

House Study Bill 92

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS AND APPEALS
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to a state false claims Act, providing penalties,
2 and providing an effective date and applicability provision.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1346DP 83
5 pf/nh/5

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1 1 Section 1. NEW SECTION. 685.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Claim" means any request or demand for money,
1 5 property, or services made to any employee, officer, or agent
1 6 of the state, or to any contractor, grantee, or other
1 7 recipient, whether under contract or not, if any portion of
1 8 the money, property, or services requested or demanded issued
1 9 from, or was provided by, the state, or if the state will
1 10 reimburse the contractor, grantee, or other recipient for any
1 11 portion of the money or property which is requested or
1 12 demanded.
1 13 2. "Employer" means any natural person, corporation, firm,
1 14 association, organization, partnership, business, trust, or
1 15 state-affiliated entity involved in a nongovernmental
1 16 function, including state universities and state hospitals.
1 17 3. a. "Knowing" or "knowingly" means that a person, with
1 18 respect to information, does any of the following:
1 19 (1) Has actual knowledge of the information.
1 20 (2) Acts in deliberate ignorance of the truth or falsity
1 21 of the information.
1 22 (3) Acts in reckless disregard of the truth or falsity of
1 23 the information.
1 24 b. "Knowing" or "knowingly" with respect to information
1 25 does not require proof of specific intent to defraud.
1 26 4. "Qui tam plaintiff" means a private plaintiff who
1 27 brings an action under this chapter on behalf of the state.
1 28 Sec. 2. NEW SECTION. 685.2 ACTS SUBJECTING PERSON TO
1 29 TREBLE DAMAGES, COSTS, AND CIVIL PENALTIES == EXCEPTIONS.
1 30 1. A person who commits any of the following acts is
1 31 liable to the state for three times the amount of damages
1 32 which the state sustains because of the act of that person. A
1 33 person who commits any of the following acts shall also be
1 34 liable to the state for the costs of a civil action brought to
1 35 recover any of those penalties or damages, and shall be liable
2 1 to the state for a civil penalty of not less than five
2 2 thousand dollars and not more than ten thousand dollars for
2 3 each violation:
2 4 a. Knowingly presents or causes to be presented to any
2 5 employee, officer, or agent of the state, or to any
2 6 contractor, grantee, or other recipient of state funds, a
2 7 false or fraudulent claim for payment or approval.
2 8 b. Knowingly makes, uses, or causes to be made or used, a
2 9 false record or statement to get a false or fraudulent claim
2 10 paid or approved.
2 11 c. Conspires to defraud the state by getting a false claim
2 12 allowed or paid, or conspires to defraud the state by
2 13 knowingly making, using, or causing to be made or used, a
2 14 false record or statement to conceal, avoid, or decrease an
2 15 obligation to pay or transmit money or property to the state.
2 16 d. Has possession, custody, or control of public property
2 17 or money used or to be used by the state and knowingly
2 18 delivers or causes to be delivered less property than the

2 19 amount for which the person receives a certificate or receipt.
2 20 e. Is authorized to make or deliver a document certifying
2 21 receipt of property used or to be used by the state and
2 22 knowingly makes or delivers a receipt that falsely represents
2 23 the property used or to be used.

2 24 f. Knowingly buys, or receives as a pledge of an
2 25 obligation or debt, public property from any person who
2 26 lawfully may not sell or pledge the property.

2 27 g. Knowingly makes, uses, or causes to be made or used, a
2 28 false record or statement to conceal, avoid, or decrease an
2 29 obligation to pay or transmit money or property to the state.

2 30 h. Is a beneficiary of an inadvertent submission of a
2 31 false claim to any employee, officer, or agent of the state,
2 32 or to any contractor, grantee, or other recipient of state
2 33 funds, subsequently discovers the falsity of the claim, and
2 34 fails to disclose the false claim to the attorney general
2 35 within a reasonable time after discovery of the false claim.

