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Senator Lesil McGuire

HB 211 – Recovery of False Claims for State Funds

Sectional Analysis – Version A

Section 1

Requires that actions under section 2 be brought within 10 years.

Section 2

Sec 37.10.110: Prohibits a person from making false or fraudulent claims for state or municipal resources, including fraudulent claims for payment. The section applies to claims under AS 43, Revenue and Taxation, if the income or sales of the person making the false claim exceeds \$1,000,000 and the damages sought exceed \$350,000. A violation of the section is punishable by a civil penalty of \$6,000-\$12,000 in addition to the costs of the enforcement action.

Sec 37.10.115: Provides that damages awarded for a successful false claims action shall be three times the damages sustained by the state or municipality. The damages may be reduced to two times damages if the person who committed the violation facilitates the investigation.

Sec 37.10.120: Charges the attorney general with investigating false claims cases. Prevents false claims cases from being brought against the federal government, the state, or a municipality, or against their employees. Requires the attorney general to consult with the Department of Health and Social Services before taking action in welfare or Medicaid cases, and with the commissioner of revenue before taking action in revenue or taxation cases. Requires a qui tam plaintiff to obtain approval from the attorney general before making a motion to compel the disclosure of tax records.

Sec 37.10.125: Allows an individual, referred to as a qui tam plaintiff, to bring a civil action for a violation of Sec 37.10.110 if the state or a municipality fails to do so. The state or a municipality may choose to intervene or proceed with the action brought by the qui tam plaintiff within 60 days. If the state or municipality chooses not to intervene or proceed, the qui tam plaintiff may bring the action.

Sec 37.10.130: Provides that if the state or a municipality proceeds with a false claims action, the attorney general or municipality bears primary responsibility for prosecuting the action, though

the qui tam plaintiff may proceed as a party. The state or municipality can dismiss the case, settle the case, or limit the qui tam plaintiff's participation notwithstanding objections of the qui tam plaintiff. If the qui tam plaintiff proceeds with a case that the state or a municipality has declined to pursue, the court may allow the state or a municipality to intervene at a later date. The court may also stay actions of discovery by the qui tam plaintiff if those would interfere with an investigation by the state or a municipality. The state or a municipality may also seek to resolve claims brought by a qui tam plaintiff through a different proceeding. The qui tam plaintiff shall have the same rights in that different proceeding as he or she would have had in civil proceedings.

Sec 37.10.135: If the state or a municipality proceeds with an action brought by a qui tam plaintiff, the qui tam plaintiff shall be awarded between 15% and 25% of the proceeds of the action, depending on the plaintiff's contribution to the prosecution, plus attorney fees and costs. If the false claims action is based primarily on information not provided by the qui tam plaintiff, the award shall not exceed 10%, plus attorney fees and costs. If the qui tam plaintiff proceeds in an action, rather than the state or a municipality, the plaintiff shall receive between 25% and 30% of the proceeds, plus attorney fees and costs. These amounts may be reduced based on the role the qui tam plaintiff plays in advancing the case to litigation. If the qui tam plaintiff is implicated in violation of Sec 37.10.110, the plaintiff shall be dismissed from the action and receive no award. A qui tam plaintiff may be liable for defendant's attorney fees if the claim brought was frivolous, vexatious, or brought primarily for purposes of harassment.

Sec 37.10.140: A case brought under this act shall be dismissed if the case is based upon allegations subject to pending civil or administrative action, and may be dismissed if the false claim has already been publicly disclosed. An action may not be brought against a member of the legislature or judiciary, the Governor, the Lieutenant Governor, or the head of an executive department if brought based upon information known to the attorney general.

Sec 37.10.145: Neither the state or a municipality is liable for expenses incurred by a qui tam plaintiff.

Sec 37.10.150: An employee retaliated against for pursuing action under the provisions of this act shall be entitled to all relief necessary to make the employee whole.

Sec 37.10.190: Defines "claim," "knowing," "knowingly," and "qui tam plaintiff" for the purposes of the act.

Sec 37.10.195: Establishes section 2's short title as the "Alaska False Claims Act."

Section 3

Requires the Department of Health and Social Services to cooperate with the attorney general and with a qui tam plaintiff who brings a civil action for violation of Sec 37.10.110.

Section 4

Amends AS 47.25.260, relating to recovery of improperly granted general relief allowance, to allow for the recovery to be pursued via the false claims act.

Section 5

Amends AS 47.25.500, relating to recovery of improperly granted adult public assistance, to allow for the recovery to be pursued via the false claims act.

Section 6

Allows false claims submitted under the Alaska temporary assistance program to be pursued through the false claims act.

Section 7

Repeals AS 36.30.687(a)(2), which limits civil penalties for false contract claims under chapter AS 36.30 to the amount by which the claim is misrepresented. Also repeals AS 36.30.687(c), which provides for a six-year statute of limitations to pursue a claim under also-repealed paragraph (a)(2).

Section 8

Notes that Sec 37.10.125 has the effect of amending Rule 4, Alaska Rules of Civil Procedure, by changing the procedure for initiating and action and for the timing of service.

Section 9

Notes that Sec 37.10.130(d) has the effect of amending Rule 46, Alaska Rules of Civil Procedure, by limiting the participation of a private party in a false claims actions in certain circumstances.

Section 10

Notes that Sec 37.10.125(e) and 37.10.130 have the effect of amending Rule 24, Alaska Rules of Civil Procedure, by limiting intervention and changing the procedure for interventions.

Section 11

Limits applicability of the act to violations that occur on or after the act's effective date.

Section 12

Makes the act effective only if the court rule changes in sections 8-10 receive a 2/3 vote in each house of the legislature.