

CHAPTER.....

AN ACT relating to false claims; revising provisions relating to the distribution of money recovered in certain actions for false claims; revising the definition of a “claim”; increasing the minimum and maximum amounts of civil penalties for certain acts related to false claims; revising provisions relating to the statute of limitations for false claim actions; making various other changes to provisions relating to actions for false claims; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The federal Deficit Reduction Act of 2005, Public Law 109-171, enacted certain provisions concerning state plans for Medicaid. Section 6031 of the Act provides financial incentives for states that enact laws establishing liability for false or fraudulent claims made to the state plans for Medicaid. For a state to be eligible for these financial incentives, the laws of the state must contain provisions that are at least as effective at rewarding and facilitating certain actions for false or fraudulent claims as those described in certain provisions of federal law relating to false claims. (31 U.S.C. §§ 3730-3732) This bill amends existing Nevada law concerning the filing of false or fraudulent claims so that the laws of this State are at least as effective at rewarding and facilitating such actions as the provisions described in federal law.

Existing law governs the distribution of any recovery from a false claim action. (NRS 357.200-357.230) **Section 5** of this bill authorizes a court to award not more than 10 percent of any recovery to a person who: (1) voluntarily discloses information on which the allegations in the action for a false claim are based before the public disclosure of such information; or (2) has knowledge of information that is independent of and materially adds to any publicly disclosed allegations or transactions and who voluntarily provides such information to the State or a political subdivision. **Section 18** of this bill authorizes a court to reduce the recovery to which a private plaintiff is otherwise entitled if the private plaintiff planned or initiated the false claim on which the action is based and provides that if such a private plaintiff is convicted of criminal conduct related to a false claim, he or she is not entitled to any share of the recovery.

Sections 2 and 3 of this bill, respectively, set forth definitions of the terms “material” and “obligation.” **Section 7** of this bill amends the definition of “claim.”

Section 8 of this bill provides that a person who knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State or a political subdivision is liable for damages and a civil penalty. **Section 8** also increases the minimum and maximum amounts of civil penalties for which a person who commits certain acts related to false claims is liable.

Section 9 of this bill requires the Attorney General to investigate diligently any alleged liability for a false claim.

Existing law provides that a false claim action may be dismissed only with leave of the court. (NRS 357.080) **Section 10** of this bill provides that a false claim action may be dismissed only with the written consent of the court and the Attorney General.



Section 12 of this bill provides that if the Attorney General or the Attorney General's designee intervenes in a false claim action brought by a private plaintiff, the Attorney General or the designee may file a complaint or amend the complaint of the private plaintiff.

Section 13 of this bill provides that if the Attorney General or the Attorney General's designee intends to settle a false claim action, the court is required to determine whether the proposed settlement is fair, adequate and reasonable under the circumstances.

Existing law authorizes the Attorney General or the Attorney General's designee to intervene in an action in which he or she has previously declined to intervene upon a timely application to the court. (NRS 357.130) **Section 14** of this bill provides that the Attorney General or the Attorney General's designee may, for good cause shown, intervene in an action in which he or she has previously declined to intervene.

Section 15 of this bill reduces the amount of time that a defendant has to respond to a complaint in a false claim action from 30 days to 20 days.

Section 20 of this bill revises provisions relating to the liability of an employer who retaliates against an employee for taking any lawful action related to a false claim.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 357 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. *“Material” means having a natural tendency to influence or be capable of influencing the payment or receipt of money, property or services.*

Sec. 3. *“Obligation” means any established duty, regardless of whether the duty is a fixed duty, arising from:*

- 1. An express or implied contractual relationship;*
- 2. A relationship between a grantor and a grantee;*
- 3. A relationship between a licensor and a licensee;*
- 4. A fee-based or similar relationship;*
- 5. A statute or regulation; or*
- 6. The retention of any overpayment.*

Sec. 4. *“Original source” means a person:*

- 1. Who voluntarily discloses to the State or a political subdivision the information on which the allegations in an action for a false claim are based before the public disclosure of the information; or*
- 2. Who has knowledge of information that is independent of and materially adds to the publicly disclosed allegations or transactions and who voluntarily provides such information to the*



State or political subdivision before bringing an action for a false claim based on the information.

