

HOUSE BILL No. 5713

March 24, 1992, Introduced by Reps. Dresch and O'Connor and referred to the Committee on Judiciary.

A bill to prohibit false or fraudulent claims against the state and local units of government; to provide for certain powers and duties of certain state and local officials; and to provide for certain civil actions and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may cited as "the
2 Michigan false claims act".

3 Sec. 2. As used in this act:

4 (a) "Court" means the circuit court.

5 (b) "Knowing" or "knowingly" means that a person has actual
6 knowledge of information, or deliberately ignores or recklessly
7 disregards the truth or falsity of information.

8 (c) "Original source" means an individual who has direct and
9 independent knowledge of the information on which the allegations
10 regarding a violation of section 3 are based and who has

1 voluntarily provided the information to the attorney general
2 before filing an action under section 9 that is based on the
3 information.

4 (d) "Person" means an individual, partnership, corporation,
5 association, governmental entity, or other legal entity.

6 (e) "Local unit of government" means a city, village, town-
7 ship, county, college, university, authority, board, council,
8 commission, district, assessment district, or other political
9 subdivision organized under the laws of this state.

10 (f) "State" means this state or an agency, department, divi-
11 sion, bureau, board, commission, council, authority, or other
12 governmental unit or entity of this state.

13 Sec. 3. A person shall not do any of the following:

14 (a) Knowingly present or cause to be presented to an officer
15 or employee of the state or a local unit of government a false or
16 fraudulent claim for payment or for approval for payment.

17 (b) Knowingly make, use, or cause to be made or used, a
18 false record or statement to get a false or fraudulent claim paid
19 or approved for payment by the state or a local unit of
20 government.

21 (c) Buy or receive as a pledge of an obligation or debt
22 public property from an officer or employee of the state or a
23 local unit of government knowing that the officer or employee
24 cannot lawfully sell or pledge the property.

25 (d) Knowingly make, use, or cause to be made or used, a
26 false record or statement to conceal, avoid, or decrease an

1 obligation to pay or transmit money or property to the state or a
2 local unit of government.

3 (e) If the person has possession, custody, or control of
4 property or money used, or to be used, by the state or a local
5 unit of government, deliver or cause to be delivered less prop-
6 erty than the amount for which the person receives a certificate
7 or receipt with the intent to defraud the state or local unit of
8 government or to willfully conceal the property.

9 (f) If the person is authorized to make or deliver a docu-
10 ment certifying receipt of property used, or to be used, by the
11 state or a local unit of government, make or deliver the receipt
12 without knowing that the information on the receipt is true with
13 the intent to defraud the state or local unit of government.

14 (g) Conspire to defraud the state or a local unit of govern-
15 ment by getting a false or fraudulent claim paid or approved for
16 payment.

17 Sec. 5. (1) Except as otherwise provided in subsection (2),
18 a person who violates section 3 is liable for all of the
19 following:

20 (a) A civil fine of not less than \$5,000.00 or more than
21 \$10,000.00.

22 (b) Three times the amount of damages that the state or a
23 local unit of government sustained as a result of the violation.

24 (c) The costs of an action brought under this act to recover
25 a civil fine or damages.

26 (2) A person who violates section 3 is liable for both of
27 the following:

1 (a) Two times the amount of damages that the state or a
2 local unit of government sustained as a result of the violation
3 if the court finds all of the following:

4 (i) The person who committed the violation furnished offi-
5 cials of the state or local unit of government responsible for
6 investigating false claims violations with all information known
7 to the person about the violation within 30 days after the date
8 on which the person first obtained the information.

9 (ii) The person fully cooperated with any state or local
10 unit of government investigation of the violation.

11 (iii) At the time the person furnished the officials of the
12 state or local unit of government investigating the violation
13 with information about the violation, a criminal prosecution or
14 civil action had not been commenced with respect to the violation
15 and the person did not have actual knowledge of the existence of
16 an investigation regarding the violation.

17 (b) The costs of an action brought under this act to recover
18 a civil fine or damages.

19 Sec. 7. (1) The attorney general may bring a civil action
20 under this act on behalf of the state for a violation of
21 section 3.

22 (2) An authorized official of a local unit of government may
23 bring a civil action under this act on behalf of the local unit
24 of government for a violation of section 3.

