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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 8

January 12, 2009

Authored by Simon, Slawik, Winkler, Falk, Hansen and others The bill was read for the first time and referred to the Committee on Civil Justice

January 22, 2009

Committee Recommendation and Adoption of Report: To Pass and re-referred to the Committee on Commerce and Labor

February 9, 2009

Committee Recommendation and Adoption of Report: To Pass as Amended and re-referred to the Committee on State and Local Government Operations Reform, Technology and Elections

March 5, 2009

Committee Recommendation and Adoption of Report: To Pass as Amended and re-referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to state government; establishing the Minnesota False Claims Act;
1.3 assessing penalties; proposing coding for new law as Minnesota Statutes, chapter
1.4 15C.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [15C.01] DEFINITIONS.

1.7 Subdivision 1. Scope. For purposes of this chapter, the terms in this section have
1.8 the meanings given them.

1.9 Subd. 2. Claim. "Claim" includes any request or demand, whether under a contract
1.10 or otherwise, for money or property which is made to a contractor, grantee, or other
1.11 recipient if the state has provided or will provide any portion of the money or property
1.12 which is requested or demanded, or if the state has reimbursed or will reimburse the
1.13 contractor, grantee, or other recipient for any portion of the money or property which is
1.14 requested or demanded.

1.15 Subd. 3. Knowing and knowingly. "Knowing" and "knowingly" mean that a
1.16 person, with respect to information:

- 1.17 (1) has actual knowledge of the information;
1.18 (2) acts in deliberate ignorance of the truth or falsity of the information; or
1.19 (3) acts in reckless disregard of the truth or falsity of the information.

1.20 No proof of specific intent to defraud is required.

1.21 Subd. 4. Original source. "Original source" means a person who has direct and
1.22 independent knowledge of information which is probative of any essential element of the
1.23 allegations in an action brought pursuant to this section which was not obtained from a
1.24 public source and who either voluntarily provided the information to the state before

2.1 bringing an action based on the information or whose information provided the basis for
2.2 or caused an investigation, hearing, audit, or report that led to the public disclosure of the
2.3 allegations or transactions upon which an action brought pursuant to this section is based.

2.4 Subd. 5. **Person.** "Person" means any natural person, partnership, corporation,
2.5 association or other legal entity, including the state and any department, agency, or
2.6 political subdivision of the state.

2.7 Subd. 6. **State.** "State" means the state of Minnesota and includes any department,
2.8 agency, or political subdivision of the state.

2.9 **Sec. 2. [15C.02] LIABILITY FOR CERTAIN ACTS.**

2.10 (a) Any person who commits any of the acts in clauses (1) to (8) is liable to the state
2.11 for a civil penalty of not less than \$5,500 and not more than \$11,000 per false claim, plus
2.12 three times the amount of damages which the state sustains because of the act of that
2.13 person, except as otherwise provided in paragraph (b):

2.14 (1) knowingly presents, or causes to be presented, to an officer or employee of the
2.15 state of Minnesota a false or fraudulent claim for payment or approval;

2.16 (2) knowingly makes or uses, or causes to be made or used, a false record or
2.17 statement to get a false or fraudulent claim paid or approved by the state;

2.18 (3) knowingly conspires to either present a false or fraudulent claim to the state for
2.19 payment or approval or make, use, or cause to be made or used a false record or statement
2.20 to obtain payment or approval of a false or fraudulent claim;

2.21 (4) has possession, custody, or control of public property or money used, or to be
2.22 used, by the state and knowingly delivers or causes to be delivered to the state less money
2.23 or property than the amount for which the person receives a receipt;

2.24 (5) is authorized to prepare or deliver a receipt for money or property used, or to
2.25 be used, by the state and knowingly prepares or delivers a receipt that falsely represents
2.26 the money or property;

2.27 (6) knowingly buys, or receives as a pledge of an obligation or debt, public property
2.28 from an officer or employee of the state who lawfully may not sell or pledge the property;

2.29 (7) is a beneficiary of an inadvertent submission of a false claim and, after
2.30 discovering the falsity of the claim, knowingly fails to disclose the falsity to the state
2.31 within a reasonable time; or

2.32 (8) knowingly makes or uses, or causes to be made or used, a false record or
2.33 statement to conceal, avoid, or decrease an obligation to pay or transmit money or
2.34 property to the state.

