

HOUSE BILL NO. 345

INTRODUCED BY C. SMITH, BLASDEL, FITZPATRICK, KNUDSEN, VANCE, ZOLNIKOV

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-8-402, MCA, is amended to read:

"17-8-402. Definitions. As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services, whether made pursuant to a contract and regardless of whether a governmental entity holds title to the money or property, that is made to:

(a) an employee, officer, or agent, or other representative of a governmental entity; or to

(b) a contractor, grantee, or other recipient person, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from or was provided by a governmental entity; is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity:

(i) provides or has provided any portion of the money, property, or services requested or demanded; or

(ii) will reimburse a contractor, grantee, or other person for any portion of the money, property, or services requested or demanded.

(2) "Government attorney" means the attorney general except for complaints involving a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the



1 state; or

2 (c) a unit of the Montana university system.

3 (4) (a) "Knowingly" means that a person, with respect to information, does any of the following:

4 (i) has actual knowledge of the information;

5 (ii) acts in deliberate ignorance of the truth or falsity of the information; or

6 (iii) acts in reckless disregard of the truth or falsity of the information.

7 (b) A specific intent to defraud is not required.

8 (5) "Material" means having a natural tendency to influence or be capable of influencing the payment
 9 or receipt of money, property, or services.

10 (6) "Obligation" means an established duty, whether fixed or not, arising from:

11 (a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

12 (b) a fee-based or similar relationship;

13 (c) a statute or regulation; or

14 (d) the retention of any overpayment.

15 ~~(5)~~(7) "Person" includes any natural person, corporation, firm, association, organization, partnership,
 16 limited liability company, business, trust, or other legal or business entity.

17 (8) "STATE" MEANS THE STATE OF MONTANA."

18

19 **Section 2.** Section 17-8-403, MCA, is amended to read:

20 **"17-8-403. False claims -- procedures -- penalties.** (1) Except as provided in subsection (2), a person
 21 is liable to a governmental entity for a civil penalty of not less than ~~\$5,000~~ \$6,000 and not more than ~~\$10,000~~
 22 \$12,000 for each act specified in this section, plus three times the amount of damages that a governmental entity
 23 sustains ~~because of the person's act~~, along with expenses, costs, and attorney fees, if the person:

24 (a) knowingly presents or causes to be presented ~~to an officer or employee of the governmental entity~~
 25 a false or fraudulent claim for payment or approval;

26 (b) knowingly makes, uses, or causes to be made or used a false record or statement material to ~~get~~
 27 a false or fraudulent claim ~~paid or approved by the governmental entity~~;

28 (c) conspires to ~~defraud the governmental entity by getting a false or fraudulent claim allowed or paid~~
 29 ~~by the governmental entity~~ commit a violation of this subsection (1);

30 (d) has possession, custody, or control of public property or money used or to be used by the

1 governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property,
 2 knowingly delivers or causes to be delivered less than all of the property or money than the amount for which the
 3 person receives a certificate or receipt;

4 (e) is authorized to make or deliver a document certifying receipt of property used or to be used by the
 5 governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property,
 6 makes or delivers a receipt without completely knowing that the information on the receipt is true;

7 (f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental
 8 entity from any person who may not lawfully sell or pledge the property;

9 (g) knowingly makes, uses, or causes to be made or used a false record or statement ~~to conceal, avoid,~~
 10 ~~or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors~~
 11 MATERIAL TO AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO A GOVERNMENTAL ENTITY OR KNOWINGLY
 12 CONCEALS OR KNOWINGLY AND IMPROPERLY AVOIDS OR DECREASES AN OBLIGATION TO PAY OR TRANSMIT MONEY OR
 13 PROPERTY TO A GOVERNMENTAL ENTITY; or

14 (h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity,
 15 subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or
 16 fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent
 17 claim.

18 (2) ~~(a)~~ In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less
 19 than ~~\$5,000~~ \$6,000 and not more than ~~\$10,000~~ \$12,000 for each act specified in this section, plus not less than
 20 two times and not more than three times the amount of damages that a governmental entity sustains ~~because~~
 21 ~~of the person's act~~ if the court finds all of the following:

22 ~~(i)~~(a) The person committing the act furnished the government attorney with all information known to that
 23 person about the act within 30 days after the date on which the person first obtained the information.

24 ~~(ii)~~(b) The person fully cooperated with any investigation of the act by the government attorney.

25 ~~(iii)~~(c) At the time that the person furnished the government attorney with information about the act, a
 26 criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and
 27 the person did not have actual knowledge of the existence of an investigation into the act.

28 ~~(b)~~(3) A person who violates the provisions of this section is also liable to the governmental entity for the
 29 expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

30 ~~(c)~~(4) Liability under this section is joint and several for any act committed by two or more persons.