3 1 2. Notwithstanding subsection 1, the court may assess not
3 2 less than two times the amount of damages which the state
3 3 sustains because of the act of the person described in
3 4 subsection 1, and no civil penalty, if the court finds all of
3 5 the following:

3 6 a. The person committing the violation furnished the
3 7 attorney general with all information known to that person
3 8 about the violation within thirty days after the date on which
3 9 the person first obtained the information.

3 10 b. The person fully cooperated with any investigation by
3 11 the attorney general.

3 12 c. At the time the person furnished the attorney general
3 13 with information about the violation, a criminal prosecution,
3 14 civil action, or administrative action had not commenced with
3 15 respect to the violation, and the person did not have actual
3 16 knowledge of the existence of an investigation into the
3 17 violation.

3 18 3. This section shall not apply to claims, records, or
3 19 statements made under Title X relating to state revenue and
3 20 taxation.

3 21 Sec. 3. NEW SECTION. 685.3 INVESTIGATIONS AND
3 22 PROSECUTIONS == POWERS OF PROSECUTING AUTHORITY == CIVIL
3 23 ACTIONS BY INDIVIDUALS AS QUI TAM PLAINTIFFS AND AS PRIVATE
3 24 CITIZENS == JURISDICTION OF COURTS.

3 25 1. The attorney general shall diligently investigate a
3 26 violation under section 685.2. If the attorney general finds
3 27 that a person has violated or is violating section 685.2, the
3 28 attorney general may bring a civil action under this section
3 29 against that person.

3 30 2. a. A person may bring a civil action for a violation
3 31 of this chapter for the person and for the state in the name
3 32 of the state. The person bringing the action shall be
3 33 referred to as the qui tam plaintiff. Once filed, the action
3 34 may be dismissed only with the written consent of the court,
3 35 taking into account the best interest of the parties involved
4 1 and the public purposes behind this chapter.

4 2 b. A copy of the complaint and written disclosure of
4 3 substantially all material evidence and information the person
4 4 possesses shall be served on the attorney general. The
4 5 complaint shall also be filed in camera, shall remain under
4 6 seal for at least sixty days, and shall not be served on the
4 7 defendant until the court so orders. The attorney general may
4 8 elect to intervene and proceed with the action within sixty
4 9 days after the attorney general receives both the complaint
4 10 and the material evidence and the information.

4 11 c. The attorney general may, for good cause shown, move
4 12 the court for extensions of the time during which the
4 13 complaint remains under seal under paragraph "b". Any such
4 14 motions may be supported by affidavits or other submissions in
4 15 camera. The defendant shall not be required to respond to any
4 16 complaint filed under this section until after the complaint
4 17 is unsealed and served upon the defendant pursuant to rules of
4 18 civil procedure.

4 19 d. Before the expiration of the sixty-day period or any
4 20 extensions obtained under paragraph "c", the attorney general
4 21 shall do one of the following:

4 22 (1) Proceed with the action, in which case the action
4 23 shall be conducted by the attorney general.

4 24 (2) Notify the court that the attorney general declines to
4 25 take over the action, in which case the person bringing the
4 26 action shall have the right to conduct the action.

4 27 e. When a person brings a valid action under this section,
4 28 no person other than the attorney general may intervene or
4 29 bring a related action based on the facts underlying the

4 30 pending action.

4 31 3. a. If the attorney general proceeds with the action,
4 32 the attorney general shall have the primary responsibility for
4 33 prosecuting the action, and shall not be bound by an act of
4 34 the person bringing the action. Such person shall have the
4 35 right to continue as a party to the action, subject to the
5 1 limitations specified in paragraph "b".

5 2 b. (1) The attorney general may move to dismiss the
5 3 action for good cause notwithstanding the objections of the
5 4 qui tam plaintiff if the qui tam plaintiff has been notified
5 5 by the attorney general of the filing of the motion and the
5 6 court has provided the qui tam plaintiff with an opportunity
5 7 to oppose the motion and present evidence at a hearing.

