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Wallace
4/11/16

CS FOR SENATE BILL NO. 211(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to the limitation period to commence a false claims action; relating to recovery for false claims for state or municipal funds; and amending Rules 4, 24, and 46, Alaska Rules of Civil Procedure."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 09.10 is amended by adding a new section to read:

Sec. 09.10.051. Action for false claims. A person may not bring a claim under AS 37.10.110 - 37.10.195 (Alaska False Claims Act) unless commenced within 10 years after the commission of the violation.

* **Sec. 2.** AS 37.10 is amended by adding new sections to read:

Article 4A. Alaska False Claims Act.

Sec. 37.10.110. False claims for state or municipal funds; civil penalty. (a)

A person may not

(1) knowingly present or cause to be presented a false or fraudulent claim to the state or a municipality for payment or approval;

(2) knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the state or a municipality;

(3) conspire to defraud the state or a municipality by getting a false claim allowed or paid, or conspire to defraud the state or a municipality by knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a municipality;

(4) possess or control public property or money used or to be used by the state or a municipality and knowingly deliver or cause to be delivered less property than the amount for which the person receives a certificate or receipt;

(5) knowingly make or deliver a receipt that falsely represents the property used or to be used if the person is authorized to make or deliver a document certifying receipt of property used or to be used by the state or a municipality;

(6) knowingly buy or receive as a pledge of an obligation or debt public property from a person who may not lawfully sell or pledge the property;

(7) knowingly make, use, or cause to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a municipality;

(8) fail to disclose a false claim to the state or a municipality within a reasonable time after discovery of the false claim if the person is a beneficiary of an inadvertent submission of a false claim to an employee, officer, or agent of the state or a municipality or to a contractor, grantee, or other recipient of state or municipal funds.

(b) This section does not apply to claims, records, or statements made under AS 43.

(c) A violation under (a) of this section is punishable by a civil penalty of not less than \$6,000 and not more than \$12,000 in addition to the costs and fees associated with an enforcement action brought under AS 37.10.110 - 37.10.195.

Sec. 37.10.115. Damages. (a) In addition to a civil penalty and costs assessed under AS 37.10.110(c), and except as provided under (b) of this section, a court shall

award damages in an amount that is three times the actual damages sustained by the state or municipality for a violation of AS 37.10.110.

(b) A court may reduce the damages assessed for a violation of AS 37.10.110 to twice the amount of actual damages sustained by the state or a municipality and waive the civil penalty allowed under AS 37.10.110(c) if the court finds, by a preponderance of the evidence, that

(1) the person committing the violation furnished a state or municipal official who is investigating the violation with all information known to that person about the violation within 30 days after receiving the information;

(2) the person fully cooperated with the investigation; and

(3) at the time the person furnished the information about the violation, a criminal prosecution, civil action, or administrative action had not commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

Sec. 37.10.120. Attorney general and municipal investigations and prosecutions of false claims. (a) The attorney general shall investigate a violation under AS 37.10.110. If the attorney general finds that a person has violated AS 37.10.110, the attorney general may bring a civil action under this section against that person. A municipality may also investigate a violation under AS 37.10.110 that may have resulted in damages to the municipality and may bring a civil action under this section against the person. An action may not be filed under this section against the federal government, the state, or a municipality, or any officer or employee of the federal government, the state, or a municipality acting in the person's official capacity.

(b) The attorney general shall consult with the Department of Health and Social Services before filing or intervening in an action under this section related to the medical assistance program under AS 47.05 or 47.07.

Sec. 37.10.125. False claims actions by private persons; notification of and participation by attorney general. (a) If the state or municipality fails to file an action under AS 37.10.120 or another applicable law, a person may bring a civil action for a violation of AS 37.10.110 in the name of the person and the state and receive an award under AS 37.10.135.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the attorney general. The complaint shall be filed with the court under seal, shall remain under seal for at least 60 days, and may not be served on the defendant until the court so orders. The state may elect to intervene or proceed with the action within 60 days after the state receives both the complaint and the material evidence and the information.

(c) If a complaint filed under this section alleges a violation of AS 37.10.110 involving damages to a municipality, the attorney general may provide a copy of the complaint and written disclosure to the municipality. The state may elect to intervene or proceed with the action, or to authorize the municipality that may have sustained damages to intervene or proceed with the action, within 60 days after the state receives both the complaint and the material evidence and information.

