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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **290**

02/04/2013 Authored by Simon and Falk

The bill was read for the first time and referred to the Committee on Civil Law

02/13/2013 Adoption of Report: Pass and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy

02/21/2013 Adoption of Report: Pass and re-referred to the Committee on Judiciary Finance and Policy

1.1 A bill for an act
1.2 relating to state government; modifying false claims provisions; amending
1.3 Minnesota Statutes 2012, sections 15C.01; 15C.02; 15C.05; 15C.08; 15C.12;
1.4 15C.13; proposing coding for new law in Minnesota Statutes, chapter 15C;
1.5 repealing Minnesota Statutes 2012, section 15C.14.

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

1.7 Section 1. Minnesota Statutes 2012, section 15C.01, is amended to read:

1.8 **15C.01 DEFINITIONS.**

1.9 Subdivision 1. **Scope.** For purposes of this chapter, the terms in this section have
1.10 the meanings given them.

1.11 Subd. 2. **Claim.** "Claim" includes a request or demand, whether under a contract or
1.12 otherwise, for money or property and whether or not the state or a political subdivision has
1.13 title to the money or property, that:

1.14 (1) is presented to an officer, employee, or agent of the state or a political
1.15 subdivision; or

1.16 (2) is made by to a contractor, grantee, or other recipient to the state or a political
1.17 subdivision if the money or property is to be spent or used on behalf of the state or the
1.18 political subdivision or to advance a state or political subdivision's program or interest,
1.19 and if the state or political subdivision provides or has provided or will provide a portion
1.20 of the money or property that is requested or demanded, or if the state or the political
1.21 subdivision has reimbursed or will reimburse the contractor, grantee, or other recipient for
1.22 a portion of the money or property that is requested or demanded.

1.23 Claim does not include requests or demands for money or property that the state
1.24 or a political subdivision has paid to an individual as compensation for state or political

subdivision employment, or as an income subsidy with no restrictions on that individual's use of the money or property.

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

(1) has actual knowledge of the information;

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

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

No proof of specific intent to defraud is required, but in no case is a person who acts merely negligently, inadvertently, or mistakenly with respect to information deemed to have acted knowingly.

Subd. 3a. **Material.** "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

Subd. 3b. **Obligation.** "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

Subd. 4. **Original source.** "Original source" means a person who ~~has direct and independent knowledge of information that is probative of an essential element of the allegations in an action brought under this chapter that was not obtained from a public source and who either voluntarily provided the information to the state or the political subdivision before bringing an action based on the information or whose information provided the basis for or caused an investigation, hearing, audit, or report that led to the public disclosure of the allegations or transactions upon which an action brought under this chapter is based.~~ either:

(1) prior to a public disclosure under section 15C.05, paragraph (f), has voluntarily disclosed to the state or a political subdivision the information on which allegations or transactions in a claim are based; or

(2) has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and has voluntarily provided the information to the state or a political subdivision before filing an action under this chapter.

Subd. 5. **Person.** "Person" means a natural person, partnership, corporation, association or other legal entity but does not include the state or a political subdivision.

Subd. 6. **Political subdivision.** "Political subdivision" means a political subdivision of the state and includes a department or agency of a political subdivision.

Subd. 7. **Prosecuting attorney.** "Prosecuting attorney" means:

(1) the attorney general, if the false or fraudulent claim involves money, property, or services provided by the state; or

(2) the county attorney, city attorney, or other attorney representing a political subdivision, if the false or fraudulent claim involves money, property, or services provided by the political subdivision.

Subd. 8. **State.** "State" means the state of Minnesota and includes a department or agency of the state.

Sec. 2. Minnesota Statutes 2012, section 15C.02, is amended to read:

15C.02 LIABILITY FOR CERTAIN ACTS.