1 ~~(4)(5)~~ This section does not apply to claims, records, or statements made in relation to claims filed with
 2 the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements
 3 made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and
 4 conservation under Title 77.

5 (6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the
 6 governmental entity or unless the action is brought by the government attorney or the person who is the original
 7 source of the information, if substantially the same allegations or transactions alleged in the action or claim were
 8 publicly disclosed in a:

9 (i) A criminal, civil, or administrative hearing in which the governmental entity or an agent of the
 10 governmental entity is a party;

11 (ii) A state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation;

12 or

13 (iii) THE news media report.

14 (b) For purposes of this subsection (6), "original source" means an individual who:

15 (i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which
 16 the allegations or transactions in a claim are based; or

17 (ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and
 18 transactions and voluntarily provided the information to the governmental entity before filing an action.

19 ~~(5)(7)~~ A person may not file a complaint or civil action:

20 ~~(a) brought under 17-8-406 against a governmental entity or an officer or employee of a governmental~~
 21 ~~entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the~~
 22 ~~governmental entity;~~ BROUGHT UNDER 17-8-406 AGAINST THE STATE OR AN OFFICER OR EMPLOYEE OF THE STATE
 23 ARISING FROM CONDUCT BY THE OFFICER OR EMPLOYEE WITHIN THE SCOPE OF THE OFFICER'S OR EMPLOYEE'S DUTIES
 24 TO THE STATE.

25 ~~(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative~~
 26 ~~civil penalty proceeding in which an agency of the governmental entity is already a party;~~

27 ~~(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or~~
 28 ~~administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate~~
 29 ~~or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political~~
 30 ~~subdivision, or the news media, unless the person has direct and independent knowledge of the information on~~

1 ~~which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information~~
 2 ~~to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil~~
 3 ~~action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that~~
 4 ~~led to the public disclosure; or~~
 5 ~~—— (d) that is based upon information discovered by a present or former employee of the governmental entity~~
 6 ~~during the course of employment unless the employee first, in good faith, exhausted existing internal procedures~~
 7 ~~for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental~~
 8 ~~entity failed to act on the information provided within a reasonable period of time."~~

9

10 **Section 3.** Section 17-8-404, MCA, is amended to read:

11 **"17-8-404. Limitation of actions.** (1) A complaint or civil action filed under 17-8-405 or 17-8-406 must
 12 be brought by the later of:

13 (a) 6 years after the date on which the violation was committed; or

14 (b) 3 years after the date when facts material to the right of action are known or reasonably should have
 15 been known by the official of the governmental entity charged with responsibility to act in the circumstances.

16 (2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after
 17 the date on which the violation was committed.

18 (3) If the governmental entity elects to intervene in any action brought under 17-8-406, the complaint in
 19 intervention must relate back to the filing date of the original complaint to the extent that the governmental entity's
 20 claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original
 21 complaint."

22

23 **Section 4.** Section 17-8-410, MCA, is amended to read:

24 **"17-8-410. Distribution of damages and civil penalty.** (1) Except as provided in subsection (2), if the
 25 government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive
 26 at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the
 27 claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

28 (2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the
 29 proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than
 30 information provided by the person bringing the action, relating to allegations or transactions disclosed through:

- 1 (i) a criminal, civil, or administrative hearing;
- 2 (ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or
- 3 (iii) the news media.
- 4 (b) In determining the award, the court shall take into account the significance of the information and the
- 5 role of the person bringing the action in advancing the case to litigation.
- 6 (3) Any payment to a person bringing an action pursuant to this part may be made only from the
- 7 proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an
- 8 amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney
- 9 fees and costs. The expenses, fees, and costs must be awarded against the defendant.
- 10 (4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing
- 11 the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil
- 12 penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less
- 13 than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and
- 14 must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the
- 15 court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs
- 16 must be awarded against the defendant.
- 17 (5) Whether or not the government attorney proceeds with the action, if the court finds that the action
- 18 was brought by a person who planned, and initiated, ~~or knowingly participated in~~ the violation of 17-8-403, the
- 19 court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the
- 20 action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into
- 21 account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to
- 22 the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the
- 23 violation of this part, the person must be dismissed from the civil action and may not receive any share of the
- 24 proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the
- 25 action.
- 26 (6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and
- 27 the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a
- 28 trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first
- 29 be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the
- 30 general fund of the governmental entity.