(d) The state may, for good cause shown, move the court for extension of the time during which the complaint remains under seal under (b) of this section. A motion may be supported by affidavits or other submissions under seal.

(e) Before the expiration of the 60-day period or an extension obtained under (d) of this section, the attorney general shall

(1) proceed with the action, in which case the action shall be conducted by the state;

(2) intervene in the action, as of right, to assist the private plaintiff in the action;

(3) authorize a municipality to proceed with the action, in which case the action shall be conducted by the municipality;

(4) authorize a municipality to intervene, as of right, to aid and assist the private plaintiff; or

(5) notify the private plaintiff and the court that the attorney general declines to take over or authorize a municipality to take over the action, in which case the private plaintiff may conduct the action.

(f) An action may not be filed under this section against the federal government, the state, or a municipality, or any officer or employee of the federal government, the state, or a municipality acting in the person's official capacity.

(g) When a person brings a valid action under this section, no person other than the state or municipality may intervene or bring a related action based on the facts underlying the pending action.

(h) The defendant may not be required to respond to a complaint filed under this section until after the complaint is unsealed and served on the defendant under the applicable Rules of Civil Procedure.

Sec. 37.10.130. Rights of the parties to false claim actions. (a) If the state or a municipality proceeds with a false claims action, the attorney general or municipality shall have the primary responsibility for prosecuting the action and may not be bound by an act of the private plaintiff. The private plaintiff may continue as a party to the action, subject to the limitations under (b) - (d) of this section.

(b) The state or municipality may seek to dismiss the action for good cause, notwithstanding the objections of the private plaintiff, if the private plaintiff has been notified by the state or municipality of the filing of the motion and the court has provided the private plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(c) The state or municipality may settle the action with the defendant, notwithstanding the objections of the private plaintiff, if the court determines, after a hearing providing the private plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(d) On a showing by the state or municipality that unrestricted participation during the course of the litigation by the private plaintiff would interfere with or unduly delay the state or municipality's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the private plaintiff's participation, including

- (1) limiting the number of witnesses the private plaintiff may call;
- (2) limiting the length of the testimony of the witnesses the private plaintiff calls;
- (3) limiting the private plaintiff's cross-examination of witnesses; and
- (4) otherwise limiting the participation by the private plaintiff in the litigation.

(e) If the state or municipality elects not to proceed with the action, the private plaintiff may conduct the action. Upon request of the state or municipality, the private plaintiff shall serve copies of all pleadings filed in the action and shall supply copies of all deposition transcripts at the expense of the state or municipality. When a private plaintiff proceeds with the action, the court, without limiting the status and rights of the private plaintiff, may nevertheless permit the state or municipality to intervene at a later date on a showing of good cause.

(f) Whether or not the state or municipality proceeds with the action, on a showing by the state or municipality that certain actions of discovery by the private plaintiff would interfere with the state or municipality's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay discovery for not more than 60 days. The court may extend the 60-day period on a further showing that the state or municipality has pursued the criminal or civil investigation or proceedings with reasonable diligence and proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(g) Notwithstanding the requirements of this section, the state or municipality may elect to pursue its claim through an alternate remedy available to the state or municipality, including a criminal or administrative proceeding to determine a penalty. If an alternate remedy is pursued in another proceeding, the private plaintiff shall have the same rights in the proceeding as the private plaintiff would have had if the action had continued under this section. A finding of fact or conclusion of law that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal by the appropriate court, if all time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

Sec. 37.10.135. Award to private plaintiff. (a) If the state or municipality proceeds with or intervenes in an action brought by a private plaintiff under AS 37.10.110 - 37.10.195, the private plaintiff shall, except as otherwise provided in this section, be awarded at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, including damages, civil penalties,

1 payments for costs of compliance, and any other economic benefit realized by the
2 state, municipality, or federal government as a result of the action, depending on the
3 extent that the private plaintiff substantially contributed to the prosecution of the
4 action.

