

# HOUSE BILL No. 4117

January 22, 2009, Introduced by Rep. Polidori and referred to the Committee on Judiciary.

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 and local governmental 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 (e) "Prosecuting authority" means, for this state, the  
19 attorney general or, for a political subdivision of this state, the  
20 official charged with investigating, filing, and conducting civil  
21 legal proceedings on behalf of the political subdivision.

22 Sec. 3. (1) A person who commits any of the following acts,  
23 regardless of whether the person acts with the specific intent to  
24 defraud, is liable to this state or a political subdivision of this  
25 state for 3 times the amount of damages the state or political  
26 subdivision sustains because of the act, for a civil penalty of not  
27 less than \$5,000.00 and not more than \$10,000.00 for each act, and

1 for the costs of an action brought to recover damages or a penalty:

2 (a) Knowingly presents or causes to be presented to an officer  
3 or employee of the state or political subdivision a false claim for  
4 payment or approval.

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

8 (c) Conspires to defraud the state or political subdivision by  
9 getting a false claim allowed or paid by the state or political  
10 subdivision.

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

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

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

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

26 (h) Is a beneficiary of the inadvertent submission of a false  
27 claim to an employee, officer, or agent of this state or a

1 political subdivision of this state or to a contractor, grantee, or  
2 other recipient of money of this state or a political subdivision  
3 of this state, subsequently discovers that the claim submitted was  
4 false, and fails to disclose the false claim to this state or the  
5 political subdivision, as applicable, within a reasonable time  
6 after the discovery.

7 (2) This act does not apply to claims, records, or statements  
8 that are either of the following:

9 (a) Made under the income tax act of 1967, 1967 PA 281, MCL  
10 206.1 to 206.532.

11 (b) Subject to recovery in a civil action under the medicaid  
12 false claim act, 1977 PA 72, MCL 400.601 to 400.613.

13 Sec. 4. (1) If, before commencing an action under this  
14 section, a prosecuting authority has reasonable cause to believe  
15 that a person has information or is in possession, custody, or  
16 control of a document or other tangible object relevant to an  
17 investigation of conduct described in section 3(1), the prosecuting  
18 authority may serve on the person in the manner required for  
19 service of process in this state a written demand that the person  
20 do 1 or more of the following:

21 (a) Appear and be examined under oath.

22 (b) Produce the document or object for inspection and copying.

23 (c) Answer written interrogatories.

24 (2) A demand under subsection (1) shall include all of the  
25 following:

26 (a) The nature of the conduct.

27 (b) If applicable, a description of the document or object to

1 be produced with sufficient definiteness to permit it to be fairly  
2 identified.

3 (c) A copy of any written interrogatories.

4 (d) A reasonable date and time at which the person must appear  
5 to testify or a period of time within which the person must produce  
6 the document or object to or answer the written interrogatories.

7 (e) A statement that objections to or reasons for not  
8 complying with the demand may be filed with the prosecuting  
9 authority on or before the date or within the time period, as  
10 applicable, given under subdivision (d).

11 (f) The place where the testimony will be taken or the  
12 document, object, or answers to interrogatories produced.

13 (g) A designation of the person who will be custodian of the  
14 document or object produced.

15 (h) A statement that if the person objects to or otherwise  
16 fails to comply with the written demand, the prosecuting authority  
17 may file an action to enforce the demand as provided in subsection  
18 (3).

19 (3) A prosecuting authority may file an action to enforce a  
20 demand made under subsection (1) in the circuit court of the county  
21 in which the person resides or maintains a principal place of  
22 business. Notice of hearing of the action and a copy of all  
23 pleadings shall be served on the person on whom the demand was  
24 served. The person may appear in opposition to the action.

25 (4) If the court in an action under subsection (3) finds that  
26 the demand is proper, that there is reasonable cause to believe  
27 that conduct described in section 3(1) may have occurred or is

1 presently occurring and that the information sought or document or  
2 object demanded is relevant to an investigation of the conduct, the  
3 court shall order the person to comply with the demand, subject to  
4 any modification the court prescribes. On motion by the person and  
5 for good cause shown, the court may enter any order that justice  
6 requires to protect the person from unreasonable annoyance,  
7 embarrassment, oppression, burden, or expense.

8 (5) Any testimony taken, document or object produced, or  
9 answers provided shall be kept confidential by the prosecuting  
10 authority before commencing an action against a person under this  
11 act for the conduct under investigation, unless 1 or more of the  
12 following apply:

13 (a) Federal law requires the disclosure.

