
- (3) "Knowing" means that a person, with respect to information, has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. Proof of specific intent to defraud is not required.
- (4) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual grantor, grantee or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of an overpayment.
- (5) "State government" and "state" means the government of the state or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of the state. This includes any contractor of the state and any of the contractor's subcontractors when the claims to the contractor is in relation to a state contract, program, whether funded in whole or in part by state funds.
- (6) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
- (7) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Proposed law provides that the attorney general may agree to settle a matter for which recovery may be sought on behalf of the state for a violation of proposed law. The terms of the settlement shall be reduced to writing and signed by the parties to the agreement. Proposed law provides that the terms of the settlement shall be a matter of public record.

Proposed law provides that concurrently with a withholding of payment, a sanction being imposed, or the institution of a criminal, civil, or departmental proceeding against any person from whom a recovery under the provisions of this part is sought, the attorney general may bring an action requesting that the court issue a temporary restraining order or permanent injunction to prevent the transference of property of any person from whom recovery is sought to other persons.

Proposed law provides that to obtain such relief, the attorney general shall demonstrate all necessary requirements for the relief to be granted.

Proposed law provides that, if an injunction is granted, the court may appoint a receiver to protect the property and business of the person from whom recovery may be sought. Proposed law provides that the court shall assess the cost of the receiver to the non-prevailing party.

Proposed law provides that the attorney general may place a notice of pendency of action, lis pendens, on the property of the person from whom recovery may be due during the pendency of a civil, criminal or administrative proceeding.

Proposed law provides that when requested by the court or the attorney general, a person from whom recovery may be sought shall have an affirmative duty to fully disclose all property and liabilities to the requester.

Proposed law provides that, in accordance with the provisions of proposed law, the court may order the forfeiture of property to satisfy recovery under any of the following circumstances:

- (1) The forfeited property, which constitutes or was derived directly or indirectly from gross proceeds traceable to the violation, forms the basis for the recovery.
- (2) The attorney general shows that property was transferred to a third party to avoid paying of recovery, or in an attempt to protect the property from forfeiture. Under this circumstance, the court may order the third party to forfeit the transferred property.

Proposed law provides that, prior to the forfeiture of property, a contradictory hearing shall be held during which the attorney general shall prove, by clear and convincing evidence, that the property in question is subject to forfeiture pursuant to proposed law. No such contradictory hearing shall be required if the owner of the property in question agrees to the forfeiture.

Proposed law provides that, if property is transferred to another person within six months prior to the occurrence or after the occurrence of the violation for which recovery is due or within six months prior to or after the institution of a criminal, civil, or departmental investigation or proceeding, it shall be prima facie evidence that the transfer was to avoid paying recovery or was an attempt to protect the property from forfeiture.

Proposed law provides that the person from whom recovery is due shall have an affirmative duty to the court and the attorney general to disclose fully all transfers of property which are transferred to avoid seizure, to the court, the attorney general.

Proposed law provides that an action instituted pursuant to the Louisiana False Claims Act may be brought in the 19th Judicial District Court for the parish of East Baton Rouge or the district court in the parish in which a person from whom recovery may be sought has its principal place of business or is domiciled.

Proposed law provides that recovery shall be granted a privilege under state law as to all property owned by the person from whom recovery is due and shall be effective as to third parties only if notice of pendency, lis pendens, is placed on the property, if recorded and reinscribed.

Proposed law provides that as to the property owned by the person from whom recovery due, the privilege provided in proposed law that shall rank ahead of any other privilege, mortgage, or secured interest except the first mortgage executed upon the property.

Proposed law provides that, if property is transferred to a third party to avoid paying of recovery, or in an attempt to protect the property from forfeiture, the privilege provided in proposed law that shall rank ahead of any other privilege, mortgage, or secured interest on the transferred property obtained or possessed by the person who obtains an ownership interest in the transferred property.

Proposed law provides that recovery for a violation of the Louisiana False Claims Act shall be considered a nondischargeable liability under the provisions of federal bankruptcy law.

Proposed law provides that the attorney general may institute a civil action in the courts of this state to seek recovery from persons who violate the provisions of proposed law.

Proposed law provides that an action to recover costs, expenses, fees, and attorney fees shall be ancillary to, and shall be brought and heard in the same court as, the civil action brought under the provision of proposed law.