1 (7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each
 2 other and to the remedies or penalties available under all other laws of the state."
 3

4 **Section 5.** Section 17-8-411, MCA, is amended to read:

5 **"17-8-411. Costs and attorney fees.** The governmental entity that filed a civil action or intervened is
 6 entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the
 7 governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the
 8 costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred
 9 for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are
 10 awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the
 11 department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied
 12 by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses
 13 reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to an
 14 amount of reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs
 15 and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails
 16 in the action. ~~A If the governmental entity does not intervene, a~~ A defendant in a civil action brought pursuant to
 17 this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely
 18 for harassment purposes is entitled to the defendant's reasonable costs and attorney fees, ~~which must be~~
 19 ~~equitably apportioned against the person who brought the action and the governmental entity if a person and a~~
 20 ~~governmental entity were coplaintiffs. IF THE GOVERNMENTAL ENTITY DOES NOT INTERVENE, IT IS NOT RESPONSIBLE~~
 21 ~~FOR ANY OF THE DEFENDANT'S FEES AND COSTS."~~

22

23 **Section 6.** Section 17-8-412, MCA, is amended to read:

24 **"17-8-412. ~~Prohibitions on employers--employee~~ RETALIATORY ACTIONS PROHIBITED -- remedies.** (1)
 25 A governmental entity, ~~or private entity, or person~~ may not adopt or enforce a rule, regulation, or policy preventing
 26 an employee, ~~officer, agency,~~ AGENT, or contractor from disclosing information to a government or law
 27 enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or
 28 an action brought pursuant to 17-8-405 or 17-8-406.

29 (2) A governmental entity, ~~or private entity, or person~~ may not discharge, demote, suspend, threaten,
 30 harass, or deny promotion to or in any other manner discriminate against an employee, ~~officer, agency,~~ AGENT,

1 or contractor in the terms and conditions of employment, agency, or contract because of the ~~employee's~~
 2 ~~disclosure by the employee, officer, agency, AGENT, or contractor~~ of information to a government or law
 3 enforcement agency pertaining to a violation of 17-8-403.

4 ~~(3) (a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:~~

5 ~~—— (i) reinstatement to the same position with the same seniority status, salary, benefits, and other~~
 6 ~~conditions of employment that the employee would have had but for the discrimination;~~

7 ~~—— (ii) two times back pay plus interest on the back pay;~~

8 ~~—— (iii) compensation for any special damages sustained as a result of the discrimination; and~~

9 ~~—— (iv) reasonable court or administrative proceeding costs and reasonable attorney fees.~~

10 ~~(b) An employee, officer, agency, or contractor may file an action for the relief provided in this subsection~~
 11 ~~(3).~~

12 ~~(4) A civil action filed under this section may not be brought more than 3 years from the date on which~~

13 ~~the act of retaliation occurred. AN EMPLOYEE, CONTRACTOR, OR AGENT IS ENTITLED TO ALL RELIEF NECESSARY TO MAKE~~

14 ~~THE EMPLOYEE, CONTRACTOR, OR AGENT WHOLE IF THE EMPLOYEE, CONTRACTOR, OR AGENT IS DISCHARGED, DEMOTED,~~

15 ~~SUSPENDED, THREATENED, HARASSED, OR IN ANY OTHER MANNER DISCRIMINATED AGAINST IN THE TERMS AND~~

16 ~~CONDITIONS OF EMPLOYMENT BECAUSE OF LAWFUL ACTS DONE BY THE EMPLOYEE, CONTRACTOR, OR AGENT OR~~

17 ~~ASSOCIATED OTHERS IN FURTHERANCE OF AN ACTION UNDER THIS PART OR OTHER EFFORTS TO STOP ONE OR MORE~~

18 ~~VIOLATIONS OF THIS PART.~~

19 ~~(4) RELIEF UNDER SUBSECTION (3) INCLUDES REINSTATEMENT WITH THE SAME SENIORITY STATUS THE~~

20 ~~EMPLOYEE, CONTRACTOR, OR AGENT WOULD HAVE HAD BUT FOR THE DISCRIMINATION, TWO TIMES THE AMOUNT OF BACK~~

21 ~~PAY, INTEREST ON THE BACK PAY, AND COMPENSATION FOR ANY SPECIAL DAMAGES SUSTAINED AS A RESULT OF THE~~

22 ~~DISCRIMINATION, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEY FEES. A CIVIL ACTION MAY BE BROUGHT IN~~

23 ~~THE APPROPRIATE DISTRICT COURT OF THE STATE FOR THE RELIEF PROVIDED IN THIS SUBSECTION.~~

24 ~~(5) A CIVIL ACTION UNDER THIS SECTION MAY NOT BE BROUGHT MORE THAN 3 YEARS AFTER THE DATE ON WHICH~~

25 ~~THE RETALIATION OCCURRED."~~

26

27 NEW SECTION. Section 7. Saving clause. [This act] does not affect rights and duties that matured,

28 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

29

30 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
2 remains in effect in all valid applications that are severable from the invalid applications.

3

4 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2013.

5

6 NEW SECTION. **Section 10. Applicability.** [This act] applies to proceedings begun on or after July 1,
7 2013.

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- END -