

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1174

Introduced by

Representatives Hogan, K. Koppelman, Maragos, Olson

Senators Bekkedahl, Poolman, Unruh

1 A BILL for an Act to provide for civil liability for false claims to the state; and to provide a penalty.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1.**

4 **Definitions.**

5 As used in this Act, unless the context otherwise requires:

6 1. "Claim" includes any request or demand for money, property, or services made to an
7 employee, officer, or agent of a governmental unit or to a contractor, grantee, or other
8 recipient, whether under contract or not, if any portion of the money, property, or
9 services requested or demanded issued from or was provided by a governmental unit.
10 The term includes a document submitted as part of or in support of the claim.

11 2. "Governmental unit" means the state or a political subdivision of the state.

12 3. "Knowingly" has the same meaning as defined in section 12.1-02-02, and a specific
13 intent to defraud is not required.

14 **SECTION 2.**

15 **Liability for certain acts - Penalty.**

16 1. Except as provided in subsection 2, a person is liable to a governmental unit for a civil
17 penalty of not less than five thousand dollars and not more than ten thousand dollars
18 for each act specified in this section, three times the amount of damages a
19 governmental unit sustains because of the person's act, and expenses, costs, and
20 attorney's fees, if the person:

21 a. Knowingly presents or causes to be presented to an officer or employee of the
22 governmental unit a false or fraudulent claim for payment or approval;

- 1 **b.** Knowingly makes, uses, or causes to be made or used a false record or
2 statement to get a false or fraudulent claim paid or approved by the governmental
3 unit;
- 4 **c.** Conspires to commit a violation of this subsection;
- 5 **d.** Has possession, custody, or control of public property or money used or to be
6 used by the governmental unit and, with the intent to defraud the governmental
7 unit or to willfully conceal the property, knowingly delivers or causes to be
8 delivered less property or money than the amount for which the person receives
9 a certificate or receipt;
- 10 **e.** Is authorized to make or deliver a document certifying receipt of property used or
11 to be used by the governmental unit and, with the intent to defraud the
12 governmental unit or to willfully conceal the property, makes or delivers a receipt
13 without knowing the information on the receipt is true;
- 14 **f.** Knowingly buys or receives as a pledge of an obligation or debt public property of
15 the governmental unit from any person that may not lawfully sell or pledge the
16 property;
- 17 **g.** Knowingly makes, uses, or causes to be made or used a false record or
18 statement to conceal, avoid, or decrease an obligation to pay or transmit money
19 or property to the governmental unit or its contractors; or
- 20 **h.** As a beneficiary of an inadvertent submission of a false or fraudulent claim to the
21 governmental unit, subsequently discovers the fraudulent claim or the falsity of
22 the claim and fails to disclose the false or fraudulent claim to the governmental
23 unit within a reasonable time after discovery of the false or fraudulent claim.
- 24 **2.** In a civil action brought under this section, a court shall assess a civil penalty of not
25 less than five thousand dollars and not more than ten thousand dollars for each act
26 specified in this section, and not less than two times and not more than three times the
27 amount of damages a governmental unit sustains because of the person's act if the
28 court finds all of the following:
- 29 **a.** The person committing the act furnished the attorney general with all information
30 known to that person about the act within thirty days after the date on which the
31 person first obtained the information.

b. The person fully cooperated with any investigation of the act by the attorney general.

c. At the time the person furnished the attorney general with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

3. A person that violates the provisions of this section also is liable to the governmental unit for the expenses, costs, and attorney's fees of the civil action brought to recover the penalty or damages.

4. Liability under this section is joint and several for any act committed by two or more persons.

5. This section does not apply to claims filed under title 38, 57, or 65.

SECTION 3.

Filing prohibited.

Notwithstanding the provisions of chapter 32-12.1 and 32-12.2, a person may not file a complaint or civil action:

1. Against a governmental unit or an officer or employee of a governmental unit arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental unit;

2. Based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental unit is already a party;

3. Based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative budget analyst and auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental unit involved with the claim that is the basis for the complaint or civil action and unless the

information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

4. Based upon information discovered by a present or former employee of the governmental unit during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental unit failed to act on the information provided within a reasonable period of time.

SECTION 4.

Limitation of actions.

1. A complaint or civil action filed under this section must be brought by the later of:

a. Six years after the date on which the violation was committed; or

b. Three years after the date facts material to the right of action are known or reasonably should have been known by the official of the governmental unit charged with responsibility to act in the circumstances.

2. An action may not be brought pursuant to subdivision b of subsection 1 more than ten years after the date on which the violation was committed.

SECTION 5.

Investigation and action by attorney general.

The attorney general shall investigate an alleged violation of this Act and may file a civil action, a criminal action, or both against any person that violated or is violating this Act.

SECTION 6.

Complaint by person - Civil action.