5 (b) If a court finds a false claims action to be based primarily on disclosures of
6 specific information, other than information provided by the private plaintiff, relating
7 to allegations or transactions specifically in a criminal, civil, or administrative hearing,
8 or in a legislative or administrative report, hearing, audit, or investigation, or from the
9 news media, the court may make an award it considers appropriate, not to exceed 10
10 percent of the proceeds, taking into account the significance of the information and the
11 role of the private plaintiff in acquiring the proceeds. The court may also award the
12 private plaintiff an amount to cover reasonable and necessary expenses, including
13 reasonable attorney fees and costs allowable under the court rules. All expenses, fees,
14 and costs awarded under this subsection must be awarded against the defendant.

15 (c) If the state or municipality does not proceed with an action under
16 AS 37.10.110 - 37.10.195, the private plaintiff shall receive an amount that the court
17 decides is reasonable for collecting the civil penalty and damages. The amount may
18 not be less than 25 percent nor more than 30 percent of the proceeds of the action or
19 settlement and shall be paid out of the proceeds, including damages, civil penalties,
20 payments for costs of compliance, and any other economic benefit realized by the
21 state, municipality, or federal government as a result of the action. The award to the
22 private plaintiff must also include an amount for reasonable expenses that the court
23 finds to have been necessarily incurred, including reasonable attorney fees and costs
24 allowable under the court rules. All expenses, fees, and costs awarded under this
25 subsection shall be awarded against the defendant.

26 (d) Whether or not the state or municipality proceeds with a false claims
27 action, if the court finds that the private plaintiff planned and initiated a violation of
28 AS 37.10.110(a), the court may, to the extent the court considers appropriate, reduce
29 the share of the proceeds of the action that the private plaintiff would otherwise
30 receive under (a) - (c) of this section, taking into account the role of the private
31 plaintiff in advancing the case to litigation and all relevant circumstances pertaining to

1 the violation. If the private plaintiff is convicted of criminal conduct arising from the
2 private plaintiff's role in the violation of AS 37.10.110(a), the private plaintiff shall be
3 dismissed from the civil action and may not receive a share of the proceeds of the
4 action. The dismissal may not prejudice the right of the state or municipality to
5 continue the action.

6 (e) If the state or municipality does not proceed with the action and the private
7 plaintiff conducts the action, the court may award to the defendant the defendant's
8 reasonable attorney fees and expenses allowable under the court rules if the defendant
9 prevails in the action and the court finds that the claim of the private plaintiff was
10 frivolous, vexatious, or brought primarily for purposes of harassment.

11 (f) In this section, "proceeds" excludes attorney fees and costs awarded to the
12 state or municipality.

13 **Sec. 37.10.140. Certain actions barred.** An action brought by a private
14 plaintiff under AS 37.10.110 - 37.10.195 shall be dismissed if the action

15 (1) is based on allegations or transactions that are the subject of a
16 pending civil action or administrative action in which the state or municipality is
17 already a party;

18 (2) is against a member of the legislature, a member of the judiciary,
19 the governor, the lieutenant governor, or the head of an executive department, if the
20 action is based on evidence or information known to the attorney general when the
21 action was brought; or

22 (3) alleges elements of actionable false claims that have been publicly
23 disclosed specifically in the news media or in a publicly disseminated governmental
24 report or pleading before the complaint was filed.

25 **Sec. 37.10.145. State or municipality not liable for certain expenses.** The
26 state or a municipality is not liable for expenses a private plaintiff incurs in bringing
27 an action under AS 37.10.110 - 37.10.195.

28 **Sec. 37.10.150. Private action for retaliation.** (a) An employee who is
29 discharged, demoted, suspended, threatened, harassed, or in any other manner
30 discriminated against in the terms and conditions of employment by the person's
31 employer because of lawful acts done by the employee on behalf of the employee or

others in furtherance of an action under AS 37.10.110 - 37.10.195, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed, is entitled to all relief necessary to make the employee whole. Relief includes reinstatement with the same seniority status the employee would have had but for the discrimination, twice the amount of back pay, interest on the back pay, and compensation for special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. An employee may bring an action in the appropriate court of the state for the relief provided in this section.

(b) In this section, "employer" means a natural person, corporation, firm, association, organization, partnership, business, trust, or publicly funded entity.

