

SECOND REGULAR SESSION

SENATE BILL NO. 959

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Read 1st time February 17, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4859S.011

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to the Missouri false claims act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 573, RSMo, is amended by adding thereto six new sections, to be known as sections 537.800, 537.802, 537.804, 537.806, 537.808, and 537.810, to read as follows:

537.800. Sections 537.800 to 537.810 shall be known as the "Missouri False Claims Act".

537.802. 1. As used in this section the following terms shall mean:

(1) "Claim", includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the government provides any portion of the money or property which is requested or demanded, or if the government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;

(2) "Government", the state of Missouri, or any political subdivision of the state, including but not limited to any public school district, public charter school of the state, or municipal corporation;

(3) "Knowing" and "knowingly", that a person, with respect to information:

(a) Has actual knowledge of the information;

(b) Acts in deliberate ignorance of the truth or falsity of the information; or

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

19 information, and no proof of specific intent to defraud is required;

20 (4) "Person", any individual, entity, corporation, partnership or
21 association, officer or employee of any state or private entity.

22 2. Any person who:

23 (1) Knowingly presents, or causes to be presented, a false or
24 fraudulent claim for payment or approval to an officer or employee of
25 the government;

26 (2) Knowingly makes, uses, or causes to be made or used, a false
27 record or statement to get a false or fraudulent claim paid or approved
28 by the government;

29 (3) Conspires to defraud the government by getting a false or
30 fraudulent claim allowed or paid;

31 (4) Has possession, custody, or control of property or money
32 used, or to be used, by the government and, intending to defraud the
33 government or willfully to conceal the property, delivers, or causes to
34 be delivered, less property than the amount for which the person
35 receives a certificate or receipt;

36 (5) Authorized to make or deliver a document certifying receipt
37 of property used, or to be used, by the government and, intending to
38 defraud the government, makes or delivers the receipt without knowing
39 that the information on the receipt is true;

40 (6) Knowingly buys, or receives as a pledge of an obligation or
41 debt, public property from an officer, employee, or agent of the
42 government who lawfully may not sell or pledge the property;

43 (7) Knowingly makes, uses, or causes to be made or used, a false
44 record or statement to conceal, avoid, or decrease an obligation to pay
45 or transmit money or property to the government; or

46 (8) Violates section 105.452, 105.454, 576.010, 576.020, 576.030,
47 576.040, 576.050, or 576.080;

48 shall be liable to the government affected for a civil penalty of not less
49 than ten thousand dollars and not more than one hundred thousand
50 dollars, plus three times the amount of damages which the government
51 sustains because of the act of that person, except that if the court finds
52 that:

53 (a) The person committing the violation of this subsection
54 furnished officials of the government entity responsible for
55 investigating false claims violations with all information known to such

56 person about the violation within thirty days after the date on which
57 the defendant first obtained the information;

58 (b) Such person fully cooperated with any government
59 investigation of such violation; and

60 (c) At the time such person furnished the government with the
61 information about the violation, no criminal prosecution, civil action,
62 or administrative action had commenced under state law with respect
63 to such violation, and the person did not have actual knowledge of the
64 existence of an investigation into such violation;

65 the court may assess not less than two times the amount of damages
66 which the government sustains because of the act of the person. A
67 person violating this subsection shall also be liable to the government
68 for the costs of a civil action brought to recover any such penalty or
69 damages.

70 3. Any information furnished under paragraphs (a) to (c) of
71 subdivision (8) of subsection 2 of this section shall be exempt from
72 disclosure under this section.

73 4. This section does not apply to claims, records, or statements
74 made under any provisions applicable to state or local taxation.

537.804. 1. The attorney general shall diligently investigate a
2 violation under section 537.802. If the attorney general finds that a
3 person has violated or is violating section 537.802, the attorney general
4 may bring a civil action under this section against the person.

5 2. (1) A person may bring a civil action for a violation of section
6 537.802 for the person and for the government. The action shall be
7 brought in the name of the government. The action may be dismissed
8 only if the court and the attorney general give written consent to the
9 dismissal and their reasons for consenting.

10 (2) A copy of the petition and written disclosure of substantially
11 all material evidence and information the person possesses shall be
12 served on the government under the Missouri Supreme Court rules of
13 civil procedure. The petition shall be filed in camera, shall remain
14 under seal for at least sixty days, and shall not be served on the
15 defendant until the court so orders. The government may elect to
16 intervene and proceed with the action within sixty days after it
17 receives both the petition and material evidence and information.

18 (3) The government may, for good cause shown, move the court

19 for extensions of time during which the petition remains under seal
20 under subdivision (2) of this subsection. Any such motions may be
21 supported by affidavits or other submissions in camera. The defendant
22 shall not be required to respond to any petition filed under this section
23 until thirty days after the petition is unsealed and served upon the
24 defendant under the Missouri Supreme Court rules of civil procedure.