25 Sec. 9. (1) A person may bring a civil action under this
26 act on behalf of the person and the state or a local unit of
27 government for a violation of section 3. An action filed under

1 this section shall be in the name of the state of Michigan or
2 local unit of government, as applicable. An action filed under
3 this section shall be dismissed only if the court and the state
4 or local unit of government give written consent to the dismissal
5 that states reasons for consenting to the dismissal.

6 (2) A complaint for an action filed under this section and
7 other documents in the court file are confidential and shall not
8 be made available for public inspection until the expiration of
9 60 days after the date the complaint is filed with the court.
10 The state or local unit of government may, for good cause shown,
11 move the court for extensions of the 60-day period during which
12 the complaint and other documents in the court file are confiden-
13 tial and are not available for public inspection. A motion to
14 extend the 60-day period may be supported by affidavits or other
15 submissions to the court. The complaint shall not be served on
16 the defendant until the court orders that service of process be
17 made on the defendant.

18 (3) A copy of a complaint for an action filed by a person
19 under this section and written disclosure of substantially all of
20 the information the person possesses regarding the violation
21 shall be served on the state or a local unit of government. The
22 copy of the complaint and information shall be served personally
23 or by registered or certified mail, return receipt requested,
24 with delivery restricted to the addressee, as follows:

25 (a) If the action is on behalf of the state, on the attorney
26 general, or an individual authorized by the attorney general to
27 receive the copy of the complaint and information.

1 (b) If the action is on behalf of a local unit of
2 government, on a person upon which service of process may be made
3 on the local unit of government in a civil action.

4 (4) Before the expiration of the 60-day period or any exten-
5 sions described in subsection (2), the state or local unit of
6 government shall do 1 of the following regarding an action filed
7 under this section:

8 (a) Notify the court that the state or local unit of govern-
9 ment will proceed with the action.

10 (b) Notify the court that the state or local unit of govern-
11 ment will not proceed with the action.

12 (5) If a person brings an action under this section, no
13 other person shall have the right to intervene in the action or
14 bring a related action based on the facts underlying the action
15 pending under this section.

16 Sec. 11. (1) If the state or a local unit of government
17 elects under section 9(4)(a) to proceed with an action filed
18 under section 9, the state or local unit of government shall have
19 the primary responsibility for conducting the action and shall
20 not be bound by an act of the person who filed the action. The
21 person who filed the action under section 9 shall have the right
22 to continue as a party to the action subject to the following:

23 (a) The state or local unit of government may dismiss the
24 action notwithstanding the objections of the person if the person
25 has been notified of the filing of the motion to dismiss and the
26 court has provided the person with an opportunity for a hearing
27 on the motion.

1 (b) The state or local unit of government may settle the
2 action with the defendant notwithstanding the objections of the
3 person if the court determines, after a hearing, that the pro-
4 posed settlement is fair, adequate, and reasonable under all the
5 circumstances of the case. Upon a showing of good cause, the
6 judge may order the hearing to be in camera.

7 (c) Upon a showing by the state or local unit of government
8 that unrestricted participation during the course of the litiga-
9 tion by the person would interfere with or unduly delay the state
10 or local unit of government prosecution of the case, or would be
11 repetitious or irrelevant, or for purposes of harassment, the
12 court may impose limitations on the person's participation in the
13 litigation, including, but not limited to, any of the following:

14 (i) Limiting the number of witnesses the person may call.

15 (ii) Limiting the length of the testimony of a witness.

16 (iii) Limiting the person's cross-examination of a witness.

17 (d) Upon a showing by the defendant that the unrestricted
18 participation during the course of the litigation by the person
19 would be for purposes of harassment or would cause the defendant
20 undue burden or expense, the court may impose limitations on the
21 person's participation in the litigation as described in
22 subdivision (c).

23 (2) If the state or a local unit of government elects under
24 section 9(4)(b) not to proceed with an action filed under
25 section 9, the person who filed the action shall have the right
26 to conduct the action. Upon the request of the state or local
27 unit of government, copies of all pleadings filed in the action

1 shall be served on the state or local unit of government. Upon
2 the request of the state or local unit of government, copies of
3 transcripts of all depositions taken in the action shall be sup-
4 plied to the state or local unit of government at the expense of
5 the state or local unit of government.

6 (3) Upon good cause shown, the court may allow the state or
7 a local unit of government to become involved in conducting an
8 action filed under section 9 that is being conducted by the
9 person who filed the action as provided in subsection (2). If
10 the court allows the state or local unit of government to be
11 involved in conducting the action, the person who filed the
12 action shall retain the primary responsibility of conducting the
13 action.

