

# HOUSE BILL No. 4773

May 16, 2007, Introduced by Reps. Polidori, Spade, Robert Jones, Brown, Valentine, Gonzales, LeBlanc, Vagnozzi, Clack, Hammel, Constan, Simpson, Griffin, Condino, Hood, Byrnes, Wojno, Bennett, Espinoza, Leland, Miller, Hopgood, Melton, Young and Dean and referred to the Committee on Government Operations.

A bill to provide for remedies and prescribe civil sanctions against a person who presents a false or fraudulent claim to obtain money, property, or services from this state; to prescribe the powers and duties of certain state officers and agencies; and to prohibit retaliation against a person who pursues a remedy under this act.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

3           Sec. 2. As used in this act:

4           (a) "Claim" means a request or demand for money, property, or  
5 services made to an employee, officer, or agent of this state or a  
6 political subdivision in this state, or to a contractor, grantee,  
7 or other recipient, whether under contract or not, if any portion

1 of the money, property, or services requested or demanded issued  
2 from or was provided by this state or a political subdivision in  
3 this state.

4 (b) "Knowingly" means any of the following:

5 (i) With actual knowledge of the relevant information.

6 (ii) In deliberate ignorance of the truth or falsity of the  
7 relevant information.

8 (iii) In reckless disregard of the truth or falsity of the  
9 relevant information.

10 (c) "Person" means an individual, partnership, corporation,  
11 association, governmental entity, limited liability company, trust,  
12 or other legal entity.

13 (d) "Political subdivision" means a county, township, city,  
14 village, district, metropolitan government or authority, political  
15 body with the legal power or authority to levy taxes, or other  
16 legally authorized local governmental body, or a legally authorized  
17 combination of political subdivisions.

18 Sec. 3. A person who commits any of the following acts,  
19 regardless of whether the person acts with the specific intent to  
20 defraud, is liable to this state or a political subdivision of this  
21 state for 3 times the amount of damages the state or political  
22 subdivision sustains because of the act and the costs of an action  
23 brought to recover damages or a penalty, and may be liable to the  
24 state or political subdivision for a civil penalty of up to  
25 \$10,000.00 for each act:

26 (a) Knowingly presents or causes to be presented to an officer  
27 or employee of the state or political subdivision a false claim for

1 payment or approval.

2 (b) Knowingly makes, uses, or causes to be made or used a  
3 false record or statement to get a false claim paid or approved by  
4 the state or political subdivision.

5 (c) Conspires to defraud the state or political subdivision by  
6 getting a false claim allowed or paid by the state or political  
7 subdivision.

8 (d) Has possession, custody, or control of public property or  
9 money used or to be used by the state or political subdivision and  
10 knowingly delivers or causes to be delivered less property than the  
11 amount for which the person receives a certificate or receipt.

12 (e) Is authorized to make or deliver a document certifying  
13 receipt of property used or to be used by the state or political  
14 subdivision and knowingly makes or delivers a receipt that falsely  
15 represents the property used or to be used.

16 (f) Knowingly buys, or receives as a pledge of an obligation  
17 or debt, public property from any person who lawfully may not sell  
18 or pledge the property.

19 (g) Knowingly makes, uses, or causes to be made or used a  
20 false record or statement to conceal, avoid, or decrease an  
21 obligation to pay or transmit money or property to the state or  
22 political subdivision.

23 Sec. 4. (1) Any person may bring an action in the name of this  
24 state under this section to recover losses that this state sustains  
25 from an act described in section 3. A court shall not dismiss an  
26 action filed under this section unless the attorney general has  
27 been notified and had an opportunity to appear and oppose the

1 dismissal. The attorney general waives the opportunity to oppose  
2 the dismissal if it is not exercised within 28 days of receiving  
3 the complaint and disclosure under subsection (2).

4 (2) If a person other than the attorney general initiates an  
5 action under this section, the complaint shall be sealed and the  
6 clerk shall not issue a summons for service on the defendant until  
7 after the time for the attorney general's election under subsection  
8 (3) expires. At the time the complaint is filed, the person  
9 initiating the action shall serve a copy of the complaint on the  
10 attorney general and shall disclose, in writing, substantially all  
11 material evidence and information in the person's possession  
12 supporting the complaint to the attorney general.