Sec. 5. *In an action brought pursuant to NRS 357.100 by an original source, the court may award not more than 10 percent of the recovery to the original source. In determining the amount to be awarded pursuant to this section, the court shall consider the role of the original source in advancing the claim to litigation.*

Sec. 6. NRS 357.010 is hereby amended to read as follows:

357.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 357.020 and 357.030 and sections 2, 3 and 4 of this act have the meanings ascribed to them in those sections.

Sec. 7. NRS 357.020 is hereby amended to read as follows:

357.020 1. "Claim" means ~~the~~ any request or demand , regardless of whether it is made under a contract or otherwise, for money, property or services ~~made to:~~

~~1. An~~ , regardless of whether the State or a political subdivision has title to the money or property, that is:

(a) Presented to an officer, employee or agent of this state or of a political subdivision of this state; or

~~2. A~~

(b) Made to a contractor, grantee or other recipient ~~of~~ if the money ~~from~~ , property or services are to be spent or used on behalf of the State or a political subdivision ~~of this state if any part of the money, property or services requested or demanded was provided by~~ and the State or political subdivision ~~is~~ :

(1) Provides or has provided any portion of the money, property or services that are requested or demanded; or

(2) Will reimburse the contractor, grantee or other recipient for any portion of the money, property or services that are requested or demanded.

2. The term does not include a request or demand for money or property that the State or a political subdivision has paid or provided to a natural person as:

(a) Compensation for employment; or

(b) An income subsidy with no restriction on the natural person's use of the money or property.

Sec. 8. NRS 357.040 is hereby amended to read as follows:

357.040 1. Except as otherwise provided in NRS 357.050, a person who, with or without specific intent to defraud, does any of the following listed acts is liable to the State or a political subdivision, whichever is affected, for ~~three times the amount of damages sustained by the State or political subdivision because of~~



~~the act of that person, for the costs of a civil action brought to recover those damages and for a civil penalty of not less than \$5,000 or more than \$10,000 for each act;~~ *the amounts set forth in subsection 2:*

(a) Knowingly presents or causes to be presented a false *or fraudulent* claim for payment or approval.

(b) Knowingly makes or uses, or causes to be made or used, a false record or statement ~~{to obtain payment or approval of}~~ *that is material to* a false *or fraudulent* claim.

(c) ~~{Conspires to defraud by obtaining allowance or payment of a false claim.~~

~~—(d)}~~ Has possession, custody or control of public property or money *used or to be used by the State or a political subdivision* and knowingly delivers or causes to be delivered to the State or a political subdivision less money or property ~~{than the amount for which the person receives a receipt.~~

~~—(e)}~~ *than the amount of which the person has possession, custody or control.*

(d) Is authorized to prepare or deliver a ~~{receipt for}~~ *document that certifies receipt of* money or property *used or* to be used by the State or a political subdivision and knowingly prepares or delivers such a ~~{receipt that falsely represents the money or property.~~

~~—(f)}~~ *document without knowing that the information on the document is true.*

(e) Knowingly buys, or receives as *a pledge or* security for an obligation ~~{}~~ *or debt*, public property from a person who is not authorized to sell or pledge the property.

~~{(e)}~~ (f) Knowingly makes or uses, or causes to be made or used, a false record or statement ~~{to conceal, avoid or decrease}~~ *that is material to* an obligation to pay or transmit money or property to the State or a political subdivision.

(g) *Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State or a political subdivision.*

(h) Is a beneficiary of an inadvertent submission of a false claim and, after discovering the falsity of the claim, fails to disclose the falsity to the State or political subdivision within a reasonable time.

(i) *Conspires to commit any of the acts set forth in this subsection.*

2. *For each act described in subsection 1 that is committed by a person, the person is liable for:*



(a) Three times the amount of damages sustained by the State or political subdivision, whichever is affected, because of the act of the person;

(b) The costs of a civil action brought to recover the damages described in paragraph (a); and

(c) A civil penalty of not less than \$5,500 or more than \$11,000.