(a) A person who commits any act described in clauses (1) to (7) is liable to the state or the political subdivision for a civil penalty of not less than \$5,500 and not more than \$11,000 per false or fraudulent claim, plus three times the amount of damages that the state or the political subdivision sustains because of the act of that person, except as otherwise provided in paragraph (b):

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

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

(3) knowingly conspires to ~~either present a false or fraudulent claim to the state or a political subdivision for payment or approval or makes, uses, or causes to be made or used a false record or statement to obtain payment or approval of a false or fraudulent claim~~ commit a violation of clause (1), (2), (4), (5), (6), or (7);

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

(5) is authorized to ~~prepare~~ make or deliver a document certifying receipt for money or property used, or to be used, by the state or a political subdivision and ~~knowingly prepares or delivers a receipt that falsely represents the money or property, intending to defraud the state or a political subdivision, makes or delivers the receipt without completely knowing that the information on the receipt is true;~~

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

(7) knowingly makes or uses, or causes to be made or used, a false record or statement material to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a political subdivision, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or a political subdivision.

(b) The court may assess not less than two times the amount of damages that the state or the political subdivision sustains because of the act of the person if:

(1) the person committing a violation under paragraph (a) furnished an officer or employee of the state or the political subdivision responsible for investigating the false or fraudulent claim violation with all information known to the person about the violation within 30 days after the date on which the person first obtained the information;

(2) the person fully cooperated with any investigation by the state or the political subdivision of the violation; and

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

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

(d) A person is not liable under this section for mere negligence, inadvertence, or mistake with respect to activities involving a false or fraudulent claim.

~~(e) An employer is not liable for an act committed by a nonmanagerial employee that violates this section, unless the employer had knowledge of the act, ratified the act, or was reckless in the hiring or supervision of the employee.~~

~~(f) Except in cases where proof of specific intent to defraud the state or a political subdivision is found, a person is not liable under this section if:~~

~~(1) the person has been informed by the original source that single or multiple false or fraudulent claims have been made against the state or a political subdivision; and~~

~~(2) the person repays the amount of actual damages to the state or the political subdivision within 45 days after being so informed. If the person has a compliance office, an original source is not considered to have informed the person of a false or fraudulent claim unless the original source reported it to the person's compliance office.~~

Sec. 3. Minnesota Statutes 2012, section 15C.05, is amended to read:

15C.05 PRIVATE REMEDIES; COMPLAINT UNDER SEAL; COPY OF COMPLAINT AND WRITTEN DISCLOSURE OF EVIDENCE TO BE SENT TO PROSECUTING ATTORNEY.

(a) Except as otherwise provided in this section, a person may maintain an action under this chapter on the person's own account and that of the state ~~if money, property, or services provided by the state are involved~~; the person's own account and that of a political subdivision ~~if money, property, or services provided by the political subdivision are involved~~; or on the person's own account and that of both the state and a political subdivision ~~if both are involved~~. After an action is commenced, it may be voluntarily dismissed only if the court and the prosecuting attorney give written consent to the dismissal and their reasons for consenting.

(b) If an action is brought under this section, no other person may bring another action under this section based on the same facts that are the subject of the pending action.

(c) An action may not be maintained under this section:

(1) against the state, the legislature, the judiciary, the executive branch, or a political subdivision, or respective officers, members, or employees if the action is based on evidence or information known to the state or political subdivision when the action was brought; or

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

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

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

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

(f) A court must dismiss an action under this section, unless opposed by the prosecuting attorney, if substantially the same allegations or transactions as alleged in the action were publicly disclosed:

(1) in a criminal, civil, or administrative hearing in which the state or the political subdivision or its agent is a party;

(2) in a report, hearing, audit, or investigation of the legislature, the governing body of a political subdivision, the legislative auditor, or the state auditor; or

(3) by the news media.

This paragraph does not apply if the action is brought by the prosecuting attorney or the person bringing the action is an original source of the information.

Sec. 4. Minnesota Statutes 2012, section 15C.08, is amended to read:

15C.08 PROSECUTING ATTORNEY AND PRIVATE PARTY ROLES.

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

(b) If the prosecuting attorney elects not to intervene at the outset of the action, the prosecuting attorney may intervene subsequently, upon ~~timely application~~ and good cause shown. If the prosecuting attorney so intervenes, the prosecuting attorney subsequently has primary responsibility for conducting the action.