25 (4) Before expiration of the sixty-day period or any extensions
26 obtained under subdivision (3) of this subsection, the government shall:

27 (a) Proceed with the action, in which case the action shall be
28 conducted by the government; or

29 (b) Notify the court that it declines to take over the action, in
30 which case the person bringing the action shall have the right to
31 conduct the action.

32 (5) When a person brings an action under this subsection, no
33 person other than the government may intervene or bring a related
34 action based on the facts underlying the pending action.

35 3. If the government proceeds with the action, it shall have the
36 primary responsibility for prosecuting the action, and shall not be
37 bound by an act of the person bringing the action. Such person shall
38 have the right to continue as a party to the action, subject to the
39 limitations set forth in subsection 4 of this section.

40 4. (1) The government may dismiss the action notwithstanding
41 the objections of the person initiating the action if the person has been
42 notified by the government of the filing of the motion and the court has
43 provided the person with an opportunity for a hearing on the motion.

44 (2) The government may settle the action with the defendant
45 notwithstanding the objections of the person initiating the action if the
46 court determines, after a hearing, that the proposed settlement is fair,
47 adequate, and reasonable under all the circumstances. Upon a showing
48 of good cause, such hearing may be held in camera.

49 (3) Upon a showing by the government that unrestricted
50 participation during the course of the litigation by the person initiating
51 the action would interfere with or unduly delay the government's
52 prosecution of the case, or would be repetitious, irrelevant, or for
53 purposes of harassment, the court may, in its discretion, impose
54 limitations on the person's participation, such as:

55 (a) Limiting the number of witnesses the person may call;

56 **(b) Limiting the length of the testimony of such witnesses;**
57 **(c) Limiting the person's cross-examination of witnesses; or**
58 **(d) Limiting the participation by the person in the litigation.**
59 **(4) Upon a showing by the defendant that unrestricted**
60 **participation during the course of the litigation by the person initiating**
61 **the action would be for purposes of harassment or would cause the**
62 **defendant undue burden or unnecessary expense, the court may limit**
63 **the participation by the person in the litigation.**

64 **5. If the government elects not to proceed with the action, the**
65 **person who initiated the action shall have the right to conduct the**
66 **action. If the government so requests, it shall be served with copies of**
67 **all pleadings filed in the action and shall be supplied with copies of all**
68 **deposition transcripts, at the government's expense. When a person**
69 **proceeds with the action, the court, without limiting the status and**
70 **rights of the person initiating the action, may nevertheless permit the**
71 **government to intervene at a later date upon a showing of good cause.**

72 **6. Whether or not the government proceeds with the action, upon**
73 **a showing by the government that certain actions of discovery by the**
74 **person initiating the action would interfere with the government's**
75 **investigation or prosecution of a criminal or civil matter arising out of**
76 **the same facts, the court may stay such discovery for a period of not**
77 **more than sixty days. Such showing shall be conducted in camera. The**
78 **court may extend the sixty-day period upon a further showing in**
79 **camera that the government has pursued the criminal or civil**
80 **investigation or proceedings with reasonable diligence and any**
81 **proposed discovery in the civil action will interfere with the ongoing**
82 **criminal or civil investigation or proceedings.**

83 **7. Notwithstanding subsection 2 of this section, the government**
84 **may elect to pursue its claim through any alternate remedy available**
85 **to the government, including any administrative proceeding to**
86 **determine a civil money penalty. If any such alternate remedy is**
87 **pursued in another proceeding, the person initiating the action shall**
88 **have the same rights in such proceeding as such person would have had**
89 **if the action had continued under this section. Any finding of fact or**
90 **conclusion of law made in such other proceeding that has become final**
91 **shall be conclusive on all parties to an action under this section. For**
92 **purposes of the preceding sentence, a finding or conclusion is final if**

93 it has been finally determined on appeal to the appropriate court of
94 this state, if all time for filing such an appeal with respect to the
95 finding or conclusion has expired, or if the finding or conclusion is not
96 subject to judicial review.

537.806. 1. If the government proceeds with an action brought
2 by a person under subsection 2 of section 537.804, such person shall,
3 subject to the second sentence of this subsection, receive at least fifteen
4 percent but not more than twenty-five percent of the proceeds of the
5 action or settlement of the claim, depending upon the extent to which
6 the person substantially contributed to the prosecution of the
7 action. Where the action is one which the court finds to be based
8 primarily on disclosures of specific information, other than information
9 provided by the person bringing the action, relating to allegations or
10 transactions in a criminal, civil, or administrative hearing, in a
11 legislative, administrative, or government report, hearing, audit, or
12 investigation, or from the news media, the court may award such sums
13 as it considers appropriate, but in no case more than ten percent of the
14 proceeds, taking into account the significance of the information and
15 the role of the person bringing the action in advancing the case to
16 litigation. Any payment to a person under the first or second sentence
17 of this subsection shall be made from the proceeds. Any such person
18 shall also receive an amount for reasonable expenses which the court
19 finds to have been necessarily incurred, plus reasonable attorneys' fees
20 and costs. All such expenses, fees, and costs shall be awarded against
21 the defendant.

