

1 nonexclusivity of act; and liberality of construction.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §9-7-6 of the Code of West Virginia, 1931, as amended, be
4 amended and reenacted; and that said code be amended by adding
5 thereto a new article, designated §14-4-1, §14-4-2, §14-4-3,
6 §14-4-4, §14-4-5, §14-4-6, §14-4-7, §14-4-8 and §14-4-9 all to read
7 as follows:

8 **CHAPTER 9. HUMAN SERVICES.**

9 **ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.**

10 **§9-7-6. Civil remedies.**

11 (a) Any person, firm, corporation or other entity which
12 willfully, by means of a false statement or representation, or by
13 concealment of any material fact, or by other fraudulent scheme,
14 devise or artifice on behalf of himself, herself, itself, or
15 others, obtains or attempts to obtain benefits or payments or
16 allowances under the medical programs of the Department of Health
17 and Human Resources to which he or she or it is not entitled, or,
18 in a greater amount than that to which he or she or it is entitled,
19 or any provisions of section two, article four, chapter fourteen of
20 this code, shall, in addition to any other penalties provided by
21 law, be liable to the Department of Health and Human Resources in
22 ~~an amount equal to three times the amount of such benefits,~~
23 ~~payments or allowances to which he or she or it is not entitled,~~
24 for civil penalties of (1) payment of interest on the amount of the

1 excess benefits or payments at the maximum legal rate in effect on
2 the date the payment was made to said person, firm, corporation,
3 partnership or other legal entity for the period from the date upon
4 which payment was made to the date upon which repayment is made to
5 the State, (2) payment of an amount not to exceed three times the
6 amount of such excess benefits or payments, (3) payment in the sum
7 of not less than and not more than the civil penalty allowed under
8 section two, article four, chapter fourteen of this code, as it may
9 be adjusted for inflation pursuant to the Federal Civil Penalties
10 Inflation Adjustment Act of 1990, Pub.L.101-410 for each excessive
11 claim for assistance, benefits or payments, and (4) ~~and shall be~~
12 liable for the payment of reasonable attorney fees and all other
13 fees and costs of litigation.

14 (b) No criminal action or indictment need be brought against
15 any person, firm, corporation or other entity as a condition for
16 establishing civil liability hereunder.

17 (c) A civil action under this section may be prosecuted and
18 maintained on behalf of the Department of Health and Human
19 Resources by the Attorney General and the Attorney General's
20 assistants or a prosecuting attorney and the prosecuting attorney's
21 assistants or by any attorney in contract with or employed by the
22 Department of Health and Human Resources to provide such
23 representation.

24 **CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.**

25 **ARTICLE 4. GOVERNMENT FRAUD PREVENTION ACT.**

1 §14-4-1. Definitions.

2 As used in this article, unless the context requires
3 otherwise:

4 (1) "Attorney General" means the West Virginia Attorney
5 General, deputies, counsels or assistant attorneys general employed
6 by the Office of the Attorney General and designated by the
7 Attorney General to act pursuant to this article.

8 (2) "Claim" means any request or demand, whether under a
9 contract or otherwise, for money or property, regardless of whether
10 the state has title to the money or property, that (A) is presented
11 to an officer, employee, or agent of the state or (B) is made to a
12 contractor, grantee, or other recipient (i) if the money or
13 property is to be spent or used on the state's behalf or to advance
14 a governmental program or interest and (ii) if the State provides
15 or has provided any portion of the money or property requested or
16 demanded or will reimburse such contractor, grantee, or other
17 recipient for any portion of the money or property that is
18 requested or demanded. For purposes of this article, "claim" does
19 not include requests or demands for money or property that the
20 state has paid to an individual as compensation for employment with
21 the state or as income subsidy with no restriction on that
22 individual's use of the money or property.

23 (3) "State" means the State of West Virginia, any agency of
24 state government, and any political subdivision of the state.

25 (4) "Employee" includes an employee or officer of the State.

1 (5) "Employer" includes the state.

