

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 278

1 AN ACT TO CREATE THE MISSISSIPPI HEALTH CARE FALSE CLAIMS
 2 ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE THAT CERTAIN ACTS SHALL
 3 BE PROHIBITED AND SUBJECT TO CIVIL PENALTIES; TO DEFINE KNOWING;
 4 TO PROVIDE FOR CIVIL ACTIONS FOR VIOLATIONS OF THIS ACT; TO
 5 PROVIDE PROCEDURES FOR SUCH CIVIL ACTIONS; TO PROVIDE FOR
 6 SUBPOENAS; TO PROVIDE FOR LIMITATIONS OF ACTIONS; TO PROVIDE A
 7 BURDEN OF PROOF; TO PROVIDE VENUE FOR ACTIONS; AND FOR RELATED
 8 PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** This act shall be known and may be cited as the
 11 "Mississippi Health Care False Claims Act."

12 **SECTION 2.** The following words and phrases shall have the
 13 meanings ascribed herein, unless the context otherwise requires:

14 (a) "Health care insurer" means any insurance company,
 15 corporation, Lloyd's insurer, fraternal benefit society or any
 16 other legal entity authorized to provide health insurance in this
 17 state, or any person, partnership, association or legal entity
 18 which is self-insured and provides health care benefits to its
 19 employees;

20 (b) "Health care provider" is defined as any person
 21 licensed to practice the healing arts by the State Board of
 22 Medical Licensure;

23 (c) "Misleading information" includes, but is not
 24 limited to, falsely representing that goods or services were
 25 medically necessary in accordance with professionally accepted
 26 standards;

27 (d) "Person" means any individual, corporation,
 28 partnership, association or any other legal entity; and

29 (e) "Statement" includes, but is not limited to, any
 30 notice, statement, invoice, account, bill for services,

31 explanation of services, medical opinion, test result,
32 computer-generated document or other evidence of loss, injury or
33 expense.

34 **SECTION 3.** (1) (a) Any person who:

35 (i) Presents, or causes to be presented, to a
36 health care insurer a claim for payment or approval knowing such
37 claim is false or fraudulent;

38 (ii) Makes or uses, or causes to be made or used,
39 a record or statement to get a false or fraudulent health
40 insurance claim paid for or approved knowing such record or
41 statement is false;

42 (iii) Conspires to defraud a health care insurer
43 by getting a claim allowed or paid knowing such claim is false or
44 fraudulent;

45 (iv) Makes or uses, or causes to be made or used,
46 a record or statement to conceal, avoid or decrease an obligation
47 to pay or transmit money or property to a health care insurer,
48 knowing such record or statement is false; or

49 (v) Expressly or impliedly assigns such person's
50 right to receive health insurance reimbursement on a filed claim
51 to a health care provider in consideration for, or partial
52 consideration for, services rendered, and who then receives and
53 fails to remit to such health care provider, within a reasonable
54 time, any and all health insurance payments which were due by
55 assignment to such health care provider; is liable to the state
56 for a civil penalty of not less than Five Thousand Dollars
57 (\$5,000.00) and not more than Ten Thousand Dollars (\$10,000.00),
58 plus three (3) times the amount of damages which the health care
59 insurer sustains because of the act of that person.

60 (b) However, if the court finds that:

61 (i) The person committing the violation of this
62 subsection furnished officials of the state responsible for
63 investigating false claims violations with all information known

64 to such person about the violation with thirty (30) days after the
65 date on which the defendant first obtained the information;

66 (ii) Such person fully cooperated with any state
67 investigation of such violation; and

68 (iii) At the time such person furnished the state
69 with the information about the violation, no criminal prosecution,
70 civil action or administrative action had commenced under this
71 part with respect to such violation, and the person did not have
72 actual knowledge of the existence of an investigation into such
73 violation; the court may assess not less than two (2) times the
74 amount of damages which the health care insurer sustains because
75 of the act of the person. A person violating this subsection
76 shall also be liable for the costs of a civil action brought to
77 recover any such penalty or damages.