14 (b) Confidentiality is waived by the person being investigated  
15 and the person who has testified, produced a document or object, or  
16 answered interrogatories.

17 (c) Disclosure is authorized by the court.

18 Sec. 5. (1) Any person may bring an action in the name of this  
19 state or a political subdivision of this state under this section  
20 to recover losses that this state or the political subdivision  
21 sustains from an act described in section 3(1). A court shall not  
22 dismiss an action filed under this section unless the prosecuting  
23 authority for the entity on whose behalf the action was brought has  
24 been notified and had an opportunity to appear and oppose the  
25 dismissal. The prosecuting authority waives the opportunity to  
26 oppose the dismissal if it is not exercised within 28 days of  
27 receiving the complaint and disclosure under subsection (2).

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

11           (3) The prosecuting authority for the entity on whose behalf  
12 the action was brought may elect to intervene in an action under  
13 this section. Within 90 days after the complaint and disclosure are  
14 served on the prosecuting authority under subsection (2) or any  
15 extension of the 90 days granted by the court, the prosecuting  
16 authority shall notify the court and the person initiating the  
17 action of 1 of the following:

18           (a) That the prosecuting authority will take over the action  
19 for this state and have primary responsibility for proceeding with  
20 the action.

21           (b) That the prosecuting authority declines to take over the  
22 action and the person initiating the action has the right to  
23 proceed with the action.

24           (4) If an action is filed under this section, a person other  
25 than the prosecuting authority for the entity on whose behalf the  
26 action was brought shall not intervene in the action or bring  
27 another action on behalf of this state or the political subdivision

1 based on the facts underlying the action.

2 (5) If the prosecuting authority elects to proceed with the  
3 action under subsection (3) or (6), the prosecuting authority has  
4 primary responsibility for prosecuting the action and may do all of  
5 the 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 prosecuting authority demonstrates  
19 that unrestricted participation by the person initiating the action  
20 during the litigation would interfere with or unduly delay the  
21 prosecuting authority's prosecution of the case or would be  
22 repetitious, irrelevant, or unduly harassing, the court may do any  
23 of the 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 prosecuting authority for the entity on whose  
4 behalf the action was brought notifies the court that he or she  
5 declines to take over the action under subsection (3), the person  
6 who initiated the action may proceed with the action. At the  
7 prosecuting authority's request and expense, the prosecuting  
8 authority shall be provided with copies of all pleadings filed in  
9 the action and copies of all deposition transcripts.  
10 Notwithstanding the prosecuting authority's election not to take  
11 over the action, the court may permit the prosecuting authority to  
12 intervene in the action at any time on a showing of good cause and,  
13 subject to subsections (5) and (7), without affecting the rights or  
14 status of the person initiating the action.

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

24           Sec. 6. As an alternative to an action permitted under section  
25 5, the prosecuting authority may pursue damages or a penalty for an  
26 act described in section 3(1) through any proceeding available to  
27 this state, including an administrative proceeding. If the

1 prosecuting authority pursues an alternative proceeding, a person  
2 who initiates an action under section 5 has rights in that  
3 proceeding equivalent to the rights that the person would have had  
4 if the action had continued under section 5 to the extent that  
5 those rights are consistent with the law governing the proceeding.  
6 Findings of fact and conclusions of law that become final in an  
7 alternative proceeding are conclusive on the parties to an action  
8 under section 5. For purposes of this section, a finding or  
9 conclusion is final if it has been finally determined on appeal to  
10 the appropriate court, if the time for filing an appeal of the  
11 finding or conclusion has expired, or if the finding or conclusion  
12 is not subject to judicial review.

13       Sec. 7. (1) A person may bring a civil action under section 5  
14 in any county in which venue is proper.

15       (2) If the attorney general elects to intervene in an action  
16 under section 5(3) or (6) and the court grants the request, on  
17 motion by the attorney general, the court shall transfer the action  
18 to the Ingham county circuit court.

19       (3) If the prosecuting authority for a political subdivision  
20 elects to intervene under section 5(3) or (6) in an action that is  
21 pending in a judicial circuit or district other than a circuit or  
22 district in which the political subdivision is located and the  
23 court grants the request, on motion by the prosecuting authority,  
24 the court shall transfer the action to the circuit or district, as  
25 applicable, in which the political subdivision is located.

26       Sec. 8. (1) The plaintiff in an action under section 5 has the  
27 burden of proving all essential elements of the cause of action,

1 including damages, by a preponderance of the evidence.