5 8 (2) The attorney general may settle the action with the
5 9 defendant notwithstanding the objections of the qui tam
5 10 plaintiff if the court determines, after a hearing providing
5 11 the qui tam plaintiff an opportunity to present evidence, that
5 12 the proposed settlement is fair, adequate, and reasonable
5 13 under all of the circumstances.

5 14 (3) Upon a showing by the attorney general that
5 15 unrestricted participation during the course of the litigation
5 16 by the person initiating the action would interfere with or
5 17 unduly delay the attorney general's prosecution of the case,
5 18 or would be repetitious, irrelevant, or for purposes of
5 19 harassment, the court may, in its discretion, impose
5 20 limitations on the person's participation, including but not
5 21 limited to any of the following:

5 22 (a) Limiting the number of witnesses the person may call.

5 23 (b) Limiting the length of the testimony of such
5 24 witnesses.

5 25 (c) Limiting the person's cross-examination of witnesses.

5 26 (d) Otherwise limiting the participation by the person in
5 27 the litigation.

5 28 (4) Upon a showing by the defendant that unrestricted
5 29 participation during the course of the litigation by the
5 30 person initiating the action would be for purposes of
5 31 harassment or would cause the defendant undue burden or
5 32 unnecessary expense, the court may limit the participation by
5 33 the person in the litigation.

5 34 c. If the attorney general elects not to proceed with the
5 35 action, the person who initiated the action shall have the
6 1 right to conduct the action. If the attorney general
6 2 requests, the attorney general shall be served with copies of
6 3 all pleadings filed in the action and shall be supplied with
6 4 copies of all deposition transcripts at the state's expense.
6 5 When a person proceeds with the action, the court, without
6 6 limiting the status and rights of the person initiating the
6 7 action, may permit the attorney general to intervene at a
6 8 later date upon a showing of good cause.

6 9 d. Whether or not the attorney general proceeds with the
6 10 action, upon a showing by the attorney general that certain
6 11 actions of discovery by the person initiating the action would
6 12 interfere with the attorney general's investigation or
6 13 prosecution of a criminal or civil matter arising out of the
6 14 same facts, the court may stay such discovery for a period of
6 15 not more than sixty days. Such a showing shall be conducted in
6 16 camera. The court may extend the sixty-day period upon a
6 17 further showing in camera that the attorney general has
6 18 pursued the criminal or civil investigation or proceedings
6 19 with reasonable diligence and any proposed discovery in the
6 20 civil action will interfere with the ongoing criminal or civil
6 21 investigation or proceedings.

6 22 e. Notwithstanding subsection 2, the attorney general may
6 23 elect to pursue the state's claim through any alternate remedy
6 24 available to the state, including any administrative
6 25 proceeding to determine a civil penalty. If any such
6 26 alternate remedy is pursued in another proceeding, the person
6 27 initiating the action shall have the same rights in such
6 28 proceeding as such person would have had if the action had
6 29 continued under this section. Any finding of fact or
6 30 conclusion of law made in such other proceeding that has
6 31 become final with respect to a party who is also a party to an
6 32 action under this section, shall be conclusive as to all such
6 33 parties to an action under this section. For purposes of this
6 34 paragraph, a finding or conclusion is final if it has been
6 35 finally determined on appeal to the appropriate court of the
7 1 state, if all time for filing such an appeal with respect to
7 2 the finding or conclusion has expired, or if the finding or
7 3 conclusion is not subject to judicial review.

7 4 4. a. (1) If the attorney general proceeds with an
7 5 action brought by a person under subsection 2, the person

7 6 shall, subject to subparagraph (2), receive at least fifteen
7 7 percent but not more than twenty-five percent of the proceeds
7 8 of the action or settlement of the claim, which includes
7 9 damages, civil penalties, payments for costs of compliance,
7 10 and any other economic benefit realized by the state or
7 11 federal government as a result of the action, depending upon
7 12 the extent to which the person substantially contributed to
7 13 the prosecution of the action.