3. As used in this section, a person acts “knowingly” with respect to information if he or she:

(a) Has knowledge of the information;

(b) Acts in deliberate ignorance of whether the information is true or false; or

(c) Acts in reckless disregard of the truth or falsity of the information.

Sec. 9. NRS 357.070 is hereby amended to read as follows:

357.070 1. Except as otherwise provided in subsection 2, the Attorney General shall investigate *diligently* any alleged liability pursuant to this chapter and may bring a civil action pursuant to this chapter against the person liable.

2. A district attorney or city attorney may accept a designation from the Attorney General to investigate any alleged liability pursuant to this chapter and may bring a civil action pursuant to this chapter against the person liable.

Sec. 10. NRS 357.080 is hereby amended to read as follows:

357.080 1. Except as otherwise provided in this section and NRS ~~{357.090 and}~~ 357.100, a private plaintiff may ~~{maintain}~~ *bring* an action pursuant to this chapter *for a violation of NRS 357.040* on his or her own account and that of the State ~~{if money, property or services provided by the State are involved, or on his or her own account and that of}~~ *or* a political subdivision ~~{if money, property or services provided by the political subdivision are involved, or on his or her own account and that of both the State and a political subdivision if both are involved.}~~ *, or both the State and a political subdivision. The action must be brought in the name of the State or the political subdivision, or both.* After such an action is commenced, it may be dismissed only with ~~{leave}~~ *written consent* of the court ~~{, taking}~~ *and the Attorney General. The court and the Attorney General shall take* into account the public purposes of this chapter and the best interests of the parties ~~{}~~ *in dismissing the action or consenting to the dismissal, as applicable, and provide the reasons for dismissing the action or consenting to the dismissal, as applicable.*



2. If a private plaintiff brings an action pursuant to this chapter, no ~~tother~~ person *other than the Attorney General or the Attorney General's designee* may *intervene or* bring ~~another~~ a related action pursuant to this chapter based on the ~~same~~ facts ~~that~~ *underlying the first action.*

3. An action may not be maintained by a private plaintiff pursuant to this chapter:

(a) Against a member of the Legislature or the Judiciary, an elected officer of the Executive Department of the State Government, or a member of the governing body of a political subdivision, if the action is based upon evidence or information known to the State or political subdivision at the time the action was brought.

(b) If the action is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding for a monetary penalty to which the State or political subdivision is already a party.

4. A complaint filed pursuant to this section must be placed under seal and so remain for at least 60 days or until the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 has elected whether to intervene. No service may be made upon the defendant until ~~the complaint is unsealed~~ *so ordered by the court.*

5. On the date the private plaintiff files a complaint, he or she shall send a copy of the complaint to the Attorney General by mail with return receipt requested. The private plaintiff shall send with each copy of the complaint a written disclosure of substantially all ~~material~~ evidence and information he or she possesses. If a district attorney or city attorney has accepted a designation from the Attorney General pursuant to NRS 357.070, the Attorney General shall forward a copy of the complaint to the district attorney or city attorney, as applicable.

6. An action pursuant to this chapter may be brought in any judicial district in this State in which the defendant can be found, resides, transacts business or in which any of the alleged fraudulent activities occurred.

Sec. 11. NRS 357.100 is hereby amended to read as follows:

357.100 ~~1. No action may be maintained~~ *Unless the Attorney General objects, a court shall dismiss an action or a claim made* pursuant to this chapter that is ~~based upon the public disclosure of~~ *substantially based on* allegations or transactions ~~that~~ *that have been disclosed publicly:*



1. *In a criminal, civil or administrative hearing ~~to, in~~ to which the State, a political subdivision, or an agent of the State or a political subdivision is a party;*

2. *In an investigation, report, hearing or audit conducted by or at the request of a house of the Legislature, an auditor or the governing body of a political subdivision ; ~~to~~ or ~~from~~*

3. *By the news media,*

↳ unless the action *or claim* is brought by the Attorney General, a designee of the Attorney General pursuant to NRS 357.070 or an original source of the information.