(c) If the prosecuting attorney elects at the outset of the action to intervene, the prosecuting attorney has the primary responsibility for prosecuting the action. The person who initially brought the action remains a party without limitation to the person's status or rights, but the person's acts do not bind the prosecuting attorney. If the prosecuting attorney elects to intervene, the prosecuting attorney may file the prosecuting attorney's own complaint or amend the complaint of the person who initially brought the action to clarify or add details to the claims in which the prosecuting attorney is intervening and to add any additional claims with respect to which the prosecuting attorney contends the prosecuting attorney is entitled to relief. For statute of limitations purposes, any prosecuting attorney pleading relates back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the prosecuting attorney arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) Whether or not the prosecuting attorney intervenes in the action, the prosecuting attorney may move to dismiss the action for good cause. The person who brought the action must be notified of the filing of the motion and may oppose it and present evidence at the hearing. The prosecuting attorney may also settle the action. If the prosecuting attorney intends to settle the action, the prosecuting attorney shall notify the person who brought the action. The state or the political subdivision may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in chambers.

Sec. 5. Minnesota Statutes 2012, section 15C.12, is amended to read:

15C.12 AWARD OF EXPENSES AND ATTORNEY FEES.

If the prosecuting attorney or a person who brought an action under section 15C.05 prevails in or settles an action under this chapter, the court ~~may authorize~~ shall award the prosecuting attorney or person ~~to recover~~ reasonable costs, reasonable attorney fees, and the reasonable fees of expert consultants and expert witnesses. These expenses must be awarded against the defendant and are not allowed against the state or a political subdivision. If the prosecuting attorney does not intervene in the action and the person bringing the action conducts the action and the defendant prevails in the action, the court shall award to the defendant reasonable expenses and attorney fees against the person bringing the action if it finds that the action was clearly frivolous or vexatious or brought in substantial part for harassment. The state or a political subdivision is not liable for expenses, attorney fees, or other costs incurred by a person in bringing or defending an action under this chapter.

Sec. 6. Minnesota Statutes 2012, section 15C.13, is amended to read:

15C.13 DISTRIBUTION TO PRIVATE PLAINTIFF IN CERTAIN ACTIONS.

If the prosecuting attorney intervenes at the outset in an action brought by a person under section 15C.05, the person is entitled to receive not less than 15 percent or more than 25 percent of any recovery ~~in proportion to the person's contribution~~ of the civil penalty and damages or settlement, depending on the extent to which the person substantially contributed to the conduct of the action. If the prosecuting attorney does not intervene in the action at any time, the person is entitled to receive not less than 25 percent or more than 30 percent of any recovery of the civil penalty and damages, or settlement, as the court determines is reasonable. If the prosecuting attorney does not intervene in the action at the outset but subsequently intervenes, the person is entitled to receive not less than

15 percent or more than 30 percent of any recovery of the civil penalty and damages or settlement, as the court determines is reasonable ~~based on the person's participation in the action before the prosecuting attorney intervened~~, depending on the extent to which the person substantially contributed to the prosecution of the action. For recoveries whose distribution is governed by federal code or rule, the basis for calculating the portion of the recovery the person is entitled to receive shall not include amounts reserved for distribution to the federal government or designated in their use by federal code or rule.

Sec. 7. **[15C.145] RELIEF FROM RETALIATORY ACTIONS.**

(a) An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this chapter or other efforts to stop one or more violations of this chapter.

(b) Relief under paragraph (a) shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees.

(c) A civil action under this section may not be brought more than three years after the date when the retaliation occurred.

Sec. 8. **REPEALER.**

Minnesota Statutes 2012, section 15C.14, is repealed.

15C.14 EMPLOYER RESTRICTIONS; LIABILITY.

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

(b) An employer must not discharge, demote, suspend, threaten, harass, deny promotion to, or otherwise discriminate against an employee in the terms or conditions of employment because of lawful acts done by the employee on the employee's behalf or on behalf of others in disclosing information to the state, a political subdivision, or a law enforcement agency in furtherance of an action under this chapter, including investigation for bringing or testifying in the action.

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