

ASSEMBLY BILL NO. 48—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to fraudulent acts committed against the State or a political subdivision. (BDR 14-154)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to crimes; extending the period during which criminal records may not be sealed if the crime is related to certain crimes involving Medicaid; revising provisions relating to incentives for bringing certain actions for false or fraudulent Medicaid claims; revising provisions governing the distribution of amounts collected to private plaintiffs in actions for false claims; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that a person convicted of a crime may, after the passage
2 of specified periods, petition the court in which he or she was convicted for the
3 sealing of all records of the conviction. Upon receiving such a petition, the court is
4 required to notify the law enforcement agency that arrested the petitioner and the
5 prosecuting attorney for the city or county who prosecuted the petitioner that the
6 petitioner is seeking to have the records of the conviction sealed. The prosecuting
7 attorney is authorized to testify and present evidence at any hearing concerning the
8 petition. (NRS 179.245) **Section 2** of this bill provides that a person who is
9 convicted of a misdemeanor or gross misdemeanor for fraud or certain other
10 offenses committed in connection with the State Plan for Medicaid is not entitled to
11 file a petition for the sealing of records relating to his or her conviction until at least
12 7 years after the date of the person's release from actual custody or from the date
13 when the person is no longer under a suspended sentence, whichever occurs later.
14 **Section 2** also requires the court to provide notice of such a petition to the Attorney
15 General if he or she was the prosecuting attorney who prosecuted the person for the
16 crime.



17 The federal Deficit Reduction Act of 2005, Public Law 109-171, enacted
 18 certain provisions concerning state plans for Medicaid. Section 6031 of the Act
 19 provides financial incentives for states that enact laws establishing liability for false
 20 or fraudulent claims made to the State Plan for Medicaid. (42 U.S.C. § 1396h) To
 21 be eligible for these financial incentives, the laws of a state must contain provisions
 22 that are at least as effective at rewarding and facilitating certain qui tam actions for
 23 false or fraudulent claims as those described in the federal False Claims Act. (31
 24 U.S.C. §§ 3730-3732) **Sections 3-8 and 10** of this bill amend existing law
 25 concerning the filing of false or fraudulent claims so that the laws of this State are
 26 at least as effective at rewarding and facilitating such actions as the provisions
 27 described in federal law.

28 Under existing law, a private plaintiff who initiates a civil action against a
 29 person for filing a false claim or otherwise defrauding the State or one of its
 30 political subdivisions, commonly called a qui tam action, is entitled to receive a
 31 percentage of the amount of any penalty recovered from the defendant according to
 32 the extent of the private plaintiff's contribution to the conduct of the action or an
 33 amount the court trying the action otherwise determines to be reasonable. (NRS
 34 357.210) **Section 9** of this bill reduces from 33 percent to 25 percent the maximum
 35 share of any recovery to which a private plaintiff is entitled in certain qui tam
 36 actions if the Attorney General or the Attorney General's designee intervenes in the
 37 action at its outset. **Section 9** also reduces from 50 percent to 33 percent the
 38 maximum share of any recovery to which a private plaintiff is entitled in certain qui
 39 tam actions if the Attorney General or the Attorney General's designee does not
 40 intervene in the action at its outset.

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

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** NRS 179.245 is hereby amended to read as follows:

3 179.245 1. Except as otherwise provided in subsection 5 and
 4 NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a
 5 person may petition the court in which the person was convicted for
 6 the sealing of all records relating to a conviction of:

7 (a) A category A or B felony after 15 years from the date of
 8 release from actual custody or discharge from parole or probation,
 9 whichever occurs later;

10 (b) A category C or D felony after 12 years from the date of
 11 release from actual custody or discharge from parole or probation,
 12 whichever occurs later;

13 (c) A category E felony after 7 years from the date of release
 14 from actual custody or discharge from parole or probation,
 15 whichever occurs later;