Proposed law provides that a prevailing defendant may only seek recovery for costs, expenses, fees, and attorney fees if the court finds, following a contradictory hearing, that either of the following applies:

- (1) The action was instituted by the attorney general pursuant to proposed law should have been determined by the attorney general to be frivolous, vexatious, or brought primarily for the purpose of harassment.
- (2) The attorney general proceeded with the action instituted pursuant to proposed law after it should have been determined by the attorney general that proceeding would be frivolous, vexatious, or for the purpose of harassment.

Proposed law provides that recovery awarded to a prevailing defendant shall be awarded only for those reasonable, necessary, and proper costs, expenses, fees, and attorney fees actually incurred by the prevailing defendant.

Proposed law provides that an action to recover costs, expenses, fees, and attorney fees may be brought no later than 60 days after the rendering of judgment by the district court, unless the district court decision is appealed. Proposed law further provides that, if the district court decision is appealed, such action may be brought no later than 60 days after the rendering of the final opinion on appeal by the court of appeal or, if applicable, by the supreme court.

Proposed law provides that all of the following shall be a violation of the proposed law:

- (1) No person shall knowingly make or cause to be made a false or fraudulent claim.
- (2) No person shall knowingly engage in misrepresentation to obtain, or attempt to obtain, payment from the state or a political subdivision.
- (3) No person shall knowingly make, use or cause to be made or used a false record or statement

- to obtain or attempt to obtain payment from the state.
- (4) No person shall knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a political subdivision.
 - (5) No person shall conspire to defraud the state or a political subdivision.
 - (6) No person shall defraud or attempt to defraud the state or a political subdivision through misrepresentation.
 - (7) No person shall knowingly submit a claim for goods, services, or supplies which were of substandard quality or quantity.

Proposed law provides that each violation of proposed law may be treated as a separate violation or may be combined into one violation at the option of the attorney general.

Proposed law provides that in any action brought under the provisions of proposed law, the attorney general shall recover any one of the following:

- (1) Actual damages.
- (2) Treble damages or an amount no more than three times the actual damages sustained by the state.
- (3) Damages of not less than five thousand dollars but not more than eleven thousand dollars for each false or fraudulent claim, misrepresentation, or other prohibited act as contained in this part.

Proposed law provides that, in addition to the damages recovered pursuant to proposed law, the payment of judicial interest shall be imposed in the amount provided by law from the date the damage occurred to the date of repayment.

Proposed law provides that, in addition to the amounts of damages provided for in proposed law, disgorgement of all profits obtained through a violation of proposed law may be ordered by the court.

Proposed law provides that, in addition to the recovery awarded by proposed law, any person who is found to have violated proposed law shall be liable for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees.

Proposed law provides that all awards of costs, expenses, fees, and attorney fees are subject to review by the court using a reasonable, necessary, and proper standard of review.

Proposed law provides that the attorney general shall promptly remit awards for those costs, expenses, and fees incurred by the various clerks of court or sheriffs involved in the investigations or proceedings to the appropriate clerk or sheriff.

Proposed law provides that the burden of proof in an action instituted pursuant to proposed law will be on the state and by a preponderance of the evidence, except that the defendant shall carry the burden of proving that goods, services, or supplies were actually provided in the quantity and quality submitted on a claim. Proposed law provides that, in all other aspects, the burden of proof shall be as set forth in state law.

Proposed law provides that proof by a preponderance of the evidence of a false or fraudulent claim shall be deemed to exist under any of the following circumstances:

- (1) The defendant has pled guilty to, been convicted of, or entered a nolo contendere plea to a criminal charge in any federal or state court to charges arising out of the same circumstances as would be a violation of the Louisiana False Claims Act.
- (2) An order has been rendered against a defendant finding the defendant to have violated the Louisiana False Claims Act.

Proposed law provides that the submission of a certified or true copy of an order, civil judgment, or criminal conviction or plea shall be prima facie evidence of a false or fraudulent claim. Proposed law further provides that the submission of the bill of information or of the indictment and the minutes of the court shall be prima facie evidence as to the circumstances underlying a criminal conviction or plea.

Proposed law provides that, after compliance with the La. Const. relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, all monies received by the state pursuant to a civil award granted or settlement under the provisions of proposed law, except for the amount to make the state whole, may be designated by the attorney general to be placed in the Legal Support Fund.

Proposed law provides that to the extent that a recovery under proposed law relates to the medical assistance programs, the attorney general may designate a portion of the recovery, except for the amount to make the medical assistance programs whole, to be deposited in the medical assistance programs fraud detection fund.

