

By: Representatives Baker, Wilson

To: Judiciary A

HOUSE BILL NO. 1177

1 AN ACT TO CREATE THE "MISSISSIPPI FALSE CLAIMS ACT"; TO
 2 PROHIBIT ANY PERSON FROM KNOWINGLY PRESENTING, OR CAUSING TO BE
 3 PRESENTED, A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OR APPROVAL TO
 4 A STATE AGENCY OR ANY EMPLOYEE OR AGENT OF A STATE AGENCY; TO
 5 REQUIRE STATE AGENCIES TO DILIGENTLY INVESTIGATE SUSPECTED
 6 VIOLATIONS OF THE ACT; TO AUTHORIZE CIVIL ACTION BY A QUI TAM
 7 PLAINTIFF; TO PROVIDE FOR A MONETARY AWARD TO THE QUI TAM
 8 PLAINTIFF OUT OF THE PROCEEDS OF THE ACTION OR SETTLEMENT, IF ANY;
 9 TO BAR CERTAIN CIVIL ACTIONS; TO PROVIDE A STATUTE OF LIMITATIONS
 10 FOR BRINGING A CIVIL ACTION UNDER THE ACT; TO PROHIBIT EMPLOYER
 11 INTERFERENCE WITH EMPLOYEE DISCLOSURE; TO PROVIDE THAT THE
 12 REMEDIES PROVIDED IN THE ACT ARE NOT EXCLUSIVE AND SHALL BE IN
 13 ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW; AND FOR RELATED
 14 PURPOSES.

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

16 **SECTION 1.** This act shall be known and may be cited as the
 17 "Mississippi False Claims Act."

18 **SECTION 2.** As used in this act, unless the context clearly
 19 indicates otherwise:

20 (a) "Claim" means a request or demand for money,
 21 property or services when all or a portion of the money, property
 22 or services requested or demanded issues from or is provided by a
 23 state agency;



24 (b) "Employer" includes an individual, corporation,
25 firm, association, business, partnership, organization, trust and
26 the state and any of its agencies, institutions or political
27 subdivisions;

28 (c) "Knowingly" means that a person, with respect to
29 information, acts:

30 (i) With actual knowledge of the truth or falsity
31 of the information;

32 (ii) In deliberate ignorance of the truth or
33 falsity of the information; or

34 (iii) In reckless disregard of the truth or
35 falsity of the information;

36 (d) "Person" means an individual, corporation, firm,
37 association, organization, trust, business, partnership, limited
38 liability company, joint venture or any legal or commercial
39 entity; and

40 (e) "State agency" means the State of Mississippi or
41 any of its branches, agencies, departments, boards, commissions,
42 officers, institutions or instrumentalities.

43 **SECTION 3.** (1) A person shall not:

44 (a) Knowingly present, or cause to be presented, to a
45 state agency or an employee or agent of a state agency or to a
46 contractor, grantee or other recipient of state funds a false or
47 fraudulent claim for payment or approval;



48 (b) Knowingly make or use, or cause to be made or used,
49 a false record or statement to obtain from a state agency approval
50 or payment on a false or fraudulent claim;

51 (c) Conspire to defraud a state agency by obtaining
52 approval or payment on a false claim;

53 (d) When in possession, custody or control of property
54 or money used or to be used by a state agency, knowingly deliver
55 or cause to be delivered less property or money than the amount
56 indicated on a certificate or receipt;

57 (e) When authorized to make or deliver a document
58 certifying receipt of property used or to be used by a state
59 agency, knowingly make or deliver a receipt that falsely
60 represents the property used or to be used;

61 (f) Knowingly buy, or receive as a pledge of an
62 obligation or debt, property of a state agency from any person
63 that may not lawfully sell or pledge the property;

64 (g) Knowingly make or use, or cause to be made or used,
65 a false record or statement to conceal, avoid or decrease an
66 obligation to pay or transmit money or property to a state agency;
67 or

68 (h) As a beneficiary of an inadvertent submission of a
69 false claim to a state agency and having later discovered the
70 falsity of the claim, fail to disclose the false claim to the
71 state agency within a reasonable time after discovery.



72 (2) Proof of specific intent to defraud is not required for
73 a violation of subsection (1) of this section.

74 (3) A person who violates subsection (1) of this section
75 shall be liable for:

76 (a) Three (3) times the amount of damages sustained by
77 a state agency because of the violation;

78 (b) A civil penalty of not less than Five Thousand
79 Dollars (\$5,000.00), nor more than Ten Thousand Dollars
80 (\$10,000.00), for each violation;

81 (c) The costs of a civil action brought to recover
82 damages or penalties; and

83 (d) Reasonable attorney's fees, including fees for
84 state agency counsel, and litigation costs and expenses including,
85 but not limited to, expert witness fees, deposition costs and
86 document and exhibit preparation and related expenses.