16 (d) ~~[Any]~~ *Except as otherwise provided in paragraph (e), any*
 17 gross misdemeanor after 5 years from the date of release from actual
 18 custody or discharge from probation, whichever occurs later;

19 (e) A violation of *NRS 422.540 to 422.570, inclusive, other*
 20 *than a felony, a violation of* NRS 484C.110 or 484C.120 other than
 21 a felony, or a battery which constitutes domestic violence pursuant



1 to NRS 33.018 other than a felony, after 7 years from the date of
2 release from actual custody or from the date when the person is no
3 longer under a suspended sentence, whichever occurs later; or

4 (f) Any other misdemeanor after 2 years from the date of release
5 from actual custody or from the date when the person is no longer
6 under a suspended sentence, whichever occurs later.

7 2. A petition filed pursuant to subsection 1 must:

8 (a) Be accompanied by the petitioner's current, verified records
9 received from:

10 (1) The Central Repository for Nevada Records of Criminal
11 History; and

12 (2) All agencies of criminal justice which maintain such
13 records within the city or county in which the conviction was
14 entered;

15 (b) If the petition references NRS 453.3365 or 458.330, include
16 a certificate of acknowledgment or the disposition of the
17 proceedings for the records to be sealed from all agencies of
18 criminal justice which maintain such records;

19 (c) Include a list of any other public or private agency, company,
20 official or other custodian of records that is reasonably known to the
21 petitioner to have possession of records of the conviction and to
22 whom the order to seal records, if issued, will be directed; and

23 (d) Include information that, to the best knowledge and belief of
24 the petitioner, accurately and completely identifies the records to be
25 sealed, including, without limitation, the:

26 (1) Date of birth of the petitioner;

27 (2) Specific conviction to which the records to be sealed
28 pertain; and

29 (3) Date of arrest relating to the specific conviction to which
30 the records to be sealed pertain.

31 3. Upon receiving a petition pursuant to this section, the court
32 shall notify the law enforcement agency that arrested the petitioner
33 for the crime and ~~f~~

34 ~~—(a) If the person was convicted in a district court or justice court,~~
35 ~~the prosecuting attorney for the county; or~~

36 ~~—(b) If the person was convicted in a municipal court,]~~ the
37 prosecuting attorney ~~f~~~~for the city.~~

38 ~~→]~~, including, without limitation, the Attorney General, who
39 *prosecuted the petitioner for the crime.* The prosecuting attorney
40 and any person having relevant evidence may testify and present
41 evidence at the hearing on the petition.

42 4. If, after the hearing, the court finds that, in the period
43 prescribed in subsection 1, the petitioner has not been charged with
44 any offense for which the charges are pending or convicted of any
45 offense, except for minor moving or standing traffic violations, the



1 court may order sealed all records of the conviction which are in the
2 custody of any agency of criminal justice or any public or private
3 agency, company, official or other custodian of records in the State
4 of Nevada, and may also order all such records of the petitioner
5 returned to the file of the court where the proceeding was
6 commenced from, including, without limitation, the Federal Bureau
7 of Investigation, the California Bureau of Criminal Identification
8 and Information and all other agencies of criminal justice which
9 maintain such records and which are reasonably known by either the
10 petitioner or the court to have possession of such records.

11 5. A person may not petition the court to seal records relating
12 to a conviction of:

13 (a) A crime against a child;

14 (b) A sexual offense;

15 (c) A violation of NRS 484C.110 or 484C.120 that is
16 punishable as a felony pursuant to paragraph (c) of subsection 1 of
17 NRS 484C.400;

18 (d) A violation of NRS 484C.430;

19 (e) A homicide resulting from driving or being in actual physical
20 control of a vehicle while under the influence of intoxicating liquor
21 or a controlled substance or resulting from any other conduct
22 prohibited by NRS 484C.110, 484C.130 or 484C.430;

23 (f) A violation of NRS 488.410 that is punishable as a felony
24 pursuant to NRS 488.427; or

25 (g) A violation of NRS 488.420 or 488.425.