Proposed law provides that a private person may institute a civil action in the courts of this state on behalf of the medical assistance programs and himself to seek recovery for a violation of proposed law. The institutor shall be known as a "qui tam plaintiff" and the civil action shall be known as a "qui tam action".

Proposed law provides that no qui tam action shall be instituted more than 10 years after the date on which the violation is committed.

Proposed law provides that, unless the action is brought by the attorney general or the person bringing the action is an original source of the information, the court shall dismiss an action or claim, unless opposed by the government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in any of the following:

- (1) A criminal, civil, or administrative hearing in which the government or its agent is a party.
- (2) A congressional or government accountability office or other federal or state report, hearing, audit, or investigation.
- (3) The news media.

Proposed law defines "original source" as an individual who, prior to a public disclosure, has voluntarily disclosed to the government the information on which allegations or transactions in a claim are based or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the government before filing an action in accordance with proposed law.

Proposed law provides that any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action in accordance with this proposed law other efforts to stop one or more violations of proposed law.

Proposed law provides that relief in accordance with an action for retaliation shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. Proposed law provides that an action for retaliation may be brought in the appropriate district court of competent jurisdiction for the relief not more than three years after the date the retaliation occurred.

Proposed law provides that the court shall allow the attorney general to intervene and proceed with the qui tam action in the district court at any time during the qui tam action proceedings.

Proposed law provides that, notwithstanding any other law to the contrary, a qui tam complaint and information filed with the attorney general shall not be subject to discovery or become public record until judicial service of the qui tam action is made on any of the defendants, except that the information contained therein may be given to other governmental entities or their authorized agents for review and investigation. Proposed law provides that the entities and their authorized agents shall maintain the confidentiality of the information provided to them under proposed law.

Proposed law provides that the following procedures shall be applicable to a qui tam action:

- (1) The complaint shall be captioned: state of Louisiana: [insert name of qui tam plaintiff(s)] v. [insert name of defendant(s)]. The qui tam complaint shall be filed with the appropriate state or federal district court.
- (2) A copy of the qui tam complaint and written disclosure of substantially all material evidence

and information each qui tam plaintiff possesses shall be served upon the attorney general in accordance with the applicable rules of civil procedure.

- (3) When a person brings an action in accordance with proposed law, no person other than the attorney general may intervene or bring a related action based on the same facts underlying the pending action.
- (4) The complaint and information filed with the court shall be made under seal, shall remain under seal for at least ninety days from the date of filing, and shall be served on the defendant when the seal is removed. Proposed law further provides that, for good cause shown, the attorney general may move the court for extensions of time during which the petition remains under seal and that any such motions may be supported by affidavits or other submissions in camera and under seal.

Proposed law provides that, if the attorney general elects to intervene in the action, the attorney general shall not be bound by any act of a qui tam plaintiff. The attorney general shall control the qui tam action proceedings on behalf of the state and the qui tam plaintiff may continue as a party to the action. Proposed law provides that, for prescription purposes, any government complaint in intervention, whether filed separately or as an amendment to the relator's complaint, shall relate back to the filing date of the complaint, to the extent that the claim of the government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the relator's complaint.

Proposed law provides that the qui tam plaintiff and his counsel shall cooperate fully with the attorney general during the pendency of the qui tam action.

Proposed law provides that, if requested by the attorney general and notwithstanding the objection of the qui tam plaintiff, the court may dismiss the qui tam action provided the qui tam plaintiff has been notified by the attorney general of the filing of the motion to dismiss and the court has provided the qui tam plaintiff a contradictory hearing on the motion.

Proposed law provides that, if the attorney general does not intervene, the qui tam plaintiff may proceed with the qui tam action unless the attorney general shows that proceeding would adversely affect the prosecution of any pending criminal actions or criminal investigations into the activities of the defendant. Proposed law further provides that a showing shall be made to the court in camera and neither the qui tam plaintiff nor the defendant shall be informed of the information revealed in camera. In which case, the qui tam action shall be stayed for no more than one year.

Proposed law provides that, when a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may nevertheless permit the attorney general to intervene at a later date upon a showing of good cause.

Proposed law provides that, if the qui tam plaintiff objects to a settlement of the qui tam action proposed by the attorney general, the court may authorize the settlement only after a hearing to determine whether the proposed settlement is fair, adequate, and reasonable under the circumstances.