87 (4) A court may assess two (2) times the amount of damages
88 sustained by a state agency and no civil penalty if the court
89 finds all of the following:

90 (a) The person committing the violation furnished the
91 state agency with all information known to that person about the
92 violation within thirty (30) days after the date on which the
93 person first obtained the information;

94 (b) At the time that the person furnished the state
95 agency with information about the violation, a criminal
96 prosecution, civil action or administrative action had not been



97 begun with respect to the violation, and the person did not have
98 actual knowledge of the existence of an investigation into the
99 violation; and

100 (c) The person fully cooperated with any investigation
101 by the state agency.

102 **SECTION 4.** (1) State agencies shall diligently investigate
103 suspected violations of Section 3 of this act, and if a state
104 agency finds that a person has violated or is violating that
105 section, the state agency may bring a civil action against that
106 person pursuant to this act.

107 (2) A state agency may, in appropriate cases, delegate the
108 authority to investigate or to bring a civil action to the
109 Attorney General, and when this occurs, the Attorney General shall
110 have every power conferred upon the state agency under this act.

111 **SECTION 5.** (1) Where the amount in controversy exceeds Ten
112 Thousand Dollars (\$10,000.000) exclusive of penalties, fees and
113 costs, a person may bring a civil action for a violation of
114 Section 3 of this act on behalf of the person and the State of
115 Mississippi. The action shall be brought in the name of the State
116 of Mississippi. The person bringing the action shall be referred
117 to as the "qui tam plaintiff." Once filed, the action may be
118 dismissed only with the written consent of the court, taking into
119 account the best interest of the parties involved and the public
120 purposes behind this act. Venue for actions brought under this



121 subsection shall be the Circuit Court of the First Judicial
122 District of Hinds County.

123 (2) A complaint filed by a qui tam plaintiff shall be filed
124 in camera in the circuit court and shall remain under seal for at
125 least sixty (60) days. No service shall be made on a defendant
126 and no response is required from a defendant until the seal has
127 been lifted and the complaint served pursuant to the Mississippi
128 Rules of Civil Procedure.

129 (3) On the same day as the complaint is filed, the qui tam
130 plaintiff shall serve the state agency to which the false claim
131 was made with a copy of the complaint and written disclosure of
132 substantially all material evidence and information the plaintiff
133 possesses. The state agency may intervene and proceed with the
134 action within sixty (60) days after receiving the complaint and
135 the material evidence and information. Upon a showing of good
136 cause and reasonable diligence in the state agency's
137 investigation, the state agency may move the court for an
138 extension of time during which the complaint shall remain under
139 seal.

140 (4) Before the expiration of the sixty-day period or any
141 extensions of time granted by the court, the state agency shall
142 notify the court that it:

143 (a) Intends to intervene and proceed with the action;
144 in which case, the seal shall be lifted and the action shall be
145 conducted by the state agency; or



146 (b) Declines to take over the action; in which case,
147 the seal shall be lifted and the qui tam plaintiff shall proceed
148 with the action.

149 (5) When a person brings an action under this section, no
150 person other than the state agency to which the false claim was
151 made may intervene or bring a related action based on the facts
152 underlying the pending action.

153 **SECTION 6.** (1) If a state agency proceeds with the action,
154 the state agency shall have the primary responsibility of
155 prosecuting the action and shall not be bound by an act of the qui
156 tam plaintiff. The qui tam plaintiff shall have the right to
157 continue as a party to the action, subject to the limitations of
158 this section.

159 (2) The state agency may seek to dismiss the action for good
160 cause notwithstanding the objections of the qui tam plaintiff if
161 the qui tam plaintiff has been notified of the filing of the
162 motion and the court has provided the qui tam plaintiff with an
163 opportunity to oppose the motion and to present evidence at a
164 hearing.

165 (3) The state agency may settle the action with the
166 defendant notwithstanding objections by the qui tam plaintiff if
167 the court determines, after a hearing providing the qui tam
168 plaintiff an opportunity to present evidence, that the proposed
169 settlement is fair, adequate and reasonable under all of the
170 circumstances.



