

2016 Regular Session

SENATE BILL NO. 331

BY SENATOR PEACOCK

JUSTICE DEPARTMENT. Requires the assignment of anti-trust claims of state vendors or contractors. (8/1/16)

1 AN ACT
2 To amend and reenact the introductory paragraph of R.S. 46:437.12(A) and R.S. 51:137 and
3 to enact R.S. 38:2197, and R.S. 46:437.12(A)(12), relative to public contracts; to
4 require the assignment of anti-trust claims of state vendors and contractors; to
5 require provisions authorizing the assignment be in requests for proposals, contracts
6 and subcontracts and provider agreements; to provide for the state; to provide for the
7 rights of direct and indirect purchasers; to provide for recovery of damages; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 38:2197 is hereby enacted to read as follows:

11 **§38:2197. Anti-trust assignment**

12 **A. All contracts or agreements of any type relating to the purchase or**
13 **reimbursement of products, goods, supplies, materials, items, or services shall**
14 **contain a provision requiring the vendor or contractor to assign to the state all**
15 **anti-trust claims the vendor or contractor may have for anti-trust violations**
16 **relating to products, goods, supplies, materials, items, or services purchased or**
17 **reimbursed in whole or in part by the state or any of the state's departments,**

1 offices, agencies, or its political subdivisions through any state program.

2 B. All publicly bid projects, public works projects, or any other project
3 for which a request for proposal is issued shall contain an anti-trust assignment
4 provision in the request for proposal requiring the winning bidder to assign to
5 the state any anti-trust claims he may have related to the subject matter at issue
6 in the request for proposal.

7 C. To the extent that a contractor or vendor utilizes a subcontractor to
8 accomplish the provisions of the contract or agreement, the contractor shall
9 require the subcontractor to provide the same anti-trust assignment the
10 primary contractor or vendor must give the state under Subsection A of this
11 Section.

12 D. If a contractor has already assigned its rights to anti-trust claims to
13 a third party prior to bidding on the contract with the state or any of the state's
14 departments, offices, agencies, or its political subdivisions, the contract or
15 agreement shall require that the contractor consent to a transfer of the
16 assignment from the third party to the state.

17 E. Any contractual provision that purports to waive or obviate the
18 requirement for the anti-trust assignment required by this Section shall be void
19 and unenforceable and in violation of the public policy of this state.

20 Section 2. The introductory paragraph of R.S. 46:437.12(A) is hereby amended and
21 reenacted and 437.12(A)(12) is hereby enacted to read as follows:

22 §437.12. Provider agreement requirements

23 A. In addition to the requirements specified in R.S. 46:437.11, the provider
24 agreement developed by the department or any Managed Care Organization or
25 their subcontractors, including all providers in the Managed Care Organization
26 or its subcontractor's network, shall require the health care provider to comply
27 with the following:

28 * * *

29 (12) Assign to the state all anti-trust claims the provider, or any entity

1 with an ownership interest in the provider, has or may acquire in the future for
 2 anti-trust violations for any products, goods, supplies, materials, items, or
 3 services paid for or reimbursed by the state or any of its departments, offices,
 4 agencies, or political subdivisions in whole or in part through any state
 5 program.

* * *

Section 3. R.S. 51:137 is hereby amended and reenacted to read as follows:

§137. Damages recoverable for violation of law

A. Any person who is injured in his business or property by any person by
 reason of any act or thing forbidden by this Part may sue in any court of competent
 jurisdiction and shall recover threefold the damages sustained by him, the cost of
 suit, and a reasonable attorney's fee.

B. The state, whether a direct or indirect purchaser, may sue in any
court of competent jurisdiction by any reason of any act or thing forbidden by
this Part and shall be entitled to the damages provided in Subsection A.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Ashley Menou.

DIGEST

SB 331 Original 2016 Regular Session Peacock

Present law establishes provisions for Public Contracts and Public Bids.

Proposed law adds provisions for anti-trust assignments in all public contracts or agreements of any type relating to the purchase or reimbursement of products, goods, supplies, materials, items, or services. Provides that the contracts or agreements must contain a provision requiring the vendor or contractor to assign to the state all anti-trust claims the vendor or contractor may have for anti-trust violations relating to products, goods, supplies, materials, items, or services purchased or reimbursed in whole or in part by the state or through any state program.