26 6. If the court grants a petition for the sealing of records
27 pursuant to this section, upon the request of the person whose
28 records are sealed, the court may order sealed all records of the civil
29 proceeding in which the records were sealed.

30 7. As used in this section:

31 (a) "Crime against a child" has the meaning ascribed to it in
32 NRS 179D.0357.

33 (b) "Sexual offense" means:

34 (1) Murder of the first degree committed in the perpetration
35 or attempted perpetration of sexual assault or of sexual abuse or
36 sexual molestation of a child less than 14 years of age pursuant to
37 paragraph (b) of subsection 1 of NRS 200.030.

38 (2) Sexual assault pursuant to NRS 200.366.

39 (3) Statutory sexual seduction pursuant to NRS 200.368, if
40 punishable as a felony.

41 (4) Battery with intent to commit sexual assault pursuant to
42 NRS 200.400.

43 (5) An offense involving the administration of a drug to
44 another person with the intent to enable or assist the commission of



1 a felony pursuant to NRS 200.405, if the felony is an offense listed
2 in this paragraph.

3 (6) An offense involving the administration of a controlled
4 substance to another person with the intent to enable or assist the
5 commission of a crime of violence pursuant to NRS 200.408, if the
6 crime of violence is an offense listed in this paragraph.

7 (7) Abuse of a child pursuant to NRS 200.508, if the abuse
8 involved sexual abuse or sexual exploitation.

9 (8) An offense involving pornography and a minor pursuant
10 to NRS 200.710 to 200.730, inclusive.

11 (9) Incest pursuant to NRS 201.180.

12 (10) Open or gross lewdness pursuant to NRS 201.210, if
13 punishable as a felony.

14 (11) Indecent or obscene exposure pursuant to NRS 201.220,
15 if punishable as a felony.

16 (12) Lewdness with a child pursuant to NRS 201.230.

17 (13) Sexual penetration of a dead human body pursuant to
18 NRS 201.450.

19 (14) Luring a child or a person with mental illness pursuant
20 to NRS 201.560, if punishable as a felony.

21 (15) An attempt to commit an offense listed in this
22 paragraph.

23 **Sec. 3.** NRS 357.026 is hereby amended to read as follows:

24 357.026 "Original source" means a person:

25 1. Who voluntarily discloses to the State or a political
26 subdivision the information on which the allegations *or transactions*
27 in an action for a false claim are based before the public disclosure
28 of the information; or

29 2. Who has knowledge of information that is independent of
30 and materially adds to the publicly disclosed allegations or
31 transactions and who voluntarily provides such information to the
32 State or political subdivision before bringing an action for a false
33 claim based on the information.

34 **Sec. 4.** NRS 357.040 is hereby amended to read as follows:

35 357.040 1. Except as otherwise provided in NRS 357.050, a
36 person who, with or without specific intent to defraud, does any of
37 the following listed acts is liable to the State or a political
38 subdivision, whichever is affected, for the amounts set forth in
39 subsection 2:

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

42 (b) Knowingly makes or uses, or causes to be made or used, a
43 false record or statement that is material to a false or fraudulent
44 claim.



1 (c) Has possession, custody or control of public property or
2 money used or to be used by the State or a political subdivision and
3 knowingly delivers or causes to be delivered to the State or a
4 political subdivision less money or property than the amount of
5 which the person has possession, custody or control.

6 (d) Is authorized to prepare or deliver a document that certifies
7 receipt of money or property used or to be used by the State or a
8 political subdivision and knowingly prepares or delivers such a
9 document without knowing that the information on the document is
10 true.

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

14 (f) Knowingly makes or uses, or causes to be made or used, a
15 false record or statement that is material to an obligation to pay or
16 transmit money or property to the State or a political subdivision.