14 Sec. 13. Upon an in camera showing by the state or a local
15 unit of government that certain discovery sought in an action
16 filed under section 9 will interfere with a state or local unit
17 of government investigation or prosecution of a criminal or civil
18 matter arising out of the same facts as that action, the court
19 may stay the discovery for a period of not more than 60 days.
20 Upon an in camera showing by the state or local unit of govern-
21 ment that the criminal or civil investigation or proceeding has
22 been pursued with reasonable diligence, the court may extend the
23 stay of discovery for additional periods of time.

24 Sec. 15. (1) Except as otherwise provided in this subsec-
25 tion and subsection (4), if the state or a local unit of govern-
26 ment elects under section 9(4)(a) to proceed with an action filed
27 by a person under section 9, the court shall award not less than

1 15% or more than 25% of the proceeds of the action or settlement
2 of the action to the person who filed the action, depending upon
3 the extent to which the court determines the person substantially
4 contributed to the prosecution of the action. If the court
5 determines that the action is based primarily on disclosures of
6 specific information relating to allegations or transactions in a
7 criminal, civil, or administrative hearing, in a legislative or
8 administrative report, hearing, audit, or investigation, or from
9 the news media, other than information provided by a person who
10 filed the action under section 9, the court may award not more
11 than 10% of the proceeds of the action or settlement to the
12 person who filed the action, taking into account the significance
13 of the information and the role of the person in advancing the
14 case to litigation.

15 (2) Except as otherwise provided in subsection (4), if the
16 state or a local unit of government elects under section 9(4)(b)
17 not to proceed with an action filed by a person under section 9,
18 the court shall award not less than 25% or more than 30% of the
19 proceeds of the action or settlement to the person who filed the
20 action, as the court determines is reasonable for collecting the
21 damages and civil fine.

22 (3) A prevailing plaintiff in an action under this act shall
23 receive reasonable expenses that the court finds to have been
24 necessarily incurred, reasonable attorney fees, and costs.
25 Expenses, fees, and costs awarded under this subsection shall be
26 awarded against the defendant.

1 (4) If the court determines that a person who filed an
2 action under section 9 planned or initiated the violation of
3 section 3 upon which the action is based, the court may, to the
4 extent the court considers appropriate, reduce that person's
5 share of the proceeds of the action that would otherwise be
6 awarded under subsection (1) or (2), taking into account the role
7 of that person in advancing the case to litigation and any rele-
8 vant circumstances pertaining to the violation. If the person
9 who filed an action under section 9 is convicted of a criminal
10 violation arising from his or her role in the violation of
11 section 3, the court shall dismiss the person from the action and
12 the person shall not receive any proceeds of the action.

13 Sec. 17. The state or a local unit of government is not
14 liable for expenses that a person incurs in prosecuting an action
15 filed under section 9.

16 Sec. 19. (1) A court shall not have jurisdiction over an
17 action filed under section 9 based on allegations or transactions
18 that are the subject of a civil action or an administrative pro-
19 ceeding to recover damages or civil fines for a violation of
20 section 3 in which the state or local unit of government is
21 already a party.

22 (2) A court shall not have jurisdiction over an action filed
23 under this act based upon the public disclosure of allegations or
24 transactions in a criminal, civil, or administrative hearing, in
25 a legislative or administrative report, hearing, or investiga-
26 tion, or from the news media, unless the action is filed by the

1 state or a local unit of government or the person filing the
2 action is an original source of the information.

3 Sec. 21. (1) If a defendant in an action filed by the state
4 under section 7(1) is the prevailing party, the state is liable
5 for costs as provided under sections 2421 to 2421d of the revised
6 judicature act of 1961, Act No. 236 of the Public Acts of 1961,
7 being sections 600.2421 to 600.2421d of the Michigan Compiled
8 Laws.

9 (2) If a defendant in an action filed by a local unit of
10 government under section 7(2) is the prevailing party, the local
11 unit of government is liable for costs in the same manner as
12 costs may be awarded against the state under sections 2421 to
13 2421d of Act No. 236 of the Public Acts of 1961.

14 (3) If the state or a local unit of government elects under
15 section 9(4)(b) not to proceed with an action filed by a person
16 under section 9, the court may award to the prevailing defendant
17 its reasonable attorney fees and expenses if the court determines
18 that the action was clearly frivolous, clearly vexatious, or
19 brought primarily for purposes of harassment. Fees and expenses
20 awarded under this subsection shall be awarded against the person
21 who filed the action under section 9.