7 14 (2) If the action is one which the court finds to be based
7 15 primarily on disclosures of specific information, other than
7 16 information provided by the person bringing the action,
7 17 relating to allegations or transactions specifically in a
7 18 criminal, civil, or administrative hearing, or in a
7 19 legislative or administrative report, hearing, audit, or
7 20 investigation, or from the news media, the court may award an
7 21 amount the court considers appropriate, but in no case more
7 22 than ten percent of the proceeds, taking into account the
7 23 significance of the information and the role of the person
7 24 bringing the action in advancing the case to litigation.

7 25 (3) Any payment to a person under subparagraph (1) or (2)
7 26 shall be made from the proceeds. Any such person shall also
7 27 receive an amount for reasonable expenses which the
7 28 appropriate court finds to have been necessarily incurred,
7 29 plus reasonable attorney fees and costs. All such expenses,
7 30 fees, and costs shall be awarded against the defendant.

7 31 b. If the attorney general does not proceed with an action
7 32 under this section, the person bringing the action or settling
7 33 the claim shall receive an amount which the court decides is
7 34 reasonable for collecting the civil penalty and damages. The
7 35 amount shall be not less than twenty-five percent and not more
8 1 than thirty percent of the proceeds of the action or
8 2 settlement and shall be paid out of such proceeds, which
8 3 includes damages, civil penalties, payments for costs of
8 4 compliance, and any other economic benefit realized by the
8 5 state or federal government as a result of the action. Such
8 6 person shall also receive an amount for reasonable expenses
8 7 which the appropriate court finds to have been necessarily
8 8 incurred, plus reasonable attorney fees and costs. All such
8 9 expenses, fees, and costs shall be awarded against the
8 10 defendant.

8 11 c. Whether or not the attorney general proceeds with the
8 12 action, if the court finds that the action was brought by a
8 13 person who planned and initiated the violation of section
8 14 685.2 upon which the action was brought, the court may, to the
8 15 extent the court considers appropriate, reduce the share of
8 16 the proceeds of the action which the person would otherwise
8 17 receive under paragraph "a" or "b", taking into account the
8 18 role of that person in advancing the case to litigation and
8 19 any relevant circumstances pertaining to the violation. If
8 20 the person bringing the action is convicted of criminal
8 21 conduct arising from the person's role in the violation of
8 22 section 685.2, the person shall be dismissed from the civil
8 23 action and shall not receive any share of the proceeds of the
8 24 action. Such dismissal shall not prejudice the right of the
8 25 attorney general to continue the action.

8 26 d. If the attorney general does not proceed with the
8 27 action and the person bringing the action conducts the action,
8 28 the court may award to the defendant reasonable attorney fees
8 29 and expenses if the defendant prevails in the action and the
8 30 court finds that the claim of the person bringing the action
8 31 was clearly frivolous, clearly vexatious, or brought primarily
8 32 for purposes of harassment.

8 33 5. a. A court shall not have jurisdiction over an action
8 34 brought under subsection 2 against a member of the general
8 35 assembly, a member of the judiciary, or an executive branch
9 1 official if the action is based on evidence or information
9 2 known to the attorney general when the action was brought.

9 3 b. A person shall not bring an action under subsection 2
9 4 which is based upon allegations or transactions which are the
9 5 subject of a civil suit or an administrative civil penalty
9 6 proceeding in which the state is already a party.

9 7 c. Upon motion of the attorney general, the court may in
9 8 consideration of all the equities, dismiss a qui tam plaintiff
9 9 if the elements of the actionable false claims alleged in the
9 10 qui tam complaint have been publicly disclosed specifically in
9 11 the news media or in a publicly disseminated governmental
9 12 report, at the time the complaint is filed.