171 (4) Upon a showing by the state agency that unrestricted
172 participation during the course of the litigation by the qui tam
173 plaintiff would interfere with or unduly delay the state agency's
174 prosecution of the case, or would be repetitious, irrelevant or
175 for purposes of harassment, the court may, in its discretion,
176 impose limitations on the qui tam plaintiff's participation, such
177 as:

178 (a) Limiting the number of witnesses that the qui tam
179 plaintiff may call;

180 (b) Limiting the length of testimony of those
181 witnesses;

182 (c) Limiting the qui tam plaintiff's cross-examination
183 of witnesses; or

184 (d) Otherwise limiting the qui tam plaintiff's
185 participation in the litigation.

186 (5) Upon a showing by a defendant that unrestricted
187 participation during the course of litigation by the qui tam
188 plaintiff would be for purposes of harassment or would cause the
189 defendant undue burden or unnecessary expense, the court may limit
190 the participation by the qui tam plaintiff in the litigation.

191 (6) If a state agency elects not to proceed with the action,
192 the qui tam plaintiff shall have the right to conduct the action.
193 If the state agency so requests, the qui tam plaintiff shall serve
194 the state agency with copies of all pleadings filed and all
195 deposition transcripts in the case, at the state agency's expense.



196 When the qui tam plaintiff proceeds with the action, the court,
197 without limiting the status and rights of the qui tam plaintiff,
198 may permit the state agency to intervene at a later date upon a
199 showing of good cause.

200 (7) Whether or not a state agency proceeds with the action,
201 upon a showing by the state agency that certain actions of
202 discovery by the qui tam plaintiff would interfere with the
203 state's investigation or prosecution of a criminal or civil matter
204 arising out of the same facts, the court may stay that discovery
205 for a period of not more than sixty (60) days. The showing by the
206 state agency shall be conducted in camera. The court may extend
207 the sixty-day period upon a further showing in camera that the
208 state has pursued the criminal or civil investigation or
209 proceeding with reasonable diligence and any proposed discovery in
210 the civil action will interfere with the ongoing criminal or civil
211 investigation or proceeding.

212 **SECTION 7.** (1) Except as otherwise provided in this
213 section, if a state agency proceeds with an action brought by a
214 qui tam plaintiff and the state prevails in the action, the qui
215 tam plaintiff shall receive:

216 (a) At least fifteen percent (15%) but not more than
217 twenty-five percent (25%) of the proceeds of the action or
218 settlement, depending upon the extent to which the qui tam
219 plaintiff substantially contributed to the prosecution of the
220 action; or



221 (b) No more than ten percent (10%) of the proceeds of
222 the action or settlement if the court finds that the action was
223 based primarily on disclosures of specific information not
224 provided by the qui tam plaintiff relating to allegations or
225 transactions in a criminal, civil, administrative or legislative
226 hearing, proceeding, report, audit or investigation or from the
227 news media, taking into account the significance of the
228 information and the role of the qui tam plaintiff in advancing the
229 case to litigation.

230 (2) If a state agency does not proceed with an action
231 brought by a qui tam plaintiff and the state prevails in the
232 action, the qui tam plaintiff shall receive an amount that is not
233 less than twenty-five percent (25%) but not more than thirty
234 percent (30%) of the proceeds of the action or settlement, as the
235 court deems reasonable for collecting the civil penalty and
236 damages.

237 (3) Whether or not a state agency proceeds with an action
238 brought by a qui tam plaintiff:

239 (a) If the court finds that the action was brought by a
240 person who planned or initiated the violation of Section 3 of this
241 act upon which the action was based, the court may reduce the
242 share of the proceeds that the person would otherwise receive
243 under subsection (1) or (2) of this section, taking into account
244 the role of the person as the qui tam plaintiff in advancing the



245 case to litigation and any relevant circumstances pertaining to
246 the violation; or

247 (b) If the person bringing the action is convicted of
248 criminal conduct arising from that person's role in the violation
249 of Section 3 of this act upon which the action was based, that
250 person shall be dismissed from the civil action and shall not
251 receive a share of the proceeds. The dismissal shall not
252 prejudice the right of the state agency to continue the action.

253 (4) Any award to a qui tam plaintiff shall be paid out of
254 the proceeds of the action or settlement, if any. The qui tam
255 plaintiff shall also receive an amount for reasonable expenses
256 necessarily incurred in the action plus reasonable attorney's
257 fees; provided that if a qui tam plaintiff receives a reduced
258 award under paragraph (a) of subsection (3) of this section, the
259 court shall also reduce or not award attorney's fees and costs.