Proposed law requires all publicly bid projects to contain an anti-trust assignment provision requiring the winning bidder to assign to the state any anti-trust claims he may have related to the subject matter at issue.

Proposed law requires a contractor or vendor to require any subcontractors to provide the same anti-trust assignment to the state as the primary contractor or vendor.

Proposed law requires any contractor that already assigned its rights to anti-trust claims to a third party prior to bidding on a contract with the state to consent to a transfer of the assignment from the third party to the state.

Proposed law provides that any contractual provision that purports to waive the anti-trust assignment requirements and provisions established in proposed law will be void and unenforceable and in violation of the public policy of the state.

Present law establishes the Medical Assistance Programs Integrity Law to prevent fraud and abuse committed by some health care providers participating in medical assistance programs and other persons, which create adverse fiscal effects and compromise program integrity.

Present law provides for provider agreements developed by the Department of Health and Hospitals. Present law requires a health care provider to comply with the following:

- (1) At the time of signing the provider agreement, have in his possession a valid professional or facility license or certificate pertinent to the goods, services, or supplies being provided, as required by applicable federal and state laws and rules, and maintain such license or certificate in good standing with the department throughout the effective period of the provider agreement.
- (2) Maintain medical assistance programs-related records in a systematic and orderly manner that the department requires and determines are relevant to the goods, services, or supplies being provided.
- (3) Retain medical assistance programs-related records for a period of five years to satisfy all necessary inquiries by the department.
- (4) Safeguard the use and disclosure of information pertaining to current or former recipients and comply with federal and state laws and rules pertaining to confidentiality of patient information.
- (5) Permit the department, the attorney general, the federal government, and any authorized agent of each of these entities access to all medical assistance programs-related records pertaining to goods, services, or supplies billed to the medical assistance programs, including access to all patient records and other health care provider information if the health care provider cannot easily separate records for recipients from other records.
- (6) Bill other insurers and third parties, including the Medicare program, before billing the medical assistance programs, if after reasonable inquiry it is known that the recipient is eligible for payment for health care or related services from another insurer or person, and comply with all applicable federal and state laws and rules in regard to this billing.
- (7) Report and refund any monies received in error or in excess of the amount to which the health care provider is entitled from the medical assistance programs.
- (8) Be liable for and indemnify, defend, and hold the department harmless from any cause of action or recovery arising out of the negligence or omission of the health care provider in the course of providing goods, services, or supplies to a recipient or a person believed to be a recipient.
- (9) At the option of the department, provide proof of liability insurance and maintain such insurance in effect for any period of time during which goods, services, or supplies are furnished to recipients.
- (10) (a) Accept payment from the medical assistance programs as payment in full, and prohibit the health care provider from billing or collecting any additional amount from the recipient or the recipient's responsible party except, and only to the extent the department permits or requires, a co-payment, coinsurance, or a deductible to be paid by the recipient for the goods,

services, or supplies provided.

- (b) The payment-in-full policy shall not apply to goods, services, or supplies provided to a recipient if the goods, services, or supplies are not covered by the medical assistance programs or the recipient is determined not to be covered by medical assistance programs.
- (11) Agree to be subject to claims review.

Proposed law retains present law and adds that provider agreements developed by any Managed Care Organization or their subcontractor, including all providers in the Managed Care Organization or its subcontractor's network will be subject to the provider agreement requirements provided in present law.

Proposed law retains all requirements in present law and adds a requirement that a health care provider assign to the state all anti-trust claims the provider, or any entity with an ownership interest in the provider, has or may acquire in the future.

Present law provides that any person who is injured in his business or property by any person by reason of any act or thing forbidden by law may sue in any court of competent jurisdiction and shall recover threefold the damages sustained by him, the cost of suit, and a reasonable attorney's fee.

Proposed law provides that the state may sue and recover damages under the provisions of present law whether the state is a direct or indirect purchaser.

Effective August 1, 2016.

(Amends 46:437.12(A)(intro para) and R.S. 51:137; adds R.S. 38:2197 and R.S. 46:437.12(A)(12))