

SENATE BILL NO. 211

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 4/1/16

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

10 **Article 4A. Alaska False Claims Act.**

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

12 A person may not

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

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

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

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

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

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

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

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

25 (b) This section applies to claims, records, or statements made under AS 43 if

26 (1) the net income or sales of the person against whom the action is
 27 brought is equal to or exceeds \$1,000,000 for a taxable year subject to an action
 28 brought under AS 37.10.110 - 37.10.195;

29 (2) the damages sought in an action under AS 37.10.110 - 37.10.195
 30 exceed \$350,000; and

31 (3) the person is alleged to have violated (a) of this section; nothing in

1 this paragraph shall be considered to modify or restrict the application of (a) of this
2 section only to an act relating to a violation of AS 43.

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

6 **Sec. 37.10.115. Damages.** (a) In addition to a civil penalty and costs assessed
7 under AS 37.10.110(c), and except as provided under (b) of this section, a court shall
8 award damages in an amount that is three times the actual damages sustained by the
9 state or municipality for a violation of AS 37.10.110.

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

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

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

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

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

31 (b) The attorney general shall consult with the Department of Health and

1 Social Services before filing or intervening in an action under this section related to
2 the medical assistance program under AS 47.05 or 47.07.

3 (c) The attorney general shall consult with the commissioner of revenue
4 before filing or intervening in an action under AS 37.10.110(b). If the state declines to
5 participate in or to authorize participation by a municipality in an action under
6 AS 37.10.110(b), a qui tam plaintiff under AS 37.10.125(a) must obtain approval from
7 the attorney general before making a motion to compel the Department of Revenue to
8 disclose tax records.

9 **Sec. 37.10.125. False claims actions by private persons, qui tam;**
10 **notification of and participation by attorney general.** (a) If the state or municipality
11 fails to file an action under AS 37.10.120 or another applicable law, a person may
12 bring a qui tam civil action for a violation of AS 37.10.110 in the name of the person
13 and the state and receive an award under AS 37.10.135. The person bringing the action
14 shall be referred to as the qui tam plaintiff.

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

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

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

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

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

3 (2) intervene in the action, as of right, so as to assist the plaintiff in the
4 action;

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

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

9 (5) notify the court that the attorney general declines to take over or
10 authorize a municipality to take over the action, in which case the person bringing the
11 action may conduct the action.

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

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

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

21 **Sec. 37.10.130. Rights of the parties to qui tam actions.** (a) If the state or a
22 municipality proceeds with a false claims action, the attorney general or municipality
23 shall have the primary responsibility for prosecuting the action and may not be bound
24 by an act of the person bringing the action. The person bringing the action may
25 continue as a party to the action, subject to the limitations under (b) - (d) of this
26 section.

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

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

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

- 10 (1) limiting the number of witnesses the qui tam plaintiff may call;
11 (2) limiting the length of the testimony of the witnesses the qui tam
12 plaintiff calls;
13 (3) limiting the qui tam plaintiff's cross-examination of witnesses; and
14 (4) otherwise limiting the participation by the qui tam plaintiff in the
15 litigation.

16 (e) If the state or municipality elects not to proceed with the action, the qui
17 tam plaintiff may conduct the action. The qui tam plaintiff shall serve copies of all
18 pleadings filed in the action and shall be supplied with copies of all deposition
19 transcripts at the request and expense of the state. When a qui tam plaintiff proceeds
20 with the action, the court, without limiting the status and rights of the qui tam plaintiff,
21 may nevertheless permit the state or municipality to intervene at a later date on a
22 showing of good cause.

23 (f) Whether or not the state or municipality proceeds with the action, on a
24 showing by the state or municipality that certain actions of discovery by the qui tam
25 plaintiff would interfere with the state or municipality's investigation or prosecution of
26 a criminal or civil matter arising out of the same facts, the court may stay discovery
27 for not more than 60 days. That showing shall be conducted in camera. The court may
28 extend the 60-day period on a further showing in camera that the state or municipality
29 has pursued the criminal or civil investigation or proceedings with reasonable
30 diligence and proposed discovery in the civil action will interfere with the ongoing
31 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 qui tam plaintiff shall have the same rights in the proceeding as the qui tam 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 qui tam plaintiff. (a) If the state or municipality proceeds with or intervenes in an action brought by a qui tam plaintiff under AS 37.10.110 - 37.10.195, the qui tam 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, payments for costs of compliance, and any other economic benefit realized by the state, municipality, or federal government as a result of the action, depending on the extent that the qui tam plaintiff substantially contributed to the prosecution of the action.