3.1 (b) The court may assess not less than two times the amount of damages which the
3.2 state sustains because of the act of the person if:

3.3 (1) the person committing a violation under paragraph (a) furnished officials of the
3.4 state responsible for investigating the false claims violations with all information known
3.5 to the person about the violation within 30 days after the date on which the defendant first
3.6 obtained the information;

3.7 (2) the person fully cooperated with any state investigation of the violation; and

3.8 (3) at the time the person furnished the state with information about the violation,
3.9 no criminal prosecution, civil action, or administrative action had commenced under this
3.10 section with respect to the violation, and the person did not have actual knowledge of the
3.11 existence of an investigation into the violation.

3.12 (c) A person violating this section is also liable to the state for the costs of a civil
3.13 action brought to recover any penalty or damages.

3.14 (d) Except for conduct described in paragraph (a), clause (7), a person is not liable
3.15 under this section for mere inadvertence or mistake with respect to activities involving a
3.16 false or fraudulent claim.

3.17 **Sec. 3. [15C.03] EXCLUSION.**

3.18 This chapter does not apply to claims, records, or statements made under portions
3.19 of Minnesota Statutes relating to taxation.

3.20 **Sec. 4. [15C.04] RESPONSIBILITIES OF ATTORNEY GENERAL.**

3.21 The attorney general may investigate violations of section 15C.02. If the attorney
3.22 general finds that a person has violated or is violating section 15C.02, the attorney general
3.23 may bring a civil action under this section against the person to enjoin any act in violation
3.24 of section 15C.02 and to recover damages and penalties.

3.25 **Sec. 5. [15C.05] PRIVATE REMEDIES; COMPLAINT UNDER SEAL; COPY**
3.26 **OF COMPLAINT AND WRITTEN DISCLOSURE OF EVIDENCE TO BE SENT**
3.27 **TO ATTORNEY GENERAL.**

3.28 (a) Except as otherwise provided in this section, a person may maintain an action
3.29 pursuant to this section on the person's own account and that of the state if money,
3.30 property, or services provided by the state are involved; the person's own account and
3.31 that of a political subdivision if money, property, or services provided by the political
3.32 subdivision are involved; or on the person's own account and that of both the state and a
3.33 political subdivision if both are involved. After such an action is commenced, it may be

4.1 voluntarily dismissed only if the court and the attorney general give written consent to the
4.2 dismissal and their reasons for consenting.

4.3 (b) If an action is brought pursuant to this section, no other person may bring
4.4 another action pursuant to this section based on the same facts which are the subject of
4.5 the pending action.

4.6 (c) An action may not be maintained by a person pursuant to this section:

4.7 (1) against the legislature, the judiciary, an executive department of the state, or a
4.8 political subdivision, and their members or employees;

4.9 (2) if the action is based upon allegations or transactions that are the subject of a
4.10 civil action or an administrative proceeding for a monetary penalty to which the state or a
4.11 political subdivision of the state is already a party; or

4.12 (3) unless the action is brought by an original source of the information or the
4.13 attorney general initiates or intervenes in the action, if the action is based upon the public
4.14 disclosure of allegations or transactions: (i) in a criminal, civil, or administrative hearing;
4.15 (ii) in an investigation, report, hearing, or audit conducted by or at the request of the house
4.16 of representatives or the senate; (iii) by an auditor or the governing body of a political
4.17 subdivision; or (iv) from the news media.

4.18 (d) A complaint in an action pursuant to this section must be commenced by filing
4.19 the complaint with the court in camera, and the court must place it under seal for at least
4.20 60 days. No service may be made upon the defendant until the complaint is unsealed.

4.21 (e) If a complaint is filed under this section, the plaintiff shall serve a copy of the
4.22 complaint on the attorney general in accordance with the Minnesota Rules of Civil
4.23 Procedure and shall also serve at the same time a written disclosure of substantially all
4.24 material evidence and information the plaintiff possesses.

4.25 **Sec. 6. [15C.06] ATTORNEY GENERAL INTERVENTION; MOTION TO**
4.26 **EXTEND TIME; UNSEALING OF COMPLAINT.**

4.27 (a) Within 60 days after receiving a complaint and disclosure pursuant to section
4.28 15C.05, the attorney general shall intervene or decline intervention or, for good cause
4.29 shown, move the court to extend the time for doing so. The motion may be supported by
4.30 affidavits or other submissions in chambers.