78 (2) For purposes of this section, "knowing" and "knowingly"
79 means that a person, with respect to information:

80 (a) Has actual knowledge of the information;

81 (b) Acts in deliberate ignorance of the truth or
82 falsity of the information; or

83 (c) Acts in reckless disregard of the truth or falsity
84 of the information, and no proof of specific intent to defraud is
85 required.

86 **SECTION 4.** (1) (a) A person may bring a civil action for a
87 violation of Section 3 of this act for the person and for the
88 State of Mississippi. The action shall be brought in the name of
89 the State of Mississippi. The action may be dismissed only if the
90 court and the Attorney General and district attorney give written
91 consent to the dismissal and their reasons for consenting.

92 (b) A copy of the complaint and written disclosure of
93 substantially all material evidence and information the person
94 possesses shall be served on the state. The complaint shall be
95 filed in camera, shall remain under seal for at least sixty (60)
96 days, and shall not be served on the defendant until the court so

97 orders. The state may elect to intervene and proceed with the
98 action within sixty (60) days after it receives both the complaint
99 and the material evidence and information.

100 (c) The state may, for good cause shown, move the court
101 for extensions of the time during which the complaint remains
102 under seal under subdivision (2). Any such motions may be
103 supported by affidavits or other submissions in camera. The
104 defendant shall not be required to respond to any complaint filed
105 under this section until twenty (20) days after the complaint is
106 unsealed and served upon the defendant.

107 (d) Before the expiration of the sixty-day period or
108 any extensions obtained under paragraph (c), the state shall:

109 (i) Proceed with the action, in which case the
110 action shall be conducted by the state; or

111 (ii) Notify the court that it declines to take
112 over the action, in which case the person bringing the action
113 shall have the right to conduct the action.

114 (e) When a person brings an action under this
115 subsection, no person other than the state may intervene or bring
116 a related action based on the facts underlying the pending action.

117 (2) (a) If the state proceeds with the action, it shall
118 have the primary responsibility for prosecuting the action, and
119 shall not be bound by an act of the person bringing the action.
120 Such person shall have the right to continue as a party to the
121 action, subject to the limitations set forth in paragraph (b).

122 (b) (i) The state may dismiss the action
123 notwithstanding the objections of the person initiating the action
124 if the person has been notified by the state of the filing of the
125 motion and the court has provided the person with an opportunity
126 for a hearing on the motion.

127 (ii) The state may settle the action with the
128 defendant notwithstanding the objections of the person initiating
129 the action if the court determines, after a hearing, that the

130 proposed settlement is fair, adequate and reasonable under all the
131 circumstances. Upon a showing of good cause, such hearing may be
132 held in camera.

133 (iii) Upon a showing by the state that
134 unrestricted participation during the course of the litigation by
135 the person initiating the action would interfere with or unduly
136 delay the state's prosecution of the case, or would be
137 repetitious, irrelevant or for purposes of harassment, the court
138 may, in its discretion, impose limitations on the person's
139 participation, such as:

- 140 1. Limiting the number of witnesses the
141 person may call;
- 142 2. Limiting the length of the testimony of
143 such witnesses;
- 144 3. Limiting the person's cross-examination of
145 witnesses; or
- 146 4. Otherwise limiting the participation by
147 the person in the litigation.

148 (iv) Upon a showing by the defendant that
149 unrestricted participation during the course of the litigation by
150 the person initiating the action would be for purposes of
151 harassment or would cause the defendant undue burden or
152 unnecessary expense, the court may limit the participation by the
153 person in the litigation.