Proposed law provides that a defendant shall have 30 days from the time a qui tam complaint is served on him to file a responsive pleading. Proposed law further provides that the qui tam plaintiff and the defendant shall serve all pleadings and papers filed, as well as discovery, in the qui tam action on the attorney general.

Proposed law provides that, whether or not the attorney general proceeds with the action, upon showing by the attorney general that certain actions of discovery by the qui tam plaintiff or defendant would interfere with a criminal, civil, or departmental investigation or proceeding arising out of the same facts, the court shall stay the discovery for a period of not more than ninety days.

Proposed law provides that, upon a further showing that federal or state authorities have pursued the criminal, civil, or departmental investigation or proceeding with reasonable diligence and any proposed discovery in the qui tam action would unduly interfere with the criminal, civil, or departmental investigation or proceeding, the court may stay the discovery for an additional period, not to exceed one year. Proposed law further provides that such showings shall be conducted in camera and neither the defendant nor the qui tam plaintiff shall be informed of the information presented to the court.

Proposed law provides that, if discovery is stayed pursuant to proposed law, the trial and any motion for summary judgment in the qui tam action shall likewise be stayed.

Proposed law provides that the attorney general may elect to refer the matter provided for in proposed law to the appropriate department for an administrative action, or the attorney general may elect to pursue a civil action against a qui tam defendant through any alternative remedy available to the attorney general. Proposed law further provides that, if an alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights he would have had if the action had continued in accordance with proposed law. Proposed law provides that any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action in accordance with proposed law. Proposed law provides that a finding or conclusion is final if it has been finally determined on appeal, if all delays for the filing of an appeal regarding the finding or conclusion have expired, or if the finding or conclusion is not subject to judicial review.

Proposed law provides that, if the attorney general intervenes in the action brought by a qui tam plaintiff, the qui tam plaintiff shall receive at least 15%, but not more than 25%, of recovery. Proposed law further provides that, in making a determination of award to the qui tam plaintiff, the court shall consider the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. Proposed law further provides that, if the court finds the allegations in the qui tam action to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions in criminal, civil, or administrative hearings, or from the news media, the court may award such sum it considers appropriate, but in no case may the court award more than ten percent of the proceeds, considering the significance of the information and the role of the person bringing the action in advancing the case to litigation. Proposed law further provides that any payment to a person in accordance with proposed law shall be made from the proceeds recovered.

Proposed law provides that, if the attorney general does not intervene in the qui tam action, the qui tam plaintiff shall receive an amount, not less than 25% but not more than 30% percent of recovery, which the court decides is reasonable for the qui tam plaintiff pursuing the action to judgment or settlement.

Proposed law provides that, in addition to all other recovery to which he is entitled and if he prevails in the qui tam action through litigation or settlement, the qui tam plaintiff shall be entitled to an award against the defendant for costs, expenses, fees, and attorney fees, subject to review by the court using a reasonable, necessary, and proper standard of review.

Proposed law provides that, if the attorney general does not intervene and the qui tam plaintiff conducts the action, the court shall award costs, expenses, fees, and attorney fees to a prevailing defendant if the court finds that the allegations made by the qui tam plaintiff were meritless or brought primarily for the purposes of harassment. Proposed law further provides that a finding by the court that qui tam allegations were meritless or brought primarily for the purposes of harassment may be used by the prevailing defendant in the qui tam action or any other civil proceeding to recover losses or damages sustained as a result of the qui tam plaintiff filing and pursuing such a qui tam action.

Proposed law provides that, whether or not the attorney general intervenes, if the court finds that the action was brought by a person who planned and initiated the violation which is the subject of the action, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under proposed law, taking into account the role the qui tam plaintiff played in advancing the case to judgment or settlement and any relevant circumstances pertaining to the qui tam plaintiff's participation in the violation.

Proposed law provides that, when more than one party serves as a qui tam plaintiff, the share of recovery each receives shall be determined by the court. Proposed law further provides, however, that if the court orders awards to multiple qui tam plaintiffs, the total awards may not be greater than the total award allowed to a single qui tam plaintiff.

Proposed law provides that, in no instance shall the attorney general, or the state be liable for any costs, expenses, fees, or attorney fees incurred by the qui tam plaintiff or for any award entered against the qui tam plaintiff.

Proposed law provides that the percentage of the share awarded to or settled for by the qui tam plaintiff shall be determined using the total amount of the award or settlement.

Effective August 1, 2016.

(Adds R.S. 49:261-277)