1. A person may bring a civil action for a violation of this Act on behalf of the person and the governmental unit. The action must be brought in the name of the governmental unit. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and provide the reasons for consenting to the dismissal.

2. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses must be served on the attorney general pursuant to rule 5 of the North Dakota Rules of Civil Procedure. The complaint must

1 be filed under seal and must remain under seal for at least sixty days. The complaint
2 may not be served upon the defendant until the court orders that it be served.

3 3. Within sixty days after receiving the complaint and the material evidence and
4 information, the attorney general may elect to intervene and proceed with the action or
5 to notify the court the attorney general declines to take over the action. If the attorney
6 general declines to intervene or take over the action, the person bringing the action
7 may conduct the action. For good cause shown, the attorney general may move the
8 court for extensions of the time during which the complaint remains under seal.

9 4. The defendant may not be required to respond to any complaint until twenty days after
10 the complaint is unsealed and served upon the defendant pursuant to rule 5 of the
11 North Dakota Rules of Civil Procedure.

12 5. If the attorney general proceeds with the action, the attorney general has the primary
13 responsibility for prosecuting the action and is not bound by an act of the person
14 bringing the action. The person bringing the action has the right to continue as a party
15 to the action subject to the limitations set forth in this chapter.

16 6. If the attorney general elects not to proceed with the action and the person that
17 initiated the action conducts it:

18 a. Upon the attorney general's request, the person that initiated the action shall
19 serve the governmental unit with copies of all pleadings filed in the action and
20 shall supply the attorney general with copies of all deposition transcripts at the
21 attorney general's expense; or

22 b. The court, without limiting the status and rights of the person initiating the action,
23 may permit the attorney general to intervene at a later date upon a showing of
24 good cause.

25 7. If a person files a civil action under this section, no person other than the attorney
26 general may intervene or bring a related action based on the facts underlying the
27 pending action.

28 8. Upon a showing by the attorney general unrestricted participation during the course of
29 the litigation by the person initiating the action would interfere with or unduly delay the
30 attorney general's prosecution of the case or would be repetitious, irrelevant, or for

purposes of harassment, the court may impose limitations on the person's participation, including:

- a. Limiting the number of witnesses the person may call;
- b. Limiting the length of testimony of witnesses called by the person;
- c. Limiting the person's cross-examination of witnesses; or
- d. Otherwise limiting the participation of the person in the litigation.

SECTION 7.

Dismissal of civil action.

On motion of the attorney general, the court may dismiss a civil action notwithstanding the objection of the person that initiated the action if the attorney general notified the person of the filing of the motion to dismiss and the court has given the person an opportunity to oppose the motion and present evidence at a hearing.

SECTION 8.

Burden of proof.

The standard of proof in civil actions brought under this section is the preponderance of the evidence.

SECTION 9.

Distribution of damages and civil penalty.

1. Except as provided in subsection 2, if the attorney general proceeds with an action brought by a person pursuant to section 6 of this Act, the person is entitled to receive at least fifteen percent, but not more than twenty-five percent, of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.
2. The court may award an amount the court considers appropriate, but in no case more than ten percent of the proceeds in an action the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through a criminal, civil, or administrative hearing; a legislative, administrative, auditor report, hearing, audit, or investigation; or the news media. In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

- 1 3. A payment to a person bringing an action pursuant to this section may be made only
2 from the proceeds recovered and collected in the action or in settlement of the claim.
3 In addition, the person is entitled to receive an amount for reasonable expenses the
4 court finds to have been necessarily incurred, and reasonable attorney's fees and
5 costs. The expenses, fees, and costs must be awarded against the defendant.
- 6 4. If the attorney general does not proceed with an action pursuant to section 6 of this
7 Act, the person bringing the action or settling the claim is entitled to receive an amount
8 the court decides is reasonable for collecting the civil penalty and damages on behalf
9 of the attorney general or governmental unit. The amount may not be less than
10 twenty-five percent nor more than thirty percent of the proceeds recovered and
11 collected in the action or settlement of the claim and must be paid out of the proceeds.
12 In addition, the person is entitled to receive an amount for reasonable expenses the
13 court finds were necessarily incurred, plus reasonable attorney fees and costs. All
14 expenses, fees, and costs must be awarded against the defendant.
- 15 5. Whether the attorney general proceeds with the action, if the court finds the action was
16 brought by a person that planned, initiated, or knowingly participated in the violation of
17 section 3 of this Act, the court may reduce or eliminate the share of the proceeds of
18 the action the person would otherwise receive pursuant to subsections 1, 2, 3, and 4,
19 taking into account the role of the person in advancing the case to litigation and any
20 relevant circumstances pertaining to the violation. If the person bringing the action is
21 convicted of criminal conduct arising from the person's role in the violation of this
22 section, the person must be dismissed from the civil action and may not receive any
23 share of the proceeds of the action. The dismissal does not prejudice the right of the
24 attorney general to continue the action.
- 25 6. The governmental unit is entitled to any damages and civil penalty not awarded to the
26 person, and the damages and civil penalty must be deposited in the general fund of
27 the governmental unit, except that if a trust fund of the governmental unit suffered a
28 loss as a result of the defendant's actions, the trust fund first must be fully reimbursed
29 for the loss and the remainder of the damages and any civil penalty must be deposited
30 in the general fund of the governmental unit.