2 (2) The defendant in an action under section 5 is estopped  
3 from denying the essential elements of a criminal offense of which  
4 the defendant was found guilty, whether by verdict after trial or  
5 by plea of guilty or nolo contendere, if the criminal offense  
6 included elements of false statement or fraud and if the action  
7 under section 5 involves the same transaction.

8 Sec. 9. (1) Subject to subsections (2) and (3), if a person  
9 other than the prosecuting authority prevails in an action that the  
10 person initiates under section 5, the court shall award the person  
11 necessary expenses, costs, reasonable attorney fees, and, based on  
12 the amount of effort involved, the following percentage of the  
13 monetary proceeds resulting from the action or any settlement of  
14 the claim:

15 (a) If the prosecuting authority intervenes, 15% to 25%.

16 (b) If the prosecuting authority does not intervene, 25% to  
17 30%.

18 (2) If the court finds an action under section 5 to be based  
19 primarily on disclosure of specific information that was not  
20 provided by the person bringing the action, such as information  
21 from a criminal, civil, or administrative hearing in a state or  
22 federal department or agency, a legislative report, hearing, audit,  
23 or investigation, or the news media, and the prosecuting authority  
24 proceeds with the action, the court shall award the person bringing  
25 the action no more than 10% of the monetary recovery in addition to  
26 reasonable attorney fees, necessary expenses, and costs.

27 (3) If the court finds that the person bringing an action

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

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

17 (5) If the court in an action under section 5 determines that  
18 the action is based on the public disclosure of allegations or  
19 transactions in a criminal, civil, or administrative hearing, in a  
20 state or federal legislative, investigative, or administrative  
21 report, hearing, audit, or investigation, or from the news media,  
22 the court shall dismiss the action unless 1 or more of the  
23 following apply:

24 (a) The action was commenced by the prosecuting authority.

25 (b) The prosecuting authority has intervened in the action  
26 under section 5(3) or (6).

27 (c) The action was commenced by a person who was the original

1 source of the information on which the allegations or transactions  
2 are based. The person is the original source if he or she had  
3 direct and independent knowledge of the information and voluntarily  
4 provided the information to the prosecuting authority before filing  
5 an action based on that information under this section.

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

11 (7) If a person proceeds with an action under section 5 after  
12 being notified that the prosecuting authority has declined to  
13 intervene and the court finds that the claim was frivolous, as  
14 defined in section 2591 of the revised judicature act of 1961, 1961  
15 PA 236, MCL 600.2591, the court shall award the prevailing  
16 defendant actual and reasonable attorney fees and expenses and, in  
17 addition, shall impose a civil fine of not more than \$10,000.00 on  
18 the person who initiated the action. The civil fine shall be  
19 deposited into the general fund of this state or the political  
20 subdivision, as applicable.

21 (8) The prosecuting authority may recover all costs this state  
22 or the political subdivision incurs in the litigation and recovery  
23 of restitution under this act, including the cost of investigation  
24 and attorney fees.

25 (9) With the exception of money recovered for restitution,  
26 court and investigation costs, and reasonable attorney fees, the  
27 prosecuting authority shall immediately deposit all recovered money

1 received by the prosecuting authority into the general fund of this  
2 state or the political subdivision.

3       Sec. 10. (1) An employer shall not discharge, demote, suspend,  
4 threaten, harass, or otherwise discriminate against an employee in  
5 the terms and conditions of employment because the employee  
6 initiates, assists in, or participates in a proceeding or court  
7 action under this act or because the employee cooperates with or  
8 assists in an investigation under this act. This prohibition does  
9 not apply to an employment action against an employee if the court  
10 finds that 1 or more of the following apply:

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

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

16       (c) The employee is convicted of criminal conduct arising from  
17 an act described in section 3(1).

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

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

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

23       (c) Interest on the back pay.

24       (d) Compensation for any special damages.

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

26       Sec. 11. (1) An action under section 5 may not be filed more  
27 than 3 years after the official of the state or political

1 subdivision charged with responsibility to act in the circumstances  
2 discovers the act on which the action is based or more than 10  
3 years after the act was committed, whichever is later.

4 (2) An action under section 5 may be brought for conduct that  
5 occurred prior to the effective date of this act if the action is  
6 filed within the time limitation in subsection (1).

7 Sec. 12. (1) The remedies provided by this act are not  
8 exclusive and are provided in addition to any other remedies  
9 provided in any other law or available under common law.

10 (2) This act shall be liberally construed and applied to  
11 promote the public interest.