22 Sec. 23. (1) An employer shall not discharge, demote, sus-
23 pend, threaten, harass, or in any other manner discriminate
24 against an employee in the terms and conditions of his or her
25 employment because of lawful acts done by the employee on behalf
26 of the employee or others in furtherance of an action filed or to
27 be filed under this act.

1 (2) An employee may bring an action against his or her
2 employer for a violation of subsection (1) by the employer. The
3 employee is entitled to the following remedies:

4 (a) Reinstatement as an employee.

5 (b) Reinstatement of all work-related benefits, rights,
6 seniority, or privileges which, but for the violation by the
7 employer, would have been accrued by the employee.

8 (c) Issuance of 2 times the amount of back pay plus
9 interest.

10 (d) Costs.

11 (e) Reasonable attorney fees.

12 (f) Special damages sustained as the result of the
13 violation.

14 Sec. 25. An action under this act shall not be brought
15 after the expiration of the later of the following:

16 (a) Six years after the date on which the violation of
17 section 3 occurred.

18 (b) Three years after the date when facts material to the
19 cause of action are known or reasonably should have been known by
20 the official of the state or a local unit of government charged
21 with the responsibility to act for a violation of section 3, but
22 in no event more than 10 years after the date on which the viola-
23 tion occurred.

24 Sec. 27. An action brought under this act may be filed in
25 the circuit court for the county where the alleged violation
26 occurred, or for the county where 1 or more persons against whom
27 the complaint is filed resides or maintains a principal place of

1 business. Additionally, an action brought under section 7(1) may
2 be filed in the circuit court for the county of Ingham.

3 Sec. 29. (1) If an alleged violation of section 3 involves
4 state property or funds, the attorney general shall investigate
5 the alleged violation. If an alleged violation of section 3
6 involves local unit of government property or funds, an autho-
7 rized official of the local unit of government shall investigate
8 the alleged violation.

9 (2) If the attorney general or an authorized official of a
10 local unit of government has reasonable cause to believe that a
11 person has information or is in possession, custody, or control
12 of any document or other tangible object relevant to an investi-
13 gation for a violation of section 3, the attorney general or
14 authorized official may serve upon the person a written demand to
15 appear and be examined under oath, and to produce the document or
16 object for inspection and copying. The demand shall be served
17 upon the person in the same manner required for service of pro-
18 cess in this state. The demand shall include all of the
19 following:

20 (a) A description of the nature of the conduct constituting
21 the violation under investigation.

22 (b) A description of the document or object with sufficient
23 definiteness to permit it to be fairly identified.

24 (c) A copy of any written interrogatories.

25 (d) A notification of a reasonable time at which the person
26 shall appear to testify; by which the person shall answer the

1 written interrogatories; and by which the document or object
2 shall be produced.

3 (e) A statement advising the person that objections to or
4 reasons for not complying with the demand may be filed with the
5 attorney general or authorized official making the demand on or
6 before the time specified under subdivision (d).

7 (f) A designation of a place for the taking of testimony or
8 for production of the document or object and a designation of the
9 person who shall be custodian of the document or object.

10 (g) A copy of the language contained in subsection (3).

11 (3) If a person objects to or otherwise fails to comply with
12 the written demand served upon him or her under subsection (2),
13 the attorney general or an authorized official of a local unit of
14 government may file in the circuit court of the county in which
15 the person resides or in which the person maintains a principal
16 place of business within this state an action to enforce the
17 demand. Notice of hearing the action and a copy of all pleadings
18 shall be served upon the person, who may appear in opposition.
19 If the court finds that the demand is proper, that there is rea-
20 sonable cause to believe that there may have been or is presently
21 occurring a violation of this act, and that the information
22 sought or document or object demanded is relevant to the investi-
23 gation, the court shall order the person to comply with the
24 demand, subject to modification the court may prescribe. Upon
25 motion by the person and for good cause shown, the court may make
26 any further order in the proceedings that justice requires to

1 protect the person from unreasonable annoyance, embarrassment,
2 oppression, burden, or expense.

3 (4) Any procedure, testimony taken, or material produced
4 shall be kept confidential by the attorney general or an autho-
5 rized official of a local unit of government before bringing an
6 action against a person under this act for the violation under
7 investigation, unless confidentiality is waived by the person
8 being investigated and the person who has testified, answered
9 interrogatories, or produced material, or disclosure is autho-
10 rized by the court.