9 13 d. The state is not liable for expenses which a person
9 14 incurs in bringing an action under this section.

9 15 6. Any employee who is discharged, demoted, suspended,
9 16 threatened, harassed, or in any other manner discriminated

9 17 against in the terms and conditions of employment by the
9 18 person's employer because of lawful acts performed by the
9 19 employee on behalf of the employee or others in furtherance of
9 20 an action under this section, including investigation for,
9 21 initiation of, testimony for, or assistance in an action filed
9 22 or to be filed under this section, shall be entitled to all
9 23 relief necessary to make the employee whole. Such relief
9 24 shall include reinstatement with the same seniority status
9 25 such employee would have had but for the discrimination, two
9 26 times the amount of back pay, interest on the back pay, and
9 27 compensation for any special damages sustained as a result of
9 28 the discrimination, including litigation costs and reasonable
9 29 attorney fees. An employee may bring an action in the
9 30 appropriate court of the state for the relief provided in this
9 31 subsection.

9 32 Sec. 4. NEW SECTION. 685.4 LIMITATION OF ACTIONS ==
9 33 BURDEN OF PROOF.

9 34 1. A civil action under section 685.3 shall not be brought
9 35 more than ten years after the date on which the violation was
10 1 committed.

10 2 2. A civil action under section 685.3 may be brought based
10 3 on activity prior to January 1, 2007, if the limitations
10 4 period pursuant to subsection 1 has not lapsed.

10 5 3. In any action brought under section 685.3, the attorney
10 6 general or the qui tam plaintiff shall be required to prove
10 7 all essential elements of the cause of action, including
10 8 damages, by a preponderance of the evidence.

10 9 4. Notwithstanding any other provision of law, a guilty
10 10 verdict rendered in a criminal proceeding charging false
10 11 statements or fraud, whether upon a verdict after trial or
10 12 upon a plea of guilty or nolo contendere, shall estop the
10 13 defendant from denying the essential elements of the offense
10 14 in any action which involves the same transaction as in the
10 15 criminal proceeding and which is brought under section 685.3,
10 16 subsection 1, 2, or 3.

10 17 Sec. 5. NEW SECTION. 685.5 REMEDIES UNDER OTHER LAWS ==
10 18 APPLICATION.

10 19 1. The provisions of this chapter are not exclusive, and
10 20 the remedies provided for in this chapter shall be in addition
10 21 to any other remedies provided for in any other law or
10 22 available under common law.

10 23 2. This chapter shall be liberally construed and applied
10 24 to promote the public interest. This chapter shall also be
10 25 construed and applied in a manner that reflects the
10 26 congressional intent behind the federal False Claims Act, 31
10 27 U.S.C. } 3729=3733, including the legislative history
10 28 underlying the 1986 amendments to the federal False Claims
10 29 Act.

10 30 Sec. 6. NEW SECTION. 685.6 VENUE.

10 31 An action brought under this chapter may be brought in any
10 32 judicial district in which the defendant or, in the case of
10 33 multiple defendants, any one defendant can be found, resides,
10 34 transacts business, or in which any act proscribed under this
10 35 chapter occurred. A summons as required by the rules of civil
11 1 procedure shall be issued by the appropriate district court
11 2 and service at any place within or outside the United States.

11 3 Sec. 7. EFFECTIVE DATE == RETROACTIVE APPLICABILITY. This
11 4 Act, being deemed of immediate importance, takes effect upon
11 5 enactment and is retroactively applicable to January 1, 2007.