~~{2. As used in this section, "original source" means a person:~~

~~—(a) Who has direct and independent knowledge of the information on which the allegations were based;~~

~~—(b) Who voluntarily provided the information to the State or political subdivision before bringing an action based on the information; and~~

~~—(c) Whose information provided the basis or caused the making of the investigation, hearing, audit or report that led to the public disclosure.}~~

Sec. 12. NRS 357.110 is hereby amended to read as follows:

357.110 1. Within 60 days after receiving a complaint and disclosure, the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 may intervene and proceed with the action or, for good cause shown, move the court to extend the time for his or her election whether to proceed. The motion may be supported by affidavits or other submissions in chambers.

2. If the Attorney General or the Attorney General's designee elects *not* to intervene, ~~{the complaint must be unsealed. If the Attorney General or the Attorney General's designee elects not to intervene.}~~ the private plaintiff may proceed ~~{and the complaint must be unsealed.}~~ *with the action.*

3. *If the Attorney General or the Attorney General's designee elects to intervene, the Attorney General or the Attorney General's designee may file his or her own complaint or amend the complaint of the private plaintiff who brought the action pursuant to NRS 357.080. For the purposes of the statute of limitations set forth in NRS 357.170, any such pleading relates back to the filing date of the complaint of the private plaintiff, to the extent that any claim made by the Attorney General or the Attorney General's designee arises out of the conduct, transactions or occurrences set forth or attempted to be set forth in the prior complaint of the private plaintiff.*



Sec. 13. NRS 357.120 is hereby amended to read as follows:

357.120 1. If the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 intervenes, the private plaintiff remains a party to an action pursuant to NRS 357.080.

2. The Attorney General or the Attorney General's designee may move to dismiss the action for good cause. The private plaintiff must be notified of the filing of the motion and is entitled to oppose it and present evidence at the hearing.

3. Except as otherwise provided in this subsection, the Attorney General or the Attorney General's designee may settle the action. If the Attorney General or the Attorney General's designee intends to settle the action, the Attorney General or the Attorney General's designee shall notify the private plaintiff of that fact. Upon the request of the private plaintiff, the court shall determine whether *the proposed* settlement ~~of the action is consistent with the public purposes of this chapter and shall not approve the settlement of the action unless it determines that such settlement is consistent with the public purposes of this chapter.~~ *is fair, adequate and reasonable under all the circumstances. Upon a showing for good cause, the court may hear the proposed settlement in camera.*

Sec. 14. NRS 357.130 is hereby amended to read as follows:

357.130 1. If the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 elects not to intervene in an action pursuant to NRS 357.080, the private plaintiff has the same rights in conducting the action as the Attorney General or the Attorney General's designee would have had. A copy of each pleading or other paper filed in the action, and a copy of the transcript of each deposition taken, must be mailed to the Attorney General or the Attorney General's designee if the Attorney General or the Attorney General's designee so requests and pays the cost thereof.

2. ~~Upon timely application,~~ *For good cause shown,* the Attorney General or the Attorney General's designee may intervene in an action in which he or she has previously declined to intervene, if the interest of the State or a political subdivision in recovery of the money or property involved is not being adequately represented by the private plaintiff.

3. If the Attorney General or the Attorney General's designee so intervenes, the private plaintiff retains primary responsibility for conducting the action and any recovery must be apportioned as if the Attorney General or the Attorney General's designee had not intervened.



Sec. 15. NRS 357.140 is hereby amended to read as follows:

357.140 The defendant is entitled to ~~30~~ 20 days in which to respond after a complaint filed pursuant to NRS 357.080 is unsealed and served upon the defendant.

Sec. 16. NRS 357.180 is hereby amended to read as follows:

357.180 1. If the Attorney General, a designee of the Attorney General pursuant to NRS 357.070 or a private plaintiff prevails in or settles an action pursuant to NRS 357.080, the private plaintiff is entitled to a reasonable amount for expenses that the court finds were necessarily incurred, including reasonable costs, attorney's fees and the fees of expert consultants and expert witnesses. Those expenses must be awarded against the defendant, and may not be allowed against the State or a political subdivision.

2. If *the Attorney General or the Attorney General's designee does not proceed with the action and* the defendant prevails in the action ~~H~~ *brought by a private plaintiff*, the court may award the defendant reasonable expenses and attorney's fees against the party or parties who participated in the action if it finds that the action was clearly frivolous ~~or~~ , clearly vexatious or brought ~~solely~~ *primarily for the purposes of* harassment.