260 (5) The State of Mississippi is entitled to all proceeds
261 collected in an action or settlement not awarded to a qui tam
262 plaintiff. The state is also entitled to reasonable expenses
263 incurred in the action plus reasonable attorney's fees, including
264 fees for state agency counsel. Proceeds and penalties collected
265 by the state shall be deposited as follows:

266 (a) Proceeds in the amount of the false claim and
267 attorney's fees and costs shall be returned to the fund or funds
268 from which the money, property or services came; and



269 (b) Any civil penalties and all remaining proceeds
270 shall be deposited in the State General Fund.

271 **SECTION 8.** If a state agency does not proceed with the
272 action and the qui tam plaintiff conducts the action, the court
273 may award a defendant reasonable attorney's fees and costs if the
274 defendant prevails and the court finds the action clearly
275 frivolous, clearly vexatious or brought primarily for purposes of
276 harassment.

277 **SECTION 9.** (1) No court shall have jurisdiction over an
278 action brought under Section 5 of this act by a present or former
279 employee of a state agency unless the employee, during employment
280 with the agency and in good faith, exhausted existing internal
281 procedures for reporting false claims and the agency failed to act
282 on the information provided within a reasonable period of time.

283 (2) No court shall have jurisdiction over an action brought
284 under Section 5 of this act against an elected or appointed state
285 official, a member of the State Legislature or a member of the
286 judiciary if the action is based on evidence or information known
287 to the state agency or to the Attorney General when the action was
288 brought.

289 (3) No court shall have jurisdiction over an action brought
290 under Section 5 of this act when that action is based on
291 allegations or transactions that are the subject of a criminal,
292 civil or administrative proceeding in which the State of
293 Mississippi is a party.



294 (4) Upon motion of a state agency, a court may, in its
295 discretion, dismiss an action brought under Section 5 of this act
296 if the elements of the alleged false claim have been publicly
297 disclosed in the news media or in a publicly disseminated
298 governmental report at the time the complaint is filed.

299 **SECTION 10.** A state agency is not liable for expenses or
300 fees that a qui tam plaintiff may incur in investigating or
301 bringing an action under this act.

302 **SECTION 11.** A civil action authorized under this act shall
303 not be brought more than three (3) years after the date when facts
304 material to the right of action are known or reasonably should
305 have been known, and in no event shall such an action be brought
306 more than ten (10) years after the date on which the violation was
307 committed.

308 **SECTION 12.** Notwithstanding any other provision of law, a
309 final judgment rendered in a criminal proceeding charging fraud or
310 false statement, whether upon a guilty verdict after trial or upon
311 a plea of guilty or nolo contendere, shall estop the defendant
312 from denying the essential elements of a fraud against taxpayers
313 action where the criminal proceeding concerns the same transaction
314 that is the subject of the fraud against taxpayers action.

315 **SECTION 13.** In an action brought under this act, the state
316 agency or the qui tam plaintiff shall be required to prove all
317 essential elements of the cause of action, including damages, by a
318 preponderance of the evidence.



319 **SECTION 14.** Liability shall be joint and several for any act
320 committed by two (2) or more persons in violation of this act.

321 **SECTION 15.** (1) An employer shall not make, adopt or
322 enforce a rule, regulation or policy that prevents an employee
323 from disclosing information to a state agency or other government
324 or law enforcement agency or from acting in furtherance of a fraud
325 against taxpayers action, including investigating, initiating,
326 testifying or assisting in an action filed or to be filed under
327 this act.

328 (2) An employer shall not discharge, demote, suspend,
329 threaten, harass, deny promotion to or in any other manner
330 discriminate against an employee in the terms and conditions of
331 employment because of the lawful acts of the employee on behalf of
332 the employee or others in disclosing information to a state agency
333 or other government or law enforcement agency or in furthering a
334 fraud against taxpayers action, including investigating,
335 initiating, testifying or assisting in an action filed or to be
336 filed under this act.

337 (3) An employer that violates subsection (2) of this section
338 shall be liable to the employee for all relief necessary to make
339 the employee whole, including reinstatement with the same
340 seniority status that the employee would have had but for the
341 violation, two (2) times the amount of back pay with interest on
342 the back pay, compensation for any special damage sustained as a
343 result of the violation and, if appropriate, punitive damages. In



344 addition, an employer shall be required to pay the litigation
345 costs and reasonable attorney's fees of the employee. An employee
346 may bring an action under this section in any court of competent
347 jurisdiction.

348 **SECTION 16.** The remedies provided for in this act are not
349 exclusive and shall be in addition to any other remedies provided
350 for in any other law or available under common law.

351 **SECTION 17.** This act shall take effect and be in force from
352 and after July 1, 2018.