11 6 EXPLANATION

11 7 This bill establishes a state false claims Act to allow a
11 8 procedure for the state and private individuals to bring an
11 9 action for fraud against another person that might result in
11 10 financial loss to the government. The federal Deficit
11 11 Reduction Act of 2005, Pub. L. No. 109=171, } 6032, provided
11 12 financial encouragement to states to have in effect a law
11 13 dealing with false or fraudulent claims that meets certain
11 14 federal requirements. If a state has such a law in place,
11 15 when recoveries are made for Medicaid funds improperly paid,
11 16 the share owed to the federal government will be decreased by
11 17 10 percent. This provision of the federal Deficit Reduction
11 18 Act took effect January 1, 2007.

11 19 The bill provides definitions of "claim", "employer",
11 20 "knowing" or "knowingly", and "qui tam plaintiff" which means
11 21 a private plaintiff who brings an action under the bill on
11 22 behalf of the state.

11 23 The bill provides that a person who commits certain
11 24 specified acts is liable to the state for three times the
11 25 amount of damages which the state sustains because of the act
11 26 of that person, and is also liable to the state for the costs
11 27 of a civil action brought to recover any of those penalties or

11 28 damages, and for a civil penalty of not less than \$5,000 and
11 29 not more than \$10,000 for each violation. The prohibited acts
11 30 include: knowingly presenting or causing to be presented to
11 31 any employee, officer, or agent of the state, or to any
11 32 contractor, grantee, or other recipient of state funds, a
11 33 false or fraudulent claim for payment or approval; knowingly
11 34 making, using, or causing to be made or used, a false record
11 35 or statement to get a false or fraudulent claim paid or
12 1 approved; conspiring to defraud the state by getting a false
12 2 claim allowed or paid, or conspiring to defraud the state by
12 3 knowingly making, using, or causing to be made or used, a
12 4 false record or statement to conceal, avoid, or decrease an
12 5 obligation to pay or transmit money or property to the state;
12 6 having possession, custody, or control of public property or
12 7 money used or to be used by the state and knowingly delivering
12 8 or causing to be delivered less property than the amount for
12 9 which the person receives a certificate or receipt; being
12 10 authorized to make or deliver a document certifying receipt of
12 11 property used or to be used by the state and knowingly making
12 12 or delivering a receipt that falsely represents the property
12 13 used or to be used; knowingly buying or receiving as a pledge
12 14 of an obligation or debt, public property from any person who
12 15 lawfully may not sell or pledge the property; knowingly
12 16 making, using, or causing to be made or used, a false record
12 17 or statement to conceal, avoid, or decrease an obligation to
12 18 pay or transmit money or property to the state; and being a
12 19 beneficiary of an inadvertent submission of a false claim to
12 20 any employee, officer, or agent of the state, or to any
12 21 contractor, grantee, or other recipient of state funds,
12 22 subsequently discovering the falsity of the claim, and failing
12 23 to disclose the false claim to the attorney general within a
12 24 reasonable time after discovery of the false claim. The bill
12 25 provides for an assessment of a lesser amount of damages under
12 26 certain circumstances.

12 27 The bill provides a process for the attorney general to
12 28 investigate and bring civil actions under the bill. The bill
12 29 also provides a process for a person to bring a civil action
12 30 for a violation of the bill for the person and for the state
12 31 in the name of the state as a qui tam plaintiff. The bill
12 32 provides for awards to the qui tam plaintiff, bars certain
12 33 actions including those brought against a member of the state
12 34 legislature, a member of the judicial branch or an executive
12 35 branch official if the action is based on evidence or
13 1 information known to the attorney general when the action was
13 2 brought and other actions in which the state is already a
13 3 party. The bill provides that the state is not liable for
13 4 expenses which a person incurs in bringing an action under the
13 5 bill, and provides for relief to a person who is retaliated
13 6 against by an employer for bringing a private action under the
13 7 bill.

13 8 The bill provides that a civil action under the bill must
13 9 be brought not more than 10 years after the date on which the
13 10 violation was committed, and requires the attorney general or
13 11 the private plaintiff to prove all essential elements of the
13 12 cause of action by a preponderance of the evidence.

13 13 LSB 1346DP 83
13 14 pf/nh/5.1