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

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

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

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

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

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

32 (c) ~~RA~~ *Except as otherwise provided in this paragraph, a* civil
33 *penalty of not less than \$5,500 or more than \$11,000. A civil*
34 *penalty imposed pursuant to this paragraph must correspond to*
35 *any adjustments in the monetary amount of a civil penalty for a*
36 *violation of the federal False Claims Act, 31 U.S.C. § 3729(a),*
37 *made by the Attorney General of the United States in accordance*
38 *with the Federal Civil Penalties Inflation Adjustment Act of 1990,*
39 *Pub. L. 101-410, as amended.*

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

42 (a) Has knowledge of the information;

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



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

3 **Sec. 5.** NRS 357.080 is hereby amended to read as follows:

4 357.080 1. Except as otherwise provided in this section and
5 NRS 357.100, a private plaintiff may bring an action pursuant to
6 this chapter for a violation of NRS 357.040 on his or her own
7 account and that of the State or a political subdivision, or both the
8 State and a political subdivision. The action must be brought in the
9 name of the State or the political subdivision, or both. After such an
10 action is commenced, it may be dismissed only with written consent
11 of the court and the Attorney General. The court and the Attorney
12 General shall take into account the public purposes of this chapter
13 and the best interests of the parties in dismissing the action or
14 consenting to the dismissal, as applicable, and provide the reasons
15 for dismissing the action or consenting to the dismissal, as
16 applicable.

17 2. If a private plaintiff brings an action pursuant to this chapter,
18 no person other than the Attorney General or the Attorney General's
19 designee may intervene or bring a related action pursuant to this
20 chapter based on the facts underlying the first action.

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

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

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

33 4. A complaint filed pursuant to this section must be placed
34 under seal and so remain for at least 60 days or until the Attorney
35 General or a designee of the Attorney General pursuant to NRS
36 357.070 has elected whether to intervene. No service may be made
37 upon the defendant until so ordered by the court.

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



1 shall forward a copy of the complaint to the district attorney or city
2 attorney, as applicable.

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

7 **Sec. 6.** NRS 357.100 is hereby amended to read as follows:

8 357.100 Unless the Attorney General objects, a court shall
9 dismiss an action or a claim made pursuant to this chapter that is
10 substantially based on *the same* allegations or transactions that have
11 been disclosed publicly:

12 1. In a criminal, civil or administrative hearing to which the
13 State, a political subdivision, or an agent of the State or a political
14 subdivision is a party;

15 2. In an investigation, report, hearing or audit conducted by or
16 at the request of a house of the Legislature, an auditor or the
17 governing body of a political subdivision; or

18 3. By the news media,
19 ↪ unless the action or claim is brought by the Attorney General, a
20 designee of the Attorney General pursuant to NRS 357.070 or an
21 original source of the information.

22 **Sec. 7.** NRS 357.120 is hereby amended to read as follows:

23 357.120 1. If the Attorney General or a designee of the
24 Attorney General pursuant to NRS 357.070 intervenes, the private
25 plaintiff remains a party to an action pursuant to NRS 357.080.

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

30 3. Except as otherwise provided in this subsection, the
31 Attorney General or the Attorney General's designee may settle the
32 action. If the Attorney General or the Attorney General's designee
33 intends to settle the action, the Attorney General or the Attorney
34 General's designee shall notify the private plaintiff of that fact.
35 Upon the request of the private plaintiff, the court shall determine ,
36 *after a hearing*, whether the proposed settlement is fair, adequate
37 and reasonable under all the circumstances. Upon a showing for
38 good cause, the court may ~~hear the proposed settlement~~ *conduct*
39 *such hearing* in camera.