13 (3) The attorney general may elect to intervene in an action  
14 under this section. Within 90 days after the complaint and  
15 disclosure are served on the attorney general under subsection (2)  
16 or any extension of the 90 days granted by the court, the attorney  
17 general shall notify the court and the person initiating the action  
18 of 1 of the following:

19 (a) That the attorney general will take over the action for  
20 this state and have primary responsibility for proceeding with the  
21 action.

22 (b) That the attorney general declines to take over the action  
23 and the person initiating the action has the right to proceed with  
24 the action.

25 (4) If an action is filed under this section, a person other  
26 than the attorney general shall not intervene in the action or  
27 bring another action on behalf of this state based on the facts

1 underlying the action.

2 (5) If the attorney general elects to proceed with the action  
3 under subsection (3) or (6), the attorney general has primary  
4 responsibility for prosecuting the action and may do all of the  
5 following:

6 (a) Agree to dismiss the action, notwithstanding the objection  
7 of the person initiating the action, but only if that person has  
8 been notified of and offered the opportunity to participate in a  
9 hearing on a motion to dismiss.

10 (b) Settle the action, notwithstanding the objection of the  
11 person initiating the action, but only if that person has been  
12 notified of and offered the opportunity to participate in a hearing  
13 on the settlement and if the court determines that the settlement  
14 is fair, adequate, and reasonable under the circumstances. On a  
15 showing of good cause, the settlement hearing may be held in  
16 camera.

17 (c) Request the court to limit the participation of the person  
18 initiating the action. If the attorney general demonstrates that  
19 unrestricted participation by the person initiating the action  
20 during the litigation would interfere with or unduly delay the  
21 attorney general's prosecution of the case or would be repetitious,  
22 irrelevant, or unduly harassing, the court may do any of the  
23 following:

24 (i) Limit the number of the person's witnesses.

25 (ii) Limit the length of the testimony of the person's  
26 witnesses.

27 (iii) Limit the person's cross-examination of witnesses.

1           (iv) Otherwise limit the person's participation in the  
2 litigation.

3           (6) If the attorney general notifies the court that he or she  
4 declines to take over the action under subsection (3), the person  
5 who initiated the action may proceed with the action. At the  
6 attorney general's request and expense, the attorney general shall  
7 be provided with copies of all pleadings filed in the action and  
8 copies of all deposition transcripts. Notwithstanding the attorney  
9 general's election not to take over the action, the court may  
10 permit the attorney general to intervene in the action at any time  
11 on a showing of good cause and, subject to subsection (7), without  
12 affecting the rights or status of the person initiating the action.

13           (7) If the court determines, after a hearing conducted in  
14 camera, that actions of the person initiating the action during  
15 discovery would interfere with the attorney general's investigation  
16 or prosecution of a criminal or civil matter, the court may stay  
17 the discovery for not more than 90 days. The court may extend the  
18 stay on a further showing that the attorney general is pursuing the  
19 investigation or proceeding with reasonable diligence and the  
20 discovery would interfere with the ongoing investigation or  
21 proceeding.

22           (8) As an alternative to an action permitted under this  
23 section, the attorney general may pursue damages or a penalty for  
24 an act described in section 3 through any proceeding available to  
25 this state, including an administrative proceeding. If the attorney  
26 general pursues an alternative proceeding, a person who initiates  
27 an action under this section has rights in that proceeding

1 equivalent to the rights that the person would have had if the  
2 action had continued under this section to the extent that those  
3 rights are consistent with the law governing the proceeding.

4 Findings of fact and conclusions of law that become final in an  
5 alternative proceeding are conclusive on the parties to an action  
6 under this section. For purposes of this subsection, a finding or  
7 conclusion is final if it has been finally determined on appeal to  
8 the appropriate court, if the time for filing an appeal of the  
9 finding or conclusion has expired, or if the finding or conclusion  
10 is not subject to judicial review.

11 (9) Subject to subsections (10) and (11), if a person other  
12 than the attorney general prevails in an action that the person  
13 initiates under this section, the court shall award the person  
14 necessary expenses, costs, reasonable attorney fees, and, based on  
15 the amount of effort involved, the following percentage of the  
16 monetary proceeds resulting from the action or any settlement of  
17 the claim:

18 (a) If the attorney general intervenes, 15% to 25%.

19 (b) If the attorney general does not intervene, 25% to 30%.