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

(c) If the state or municipality does not proceed with an action under

1 AS 37.10.110 - 37.10.195, the qui tam plaintiff shall receive an amount that the court
2 decides is reasonable for collecting the civil penalty and damages. The amount may
3 not be less than 25 percent nor more than 30 percent of the proceeds of the action or
4 settlement and shall be paid out of the proceeds, including damages, civil penalties,
5 payments for costs of compliance, and any other economic benefit realized by the
6 state, municipality, or federal government as a result of the action. The award to the
7 qui tam plaintiff must also include an amount for reasonable expenses that the court
8 finds to have been necessarily incurred, including reasonable attorney fees and costs
9 allowable under the court rules. All expenses, fees, and costs awarded under this
10 subsection shall be awarded against the defendant.

11 (d) Whether or not the state or municipality proceeds with a false claims
12 action planned and initiated by a qui tam plaintiff, the court may, to the extent the
13 court considers appropriate, reduce the share of the proceeds of the action that the qui
14 tam plaintiff would otherwise receive under (a) - (c) of this section, taking into
15 account the role of that qui tam plaintiff in advancing the case to litigation and all
16 relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted
17 of criminal conduct arising from the plaintiff's role in the violation of
18 AS 37.10.110(a), the qui tam plaintiff shall be dismissed from the civil action and may
19 not receive a share of the proceeds of the action. The dismissal may not prejudice the
20 right of the state or municipality to continue the action.

21 (e) If the state or municipality does not proceed with the action and the qui
22 tam plaintiff conducts the action, the court may award to the defendant the defendant's
23 reasonable attorney fees and expenses allowable under the court rules if the defendant
24 prevails in the action and the court finds that the claim of the qui tam plaintiff was
25 frivolous, vexatious, or brought primarily for purposes of harassment.

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

28 **Sec. 37.10.140. Certain actions barred.** (a) An action brought under
29 AS 37.10.110 - 37.10.195 shall be dismissed if the action is based on allegations or
30 transactions that are the subject of a pending civil action or administrative action in
31 which the state or municipality is already a party.

1 (b) An action brought under AS 37.10.110 - 37.10.195 may not be brought
 2 against a member of the legislature, a member of the judiciary, the governor, the
 3 lieutenant governor, or the head of an executive department if the action is based on
 4 evidence or information known to the attorney general when the action was brought.

5 (c) Upon motion of the state or municipality, the court may, in consideration
 6 of all the equities, dismiss a qui tam plaintiff if the elements of the actionable false
 7 claims alleged in the qui tam complaint have been publicly disclosed specifically in
 8 the news media or in a publicly disseminated governmental report or pleading at the
 9 time the complaint is filed.

10 **Sec. 37.10.145. State or municipality not liable for certain expenses.** The
 11 state or a municipality is not liable for expenses a qui tam plaintiff incurs in bringing
 12 an action under AS 37.10.110 - 37.10.195.

13 **Sec. 37.10.150. Private action for retaliation.** (a) An employee who is
 14 discharged, demoted, suspended, threatened, harassed, or in any other manner
 15 discriminated against in the terms and conditions of employment by the person's
 16 employer because of lawful acts done by the employee on behalf of the employee or
 17 others in furtherance of an action under AS 37.10.110 - 37.10.195, including
 18 investigation for, initiation of, testimony for, or assistance in an action filed or to be
 19 filed, is entitled to all relief necessary to make the employee whole. Relief includes
 20 reinstatement with the same seniority status the employee would have had but for the
 21 discrimination, two times the amount of back pay, interest on the back pay, and
 22 compensation for special damages sustained as a result of the discrimination,
 23 including litigation costs and reasonable attorney fees. An employee may bring an
 24 action in the appropriate court of the state for the relief provided in this section.

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

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

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

1 reimbursement or direct payment;

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

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

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

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

10 (3) "qui tam plaintiff" means a person who initiates an action under
11 AS 37.10.125.

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

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

15 **Sec. 47.05.110. False claims.** The department shall cooperate with the attorney
16 general and, subject to a subpoena issued by a court of competent jurisdiction, a
17 person who brings a civil action for a violation of AS 37.10.110 - 37.10.195 (Alaska
18 False Claims Act).

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

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

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

31 (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:

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

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

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

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

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

1 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

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

5 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

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