22 2. If the government does not proceed with an action under
23 subsection 2 of section 537.804, the person bringing the action or
24 settling the claim shall receive an amount which the court decides is
25 reasonable for collecting the civil penalty and damages. The amount
26 shall not be less than twenty-five percent and not more than thirty
27 percent of the proceeds of the action or settlement and shall be paid
28 out of such proceeds. Such person shall also receive an amount for
29 reasonable expenses which the court finds to have been necessarily
30 incurred, plus reasonable attorneys' fees and costs. All such expenses,
31 fees, and costs shall be awarded against the defendant.

32 3. Whether or not the government proceeds with the action, if
33 the court finds that the action was brought by a person who planned

34 and initiated the violation of section 537.802 upon which the action was
35 brought, then the court may, to the extent the court considers
36 appropriate, reduce the share of the proceeds of the action which the
37 person would otherwise receive under subsection 1 or 2 of this section,
38 taking into account the role of that person in advancing the case to
39 litigation and any relevant circumstances pertaining to the violation.
40 If the person bringing the action is convicted of criminal conduct
41 arising from his or her role in the violation of section 537.802, that
42 person shall be dismissed from the civil action and shall not receive
43 any share of the proceeds of the action. Such dismissal shall not
44 prejudice the right of the government to continue the action,
45 represented by the attorney general.

46 4. If the government does not proceed with the action and the
47 person bringing the action conducts the action, the court may award to
48 the defendant its reasonable attorneys' fees and expenses if the
49 defendant prevails in the action and the court finds that the claim of
50 the person bringing the action was clearly frivolous, clearly vexatious,
51 or brought primarily for purposes of harassment.

52 5. (1) No court shall have jurisdiction over an action brought by
53 a former or present member of the armed forces under subsection 2 of
54 section 537.804 against a member of the armed forces arising out of
55 such person's service in the armed forces.

56 (2) No court shall have jurisdiction over an action brought under
57 subsection 2 of section 537.804 against a member of the legislature, a
58 member of the judiciary, or a senior executive branch official if the
59 action is based on evidence or information known to the government
60 when the action was brought. For purposes of this subdivision "senior
61 executive branch official" means the governor, lieutenant governor,
62 secretary of state, attorney general, state treasurer, state auditor,
63 director, division director, or counsel of any government agency, or
64 members of any state board, commission, or council.

65 (3) In no event may a person bring an action under subsection
66 2 of section 537.804 which is based upon allegations or transactions
67 which are the subject of a civil suit or an administrative civil money
68 penalty proceeding in which the government is already a party.

69 (4) No court shall have jurisdiction over an action under section
70 537.804 based upon the public disclosure of allegations or transactions

71 in a criminal, civil, or administrative hearing, in a legislative,
72 administrative, or government report, hearing, audit, or investigation,
73 or from the news media, unless the action is brought by the attorney
74 general or the person bringing the action is an original source of the
75 information.

76 6. As used in this section "original source" means an individual
77 who has direct and independent knowledge of the information on which
78 the allegations are based and has voluntarily provided the information
79 to the government before filing an action under section 537.804 which
80 is based on the information.

81 7. The government is not liable for expenses which a person
82 incurs in bringing an action under section 537.804.

537.808. 1. In civil actions brought under section 537.804 by the
2 state of Missouri, the provisions of sections 537.800 to 537.810 shall
3 apply.

4 2. Any employee who is discharged, demoted, suspended,
5 threatened, harassed, or in any other manner discriminated against in
6 the terms and conditions of employment by his or her employer because
7 of lawful acts done by the employee on behalf of the employee or others
8 in furtherance of an action under section 537.804, including
9 investigation for, initiation of, testimony for, or assistance in an action
10 filed or to be filed under section 537.804, shall be entitled to all relief
11 necessary to make the employee whole. Such relief shall include
12 reinstatement with the same seniority status such employee would have
13 had but for the discrimination, two times the amount of back pay,
14 interest on the back pay, and compensation for any special damages
15 sustained as a result of the discrimination, including litigation costs
16 and reasonable attorneys' fees. An employee may bring an action in the
17 appropriate circuit court for the relief provided in this subsection.

537.810. Sections 537.800 to 537.808 shall not apply to hospitals
2 and medical providers governed under section 208.164 or sections
3 191.900 to 191.910.

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