20 (10) If the court finds an action under this section to be  
21 based primarily on disclosure of specific information that was not  
22 provided by the person bringing the action, such as information  
23 from a criminal, civil, or administrative hearing in a state or  
24 federal department or agency, a legislative report, hearing, audit,  
25 or investigation, or the news media, and the attorney general  
26 proceeds with the action, the court shall award the person bringing  
27 the action no more than 10% of the monetary recovery in addition to

1 reasonable attorney fees, necessary expenses, and costs.

2 (11) If the court finds that the person bringing an action  
3 under this section planned, initiated, or participated in the  
4 conduct on which the action is brought, then the court may reduce  
5 or eliminate, as it considers appropriate, the share of the  
6 proceeds of the action that the person would otherwise be entitled  
7 to receive. A person who is convicted of criminal conduct arising  
8 from a violation of this act shall not initiate or remain a party  
9 to an action under this section and is not entitled to share in the  
10 monetary proceeds resulting from the action or any settlement of  
11 the claim.

12 (12) A person other than the attorney general shall not bring  
13 an action under this section that is based on allegations or  
14 transactions that are already the subject of a civil action, a  
15 criminal investigation or prosecution, or an administrative  
16 investigation or proceeding to which this state or the federal  
17 government is already a party. The court shall dismiss an action  
18 brought in violation of this section.

19 (13) Unless the person is the original source of the  
20 information, a person, other than the attorney general, shall not  
21 initiate an action under this section based on the public  
22 disclosure of allegations or transactions in a criminal, civil, or  
23 administrative hearing, in a state or federal legislative,  
24 investigative, or administrative report, hearing, audit, or  
25 investigation, or from the news media. The person is the original  
26 source if he or she had direct and independent knowledge of the  
27 information on which the allegations are based and voluntarily

1 provided the information to the attorney general before filing an  
2 action based on that information under this section.

3 (14) This state and the attorney general are not liable for  
4 any expenses, costs, or attorney fees that a person incurs in  
5 bringing an action under this section. Any amount awarded to a  
6 person initiating an action to enforce this act is payable solely  
7 from the proceeds of the action or settlement.

8 (15) If a person proceeds with an action under this section  
9 after being notified that the attorney general has declined to  
10 intervene and the court finds that the claim was frivolous, as  
11 defined in section 2591 of the revised judicature act of 1961, 1961  
12 PA 236, MCL 600.2591, the court shall award the prevailing  
13 defendant actual and reasonable attorney fees and expenses and, in  
14 addition, shall impose a civil fine of not more than \$10,000.00 on  
15 the person who initiated the action. The civil fine shall be  
16 deposited into the general fund of this state.

17 (16) The attorney general may recover all costs this state  
18 incurs in the litigation and recovery of restitution under this  
19 act, including the cost of investigation and attorney fees. The  
20 attorney general shall retain the amount received for activities  
21 under this act, excluding amounts for restitution, court costs, and  
22 fines.

23 (17) The attorney general shall not retain amounts under this  
24 section until all the restitution awarded in the proceeding has  
25 been paid.

26 Sec. 5. (1) An employer shall not discharge, demote, suspend,  
27 threaten, harass, or otherwise discriminate against an employee in

1 the terms and conditions of employment because the employee  
2 initiates, assists in, or participates in a proceeding or court  
3 action under this act or because the employee cooperates with or  
4 assists in an investigation under this act. This prohibition does  
5 not apply to an employment action against an employee if the court  
6 finds that 1 or more of the following apply:

7 (a) The employee brought a frivolous claim under this act, as  
8 defined in section 2591 of the revised judicature act of 1961, 1961  
9 PA 236, MCL 600.2591.

10 (b) The employee planned, initiated, or participated in the  
11 conduct on which the action is brought.

12 (c) The employee is convicted of criminal conduct arising from  
13 an act described in section 3.

14 (2) An employer who violates this section is liable to the  
15 employee for all of the following:

16 (a) Reinstatement to the employee's previous position without  
17 loss of seniority.

18 (b) Two times the amount of lost back pay.

19 (c) Interest on the back pay.

20 (d) Compensation for any special damages.

21 (e) Any other relief necessary to make the employee whole.

22 Sec. 6. A civil action under section 4 may not be filed more  
23 than 3 years after the official of the state or political  
24 subdivision charged with responsibility to act in the circumstances  
25 discovers the act on which the action is based or more than 10  
26 years after the act was committed, whichever is later.