4.31 (b) The complaint must be unsealed after the attorney general decides whether
4.32 or not to intervene.

4.33 (c) Notwithstanding the attorney general's decision regarding intervention in an
4.34 action brought by a plaintiff under section 15C.05, the attorney general may pursue the
4.35 claim through any alternate remedy available to the state, including any administrative

5.1 proceeding to determine a civil money penalty. If the attorney general pursues any such
5.2 alternate remedy in another proceeding, the person initiating the action has the same rights
5.3 in that proceeding as if the action had continued under section 15C.05. Any finding of fact
5.4 or conclusion of law made in the other proceeding that has become final is conclusive on
5.5 all parties to an action under section 15C.05. For purposes of this paragraph, a finding
5.6 or conclusion is final if it has been finally determined on appeal to the appropriate state
5.7 court, if the time for filing an appeal has expired, or if the finding or conclusion is not
5.8 subject to judicial review.

5.9 Sec. 7. **[15C.07] SERVICE OF UNSEALED COMPLAINT AND RESPONSE**
5.10 **BY DEFENDANT.**

5.11 When unsealed, the complaint shall be served on the defendant pursuant to Rule 3 of
5.12 the Minnesota Rules of Civil Procedure.

5.13 The defendant must respond to the complaint within 20 days after it is served on
5.14 the defendant.

5.15 Sec. 8. **[15C.08] ATTORNEY GENERAL AND PRIVATE PARTY ROLES.**

5.16 (a) Except as otherwise provided by this section, if the attorney general does not
5.17 intervene at the outset in an action brought by a person pursuant to section 15C.05, the
5.18 person has the same rights in conducting the action as the attorney general would have
5.19 had. A copy of each pleading or other paper filed in the action, and a copy of the transcript
5.20 of each deposition taken, must be mailed to the attorney general if the attorney general
5.21 so requests and pays the cost of doing so.

5.22 (b) If the attorney general elects not to intervene at the outset in the action, the
5.23 attorney general may intervene subsequently, upon timely application and good cause
5.24 shown. If the attorney general so intervenes, the attorney general subsequently has
5.25 primary responsibility for conducting the action.

5.26 (c) If the attorney general elects at the outset of the action to intervene, the attorney
5.27 general has the primary responsibility for prosecuting the action. The person who initially
5.28 brought the action remains a party, but the person's acts do not bind the attorney general.

5.29 (d) Whether or not the attorney general intervenes in the action, the attorney general
5.30 may move to dismiss the action for good cause. The person who brought the action must
5.31 be notified of the filing of the motion and may oppose it and present evidence at the
5.32 hearing. The attorney general may also settle the action. If the attorney general intends to
5.33 settle the action, the attorney general shall notify the person who brought the action. The
5.34 state may settle the action with the defendant notwithstanding the objections of the person

6.1 initiating the action if the court determines, after a hearing, that the proposed settlement
6.2 is fair, adequate, and reasonable under all the circumstances. Upon a showing of good
6.3 cause, such a hearing may be held in camera.

6.4 **Sec. 9. [15C.09] STAY OF DISCOVERY; EXTENSION.**

6.5 (a) The court may stay discovery by a person who brought an action under section
6.6 15C.05 for not more than 60 days if the attorney general shows that the proposed discovery
6.7 would interfere with the investigation or prosecution of a civil or criminal matter arising
6.8 out of the same facts, whether or not the attorney general participates in the action.

6.9 (b) The court may extend the stay upon a further showing that the attorney general
6.10 has pursued the civil or criminal investigation or proceeding with reasonable diligence and
6.11 that the proposed discovery would interfere with its continuation.

6.12 (c) Discovery may not be stayed for a total of more than six months over the
6.13 objection of the person who brought the action, except for good cause shown by the
6.14 attorney general.

6.15 (d) A showing made pursuant to this section must be made in chambers.