154 (c) If the state elects not to proceed with the action,
155 the person who initiated the action shall have the right to
156 conduct the action. If the state so requests, it shall be served
157 with copies of all pleadings filed in the action and shall be
158 supplied with copies of all deposition transcripts at the state's
159 expense. When a person proceeds with the action, the court,
160 without limiting the status and rights of the person initiating
161 the action, may nevertheless permit the state to intervene at a
162 later date upon a showing of good cause.

163 (d) Whether or not the state proceeds with the action,
164 upon a showing by the state that certain actions of discovery by
165 the person initiating the action would interfere with the state's
166 investigation or prosecution of a criminal or civil matter arising
167 out of the same facts, the court may stay such discovery for a
168 period of not more than sixty (60) days. Such a showing shall be
169 conducted in camera. The court may extend the sixty-day period
170 upon a further showing in camera that the state has pursued the
171 criminal or civil investigation or proceedings with reasonable
172 diligence and any proposed discovery in the civil action will
173 interfere with the ongoing criminal or civil investigation or
174 proceedings.

175 (e) Notwithstanding subsection (1), the state may elect
176 to pursue its claim through any alternate remedy available to the
177 state, including any administrative proceeding to determine a
178 civil money penalty. If any such alternate remedy is pursued in
179 another proceeding, the person initiating the action shall have
180 the same rights in such proceedings as such person would have had
181 if the action had continued under this section. Any finding of
182 fact or conclusion of law made in such other proceeding that has
183 become final shall be conclusive on all parties to an action under
184 this section. For purposes of the preceding sentence, a finding
185 or conclusion is final if it has been finally determined on appeal
186 to the appropriate court of jurisdiction, if all time for filing
187 such an appeal with respect to the finding or conclusion has
188 expired, or if the finding or conclusion is not subject to
189 judicial review.

190 (3) (a) If the state proceeds with an action brought by a
191 person under subsection (1), a person shall, subject to the second
192 sentence of this paragraph, receive at least fifteen percent (15%)
193 but not more than twenty-five percent (25%) of the proceeds of the
194 action or settlement of the claim, depending upon the extent to
195 which the person substantially contributed to the prosecution of

196 the action. Where the action is one which the court finds to be
197 based primarily on disclosures of specific information (other than
198 information provided by the person bringing the action) relating
199 to allegations or transactions in a criminal, civil or
200 administrative hearing, report, audit, investigation or from the
201 news media, the court may award such sums as it considers
202 appropriate, but in no case more than ten percent (10%) of the
203 proceeds, taking into account the significance of the information
204 and the role of the person bringing the action in advancing the
205 case to litigation. Any payment to a person under the first or
206 second sentence of this paragraph shall be made from the proceeds.
207 Any such person shall also receive an amount for reasonable
208 expenses which the court finds to have been necessarily incurred,
209 plus reasonable attorney's fees and costs. All such expenses,
210 fees and costs shall be awarded against the defendant.

211 (b) If the state does not proceed with an action under
212 this section, the person bringing the action or settling the claim
213 shall receive an amount which the court decides is reasonable for
214 collecting the civil penalty and damages. The amount shall be not
215 less than twenty-five percent (25%) and not more than thirty
216 percent (30%) of the proceeds of the action or settlement and
217 shall be paid out of such proceeds. Such person shall also
218 receive an amount for reasonable expenses which the court finds to
219 have been necessarily incurred, plus reasonable attorney's fees
220 and costs. All such expenses, fees and costs shall be awarded
221 against the defendant.

222 (c) Whether or not the state proceeds with the action,
223 if the court finds that the action was brought by a person who
224 planned and initiated the violation of Section 3 of this act upon
225 which the action was brought, then the court may, to the extent
226 the court considers appropriate, reduce the share of the proceeds
227 of the action which the person would otherwise receive under
228 paragraph (a) or (b), taking into account the role of that person

229 in advancing the case to litigation and any relevant circumstances
230 pertaining to the violation. If the person bringing the action is
231 convicted of criminal conduct arising from such person's role in
232 the violation of Section 3 of this act, that person shall be
233 dismissed from the civil action and shall not receive any share of
234 the proceeds of the action. Such dismissal shall not prejudice
235 the right of the state to continue the action.