Sec. 17. NRS 357.190 is hereby amended to read as follows:

357.190 As used in NRS 357.190 to 357.230, inclusive, *and section 5 of this act*, "recovery" includes civil penalties and does not include any allowance of expenses or attorney's fees.

Sec. 18. NRS 357.210 is hereby amended to read as follows:

357.210 1. ~~H~~ *Except as otherwise provided in subsection 3, if* the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 intervenes at the outset in an action pursuant to NRS 357.080, the private plaintiff is entitled ~~to receive not less than 15 percent or more than 33 percent of any recovery, according to the extent of his or her contribution to the conduct of the action.~~ ~~to receive not less than 15 percent or more than 33 percent of any recovery, according to the extent of his or her contribution to the conduct of the action.~~

2. ~~H~~ *Except as otherwise provided in subsection 3, if* the Attorney General or the Attorney General's designee does not intervene in the action at the outset, the private plaintiff is entitled ~~to receive not less than 25 percent or more than 50 percent of any recovery, as the court determines to be reasonable.~~ ~~to receive not less than 25 percent or more than 50 percent of any recovery, as the court determines to be reasonable.~~

3. *Regardless of whether the Attorney General or the Attorney General's designee intervenes in the action, if the court finds that the action was brought by a private plaintiff who planned or initiated the violation of NRS 357.040 upon which the action is based, the court may reduce the recovery to which the*



private plaintiff is otherwise entitled pursuant to subsection 1 or 2. The court shall consider the role of the private plaintiff in advancing the action and any other relevant circumstances. If the private plaintiff is convicted of criminal conduct arising from his or her role in the violation of NRS 357.040, the private plaintiff must be dismissed from the civil action and must not receive any share of the recovery pursuant to subsection 1 or 2. Any such dismissal does not prejudice the right of the Attorney General or the Attorney General's designee to continue the action.

Sec. 19. NRS 357.230 is hereby amended to read as follows:

357.230 The portion of any recovery not apportioned pursuant to NRS 357.200 ~~and~~ and 357.210 ~~and 357.220~~ must be paid into the State General Fund if the money, property or services were provided only by the State, or into the general fund of the political subdivision if they were provided only by a political subdivision. If the action involved both the State and a political subdivision, the court shall apportion the remaining portion of any recovery between them according to the respective values of the money, property or services provided by each.

Sec. 20. NRS 357.250 is hereby amended to read as follows:

357.250 1. ~~[An employer who violates subsection 2 of NRS 357.240 is liable to the affected employee in a civil action for all relief necessary to make the affected]~~ *If an employee, contractor or agent is discharged, demoted, suspended, threatened, harassed or discriminated against in the terms and conditions of employment as a result of any lawful act of the employee, contractor or agent in furtherance of an action brought pursuant to this chapter, the employee, contractor or agent is entitled to all relief necessary to make the employee, contractor or agent whole, including, without limitation, reinstatement with the same seniority as if the **discharge, demotion, suspension, threat, harassment or** discrimination had not occurred or damages in lieu of reinstatement if appropriate, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the **discharge, demotion, suspension, threat, harassment or** discrimination and punitive damages if appropriate. The ~~employer is also liable~~ *employee, contractor or agent may also receive compensation* for expenses recoverable pursuant to NRS 357.180, costs and attorney's fees.*

2. ~~[An employee is entitled to the remedies provided in subsection 1 only if the employee:~~



~~—(a) Voluntarily disclosed information to the State or a political subdivision or voluntarily acted in furtherance of an action pursuant to this chapter; and~~

~~—(b) Was harassed, threatened with termination or demotion, or otherwise coerced by his or her employer into any participation in fraudulent activity.]~~ *A civil action brought pursuant to this section may not be brought more than 3 years after the date on which the discharge, demotion, suspension, threat, harassment or discrimination occurred.*

Sec. 21. NRS 357.090, 357.220 and 357.240 are hereby repealed.

Sec. 22. This act becomes effective on July 1, 2013.