Sec. 37.10.190. Definitions. In AS 37.10.110 - 37.10.190,

(1) "claim" means a request or demand for money, property, or services made to an employee, officer, or agent of the state or a municipality, or to any contractor, grantee, or other recipient, whether under contract or not, of any portion of money, property, or service requested or demanded from state or municipal funds as reimbursement or direct payment;

(2) "knowing" and "knowingly" mean that a person, with or without specific intent to defraud another person,

(A) has actual knowledge of information relating to a false claim;

(B) acts in deliberate disregard for the truth or falsity of information relating to a false claim; or

(C) acts in reckless disregard for the truth or falsity of information relating to a false claim;

(3) "private plaintiff" means a person who initiates an action under AS 37.10.125.

Sec. 37.10.195. Short title. AS 37.10.110 - 37.10.195 may be cited as the Alaska False Claims Act.

* **Sec. 3.** AS 47.05 is amended by adding a new section to article 1 to read:

Sec. 47.05.110. False claims. The department shall cooperate with the attorney general and, subject to a subpoena issued by a court of competent jurisdiction, a

person who brings a civil action for a violation of AS 37.10.110 - 37.10.195 (Alaska False Claims Act).

* **Sec. 4.** AS 47.25.260 is amended to read:

Sec. 47.25.260. Recovery and disposition of allowances improperly granted. If the department finds that a general relief allowance has been improperly granted, it shall investigate, and if it appears from the investigation that the assistance was improperly granted, the department may cancel the allowance and notify the recipient of the cancellation. The state then has a claim against the person who received the improper allowance. **Except for a false claim that may be enforced under AS 37.10.110 - 37.10.195 (Alaska False Claims Act), the** [THE] claim may be enforced by civil action in the name of the state by the attorney general to recover the amount paid to the person, with interest, together with the necessary costs of the action.

* **Sec. 5.** AS 47.25.500(a) is amended to read:

(a) If the department has reasonable grounds for believing that assistance was improperly granted, it shall investigate and document the grounds in the case file, and, if it appears as a result of the investigation that assistance was improperly granted, it may, after providing an opportunity for a hearing, terminate or reduce assistance and notify the recipient to that effect. The department shall continue the payment of benefits pending the hearing. The state has a claim against a person who received an improper amount of assistance. **Except for a false claim that may be enforced under AS 37.10.110 - 37.10.195 (Alaska False Claims Act), the** [THE] claim may be enforced by an action instituted in the name of the state by the attorney general to recover the amount paid to the person, with interest, together with the necessary costs of the action.

* **Sec. 6.** AS 47.27.085 is amended by adding a new subsection to read:

(f) A false claim submitted under the Alaska temporary assistance program is subject to investigation and prosecution under AS 37.10.110 - 37.10.195.

* **Sec. 7.** AS 36.30.687(a)(2) and 36.30.687(c) are repealed.

* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

1 INDIRECT COURT RULE AMENDMENT. AS 37.10.125, added by sec. 2 of this
2 Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, by changing the
3 procedure for initiating an action and for the timing of service.

4 * **Sec. 9.** The uncoded law of the State of Alaska is amended by adding a new section to
5 read:

6 INDIRECT COURT RULE AMENDMENT. AS 37.10.130(d), added by sec. 2 of this
7 Act, has the effect of amending Rule 46, Alaska Rules of Civil Procedure, by limiting the
8 participation of a private party in a false claims action in certain circumstances.

9 * **Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to
10 read:

11 INDIRECT COURT RULE AMENDMENT. AS 37.10.125(e) and 37.10.130, added
12 by sec. 2 of this Act, have the effect of amending Rule 24, Alaska Rules of Civil Procedure,
13 by limiting intervention and by changing the procedure for intervention by allowing the state
14 or a municipality to intervene at various times and for various reasons in a false claims action
15 brought by a private party.

16 * **Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to
17 read:

18 APPLICABILITY. AS 37.10.110 - 37.10.195, added by sec. 2 of this Act, apply to
19 violations or acts or omissions that occur on or after the effective date of this Act.

20 * **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to
21 read:

22 CONDITIONAL EFFECT. AS 37.10.110 - 37.10.195, added by sec. 2 of this Act,
23 take effect only if secs. 8 - 10 of this Act receive the two-thirds majority vote of each house
24 required by art. IV, sec. 15, Constitution of the State of Alaska.