40 **Sec. 8.** NRS 357.170 is hereby amended to read as follows:

41 357.170 1. An action pursuant to this chapter may not be
42 commenced ~~more~~ :

43 (a) *More* than 3 years after the date on which the Attorney
44 General or a designee of the Attorney General pursuant to NRS
45 357.070 discovers, or reasonably should have discovered, the



1 fraudulent activity , ~~for more than 6 years after the fraudulent~~
2 ~~activity occurred.~~ but in no event more than 10 years after the
3 fraudulent activity occurred ~~[-]; or~~

4 *(b) More than 6 years after the fraudulent activity occurred,*
5 *↪ whichever occurs later.* Within those limits, an action may be
6 based upon fraudulent activity that occurred before ~~July 1, 2007.~~
7 *the effective date of this act.*

8 2. In an action pursuant to this chapter, the standard of proof is
9 a preponderance of the evidence. A finding of guilty or guilty but
10 mentally ill in a criminal proceeding charging false statement or
11 fraud, whether upon a verdict of guilty or guilty but mentally ill or a
12 plea of guilty, guilty but mentally ill or nolo contendere, estops the
13 person found guilty or guilty but mentally ill from denying an
14 essential element of that offense in an action pursuant to this chapter
15 based upon the same transaction as the criminal proceeding.

16 **Sec. 9.** NRS 357.210 is hereby amended to read as follows:

17 357.210 1. Except as otherwise provided in subsection 3, if
18 the Attorney General or a designee of the Attorney General pursuant
19 to NRS 357.070 intervenes at the outset in an action pursuant to
20 NRS 357.080, the private plaintiff is entitled to receive not less than
21 15 percent or more than ~~33~~ 25 percent of any recovery, according
22 to the extent of his or her contribution to the conduct of the action.

23 2. Except as otherwise provided in subsection 3, if the Attorney
24 General or the Attorney General's designee does not intervene in the
25 action at the outset, the private plaintiff is entitled to receive not less
26 than 25 percent or more than ~~50~~ 30 percent of any recovery, as the
27 court determines to be reasonable.

28 3. Regardless of whether the Attorney General or the Attorney
29 General's designee intervenes in the action, if the court finds that
30 the action was brought by a private plaintiff who planned or initiated
31 the violation of NRS 357.040 upon which the action is based, the
32 court may reduce the recovery to which the private plaintiff is
33 otherwise entitled pursuant to subsection 1 or 2. The court shall
34 consider the role of the private plaintiff in advancing the action and
35 any other relevant circumstances. If the private plaintiff is convicted
36 of criminal conduct arising from his or her role in the violation of
37 NRS 357.040, the private plaintiff must be dismissed from the civil
38 action and must not receive any share of the recovery pursuant to
39 subsection 1 or 2. Any such dismissal does not prejudice the right of
40 the Attorney General or the Attorney General's designee to continue
41 the action.

42 **Sec. 10.** NRS 357.250 is hereby amended to read as follows:

43 357.250 1. If an employee, contractor or agent is discharged,
44 demoted, suspended, threatened, harassed or discriminated against
45 in the terms and conditions of employment as a result of any lawful



1 act of the employee, contractor , ~~or~~ agent *or associated others* in
2 furtherance of an action brought pursuant to this chapter ~~or~~ *or any*
3 *other effort to stop a violation of this chapter*, the employee,
4 contractor or agent is entitled to all relief necessary to make the
5 employee, contractor or agent whole, including, without limitation,
6 reinstatement with the same seniority as if the discharge, demotion,
7 suspension, threat, harassment or discrimination had not occurred or
8 damages in lieu of reinstatement if appropriate, twice the amount of
9 lost compensation, interest on the lost compensation, any special
10 damage sustained as a result of the discharge, demotion, suspension,
11 threat, harassment or discrimination and punitive damages if
12 appropriate. The employee, contractor or agent may also receive
13 compensation for expenses recoverable pursuant to NRS 357.180,
14 costs and attorney's fees.

15 2. A civil action brought pursuant to this section may not be
16 brought more than 3 years after the date on which the discharge,
17 demotion, suspension, threat, harassment or discrimination
18 occurred.

19 **Sec. 11.** NRS 357.225 is hereby repealed.

20 **Sec. 12.** This act becomes effective upon passage and
21 approval.

TEXT OF REPEALED SECTION

357.225 Distribution to original source in action based upon certain public disclosures. 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.