6.16 **Sec. 10. [15C.10] COURT-IMPOSED LIMITATION UPON PARTICIPATION**
6.17 **OF PRIVATE PLAINTIFF IN ACTION.**

6.18 Upon a showing by the attorney general in an action in which the attorney general
6.19 has intervened that unrestricted participation by a person under this chapter would
6.20 interfere with or unduly delay the conduct of the action, or would be repetitious, irrelevant,
6.21 or solely for harassment, the court may limit the person's participation by, among other
6.22 measures, limiting the number of witnesses, the length of the testimony of the witnesses,
6.23 or the cross-examination of witnesses by the person.

6.24 **Sec. 11. [15C.11] LIMITATION OF ACTIONS; REMEDIES.**

6.25 (a) An action pursuant to this chapter may not be commenced more than three years
6.26 after the date of discovery of the fraudulent activity by the attorney general or more than
6.27 six years after the fraudulent activity occurred, whichever occurs last, but in no event more
6.28 than ten years after the date on which the violation is committed.

6.29 (b) A finding of guilt in a criminal proceeding charging false statement or fraud,
6.30 whether upon a verdict of guilty or a plea of guilty or nolo contendere, stops the person
6.31 found guilty from denying an essential element of that offense in an action pursuant to this
6.32 chapter based upon the same transaction as the criminal proceeding.

7.1 (c) In any action under this chapter, the state and any qui tam plaintiff must prove
7.2 all essential elements of the cause of action, including damages, by a preponderance of
7.3 the evidence.

7.4 **Sec. 12. [15C.12] AWARD OF EXPENSES AND ATTORNEY FEES.**

7.5 If the attorney general or a person who brought an action under section 15C.05
7.6 prevails in or settles an action pursuant to this chapter, the court may authorize the person
7.7 to recover reasonable costs, reasonable attorney fees, and the reasonable fees of expert
7.8 consultants and expert witnesses. Those expenses must be awarded against the defendant,
7.9 and may not be allowed against the state or a political subdivision. If the attorney general
7.10 does not intervene in the action and the person bringing the action conducts the action, and
7.11 if the defendant prevails in the action, the court shall award to the defendant reasonable
7.12 expenses and attorney fees against the party or parties who participated in the action if it
7.13 finds that the action was clearly frivolous or vexatious or brought solely for harassment.

7.14 **Sec. 13. [15C.13] DISTRIBUTION TO PRIVATE PLAINTIFF IN CERTAIN**
7.15 **ACTIONS.**

7.16 If the attorney general intervenes at the outset in an action brought by a person
7.17 under section 15C.05, the person shall receive not less than 15 percent or more than 25
7.18 percent of any recovery in proportion to the person's contribution to the conduct of the
7.19 action. If the attorney general does not intervene in the action at the outset, the person is
7.20 entitled to receive not less than 25 percent or more than 30 percent of any recovery of
7.21 the civil penalty and damages, or settlement, as the court determines to be reasonable.
7.22 For recoveries whose distribution is governed by federal code or rule, the basis for
7.23 calculating the portion of the recovery the person is entitled to receive shall not include
7.24 such amounts reserved for distribution to the federal government or designated in their
7.25 use by such federal code or rule.

7.26 **Sec. 14. [15C.14] EMPLOYER RESTRICTIONS; LIABILITY.**

7.27 (a) An employer shall not adopt or enforce any rule or policy forbidding an employee
7.28 to disclose information to the state, a political subdivision, or a law enforcement agency,
7.29 or to act in furtherance of an action pursuant to this chapter, including investigation for
7.30 bringing or testifying in such an action.

7.31 (b) An employer shall not discharge, demote, suspend, threaten, harass, deny
7.32 promotion to, or otherwise discriminate against an employee in the terms or conditions
7.33 of employment because of lawful acts done by the employee on the employee's behalf

8.1 or on behalf of others in disclosing information to the state, a political subdivision, or a
8.2 law enforcement agency in furtherance of an action pursuant to this chapter, including
8.3 investigation for bringing or testifying in such an action.

8.4 (c) An employer who violates this section is liable to the affected employee in a civil
8.5 action for damages and other relief, including reinstatement, twice the amount of lost
8.6 compensation, interest on the lost compensation, any special damage sustained as a result
8.7 of the discrimination, and punitive damages if appropriate. The employer is also liable for
8.8 expenses recoverable pursuant to section 15C.12, including costs and attorney fees.