236 (d) If the state does not proceed with the action and
237 the person bringing the action conducts the action, the court
238 shall award to the defendant its reasonable attorney's fees and
239 expenses if the defendant prevails in the action and the court
240 finds that the claim of the person bringing the action was clearly
241 frivolous, clearly vexatious or brought primarily for purposes of
242 harassment.

243 (4) (a) In no event may a person bring an action under
244 subsection (1) which is based upon allegations or transactions
245 which are the subject of a civil suit or an administrative civil
246 money penalty proceeding in which the state is already a party.

247 (b) (i) No court shall have jurisdiction over an
248 action under this section based upon the public disclosure of
249 allegations of transactions in a criminal, civil or administrative
250 hearing, audit, investigation or from the news media, unless the
251 action is brought by the Attorney General or district attorney or
252 the person bringing the action is an original source of the
253 information.

254 (ii) For purpose of this subdivision, "original
255 source" means an individual who has direct and independent
256 knowledge of the information on which the allegations are based
257 and has voluntarily provided the information to the state before
258 filing an action under this section, which is based on the
259 information.

260 (5) The state is not liable for expenses which a person
261 incurs in bringing an action under this section.

262 (6) Any employee who is discharged, demoted, suspended,
263 threatened, harassed or in any other manner discriminated against
264 in the terms and conditions of employment by an employer because
265 of lawful acts done by the employee on behalf of the employee or
266 others in furtherance of an action under this section, including
267 investigation for, initiation of, testimony for or assistance in
268 an action filed or to be filed under this section, shall be
269 entitled to all relief necessary to make the employee whole. Such
270 relief shall include reinstatement with the same seniority status
271 such employee would have had but for the discrimination, two (2)
272 times the amount of back pay, interest on the back pay, and
273 compensation for any special damages sustained as a result of the
274 discrimination, including litigation costs and reasonable
275 attorney's fees. An employee may bring an action in the
276 appropriate court for the relief provided in this subsection.

277 **SECTION 5.** (1) A subpoena requiring the attendance of a
278 witness at a trial or hearing conducted under Section 4 of this
279 act may be served at any place in the United States.

280 (2) A civil action under Section 4 of this act may not be
281 brought:

282 (a) More than six (6) years after the date on which the
283 violation of Section 2 of this act is committed, or

284 (b) More than three (3) years after the date when facts
285 material to the right of action are known or reasonably should
286 have been known by the health care insurer with responsibility to
287 act in the circumstances, but in no event more than ten (10) years
288 after the date on which the violation is committed, whichever
289 occurs last.

290 (3) In any action brought under Section 4 of this act, the
291 state shall be required to prove all essential elements of the
292 cause of action, including damages, by a preponderance of the
293 evidence.

294 (4) Notwithstanding any other provision of law, the Rules of
295 Criminal Procedure or the Rules of Evidence, a final judgment
296 rendered in favor of the state in any criminal proceeding charging
297 fraud or false statements, whether upon a verdict after trial or
298 upon a plea of guilty or nolo contendere, shall stop the defendant
299 from denying the essential elements of the offense in any action
300 which involves the same transaction as in the criminal proceeding
301 and which is brought under subsection (1) or (2) or Section 3 of
302 this act.

303 **SECTION 6.** Any action under Section 4 of this act may be
304 brought in any circuit court district in which the defendant or,
305 in the case of multiple defendants, any one (1) defendant can be
306 found, resides or transacts business, or in which any act
307 proscribed by Section 3 of this act occurred. A summons as
308 required by the Rules of Civil Procedure shall be issued by the
309 appropriate district court and served at any place within or
310 outside the United States.

311 **SECTION 7.** This act shall take effect and be in force from
312 and after July 1, 2005.