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

4 **SECTION 10.**

5 **Effect of criminal conviction.**

6 A defendant convicted in any criminal proceeding is precluded from subsequently denying
7 the essential allegations of the criminal offense of which the defendant was convicted in any
8 civil proceeding. For purposes of this section, a conviction may result from a verdict or plea.

9 **SECTION 11.**

10 **Costs and attorney's fees.**

11 The governmental unit that filed a civil action or intervened is entitled to reasonable costs
12 and attorney's fees if the action is settled favorably for the governmental unit or the
13 governmental unit prevails. In an action in which outside counsel is engaged by the attorney
14 general, the costs and attorney's fees awarded to that counsel must equal the outside counsel's
15 charges reasonably incurred for costs and attorney's fees in prosecuting the action. In any other
16 actions in which costs and attorney's fees are awarded to the governmental unit, the costs and
17 attorney's fees must be calculated by reference to the hourly rate charged by the attorney
18 general for providing legal services to state agencies, multiplied by the number of attorney
19 hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably
20 incurred in the prosecution of the action. A plaintiff is entitled to an amount for reasonable
21 expenses the court finds to have been necessarily incurred, plus reasonable costs and
22 attorney's fees, if the action is settled favorably for the governmental unit or the governmental
23 unit prevails in the action. A defendant in a civil action brought pursuant to this section which
24 prevails in an action that is not settled and that the court finds was clearly frivolous or brought
25 solely for harassment purposes is entitled to reasonable costs and attorney's fees, which must
26 be equitably apportioned against the person that brought the action and the governmental unit if
27 a person and a governmental unit were coplaintiffs.

28 **SECTION 12.**

29 **Prohibitions on employers - Employee remedies.**

30 1. An entity may not adopt or enforce a rule, regulation, or policy preventing an employee
31 from disclosing information to a government or law enforcement agency with regard to

1 or from acting in furtherance of an investigation of a violation of this Act or an action
2 brought under this Act.

3 2. An entity may not discharge, demote, suspend, threaten, harass, or deny promotion to
4 or in any other manner discriminate against an employee's terms and conditions of
5 employment because of the employee's disclosure of information to a government or
6 law enforcement agency pertaining to a violation of this Act.

7 3. A governmental unit or private unit that violates subsection 2 is liable for:

8 a. Reinstatement to the same position with the same seniority status, salary,
9 benefits, and other conditions of employment the employee would have had but
10 for the discrimination;

11 b. Backpay plus interest on the backpay;

12 c. Compensation for any special damages sustained as a result of the
13 discrimination; and

14 d. Reasonable court or administrative proceeding costs and reasonable attorney's
15 fees.

16 4. An employee may file an action for the relief provided in this section.

17 **SECTION 13.**

18 **Settlement by attorney general.**

19 The attorney general may settle the case with a defendant notwithstanding the objections of
20 any person that initiated the action if the court determines, after a hearing, the settlement is fair,
21 adequate, and reasonable under the circumstances. Upon a showing of good cause, the
22 hearing may be held in camera.

23 **SECTION 14.**

24 **False claim to public agency - Penalty.**

25 1. A person commits an offense under this section if the person knowingly presents for
26 allowance, for payment, or for the purpose of concealing, avoiding, or decreasing an
27 obligation to pay a false or fraudulent claim, bill, account, voucher, or writing to a
28 public agency, public servant, or contractor authorized to allow or pay valid claims
29 presented to a public agency.

30 2. A criminal violation of this Act is a class A misdemeanor.

1 3. Notwithstanding subsection 2, if a false or fraudulent claim is knowingly submitted as
2 part of a common scheme and if the value of the claim or the aggregate value of one
3 or more claims exceeds one thousand dollars in value, a violation of this Act is a
4 class C felony.

5 4. Notwithstanding subsection 3, if a false or fraudulent claim is knowingly submitted as
6 part of a common scheme and if the value of the claim or the aggregate value of one
7 or more claims exceeds ten thousand dollars in value, but does not exceed fifty
8 thousand dollars, a violation of this Act is a class B felony.

9 5. Notwithstanding subsection 4, if a false or fraudulent claim is knowingly submitted as
10 part of a common scheme and if the value of the claim or the aggregate value of one
11 or more claims exceeds fifty thousand dollars in value, a violation of this Act is a
12 class A felony.