2 (6) "Investigation" means any inquiry conducted by an
3 investigator for the purpose of ascertaining whether any person is
4 or has been engaged in any violation of this article.

5 (7) "Material" means having a natural tendency to influence,
6 or be capable of influencing, the payment or receipt of money or
7 property.

8 (8) "Obligation" means an established duty, whether or not
9 fixed, arising from (A) an express or implied contractual,
10 grantor-grantee, or licensor-licensee relationship; (B) a fee-based
11 or similar relationship; (C) a statute, regulation or rule; or (D)
12 the retention of any overpayment.

13 (9) "Person" includes any natural person, corporation, firm,
14 association, organization, partnership, limited liability company,
15 business or trust.

16 **§14-4-2. False Claims; civil penalties.**

17 (a) Any person who:

18 (1) Knowingly presents, or causes to be presented, a false or
19 fraudulent claim for payment or approval;

20 (2) Knowingly makes, uses, or causes to be made or used, a
21 false record or statement material to a false or fraudulent claim;

22 (3) Conspires to commit a violation of subdivision (1), (2),
23 (4), (5), (6), or (7);

24 (4) Has possession, custody, or control of property or money
25 used, or to be used, by the state and knowingly delivers, or causes

1 to be delivered, less than all such money or property;

2 (5) Is authorized to make or deliver a document certifying
3 receipt of property used, or to be used, by the State and,
4 intending to defraud the State, makes or delivers the receipt
5 without completely knowing that the information on the receipt is
6 true;

7 (6) Knowingly buys or receives as a pledge of an obligation or
8 debt, public property from an officer or employee of the State who
9 lawfully may not sell or pledge the property; or

10 (7) Knowingly makes, uses, or causes to be made or used, a
11 false record or statement material to an obligation to pay or
12 transmit money or property to the State or knowingly conceals or
13 knowingly and improperly avoids or decreases an obligation to pay
14 or transmit money or property to the State;

15 shall be liable to the state for a civil penalty of not less than
16 \$ 5,500 and not more than \$ 11,000, as may be adjusted by the
17 Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C.
18 2461; Public Law 104-410), plus three times the amount of damages
19 sustained by the State.

20 (b) A person violating this section shall be liable to the
21 state for reasonable attorney fees and costs of a civil action
22 brought to recover any such penalties or damages. All such fees and
23 costs shall be paid to the Attorney General's Office by the
24 defendant and shall not be included in any damages or civil
25 penalties recovered in a civil action based on a violation of this

1 section.

2 (c) If the court finds that:

3 (1) The person committing the violation of this section
4 furnished officials of the state responsible for investigating
5 false claims violations with all information known to the person
6 about the violation within thirty days after the date on which the
7 defendant first obtained the information;

8 (2) Such person fully cooperated with any state investigation
9 of such violation;

10 (3) At the time such person furnished the state with the
11 information about the violation, no criminal prosecution, civil
12 action, or administrative action had commenced with respect to such
13 violation; and

14 (4) The person did not have actual knowledge of the existence
15 of an investigation into such violation, the court may assess not
16 less than two times the amount of damages that the state sustains
17 because of the act of that person. A person violating this section
18 shall also be liable to the state for the costs of a civil action
19 brought to recover any such penalty or damages.

20 (d) For purposes of this section, the terms "knowing" and
21 "knowingly" mean that a person, with respect to information,

22 (1) Has actual knowledge of the information;

23 (2) Acts in deliberate ignorance of the truth or falsity of
24 the information; or

25 (3) Acts in reckless disregard of the truth or falsity of the

1 information and require no proof of specific intent to defraud.

2 (e) This section shall not apply to claims, records or
3 statements relating to state or local taxes.

4 **§14-4-3. Attorney General; investigation, civil action.**

5 The Attorney General shall investigate any violation of
6 section two of this article. If the Attorney General finds that a
7 person has violated or is violating section two, the Attorney
8 General may bring a civil action under this section.

9 **§14-4-4. Civil actions filed by private persons; state may**
10 **intervene.**

11 (a) A person may bring a civil action for a violation of
12 section two for the person and for the state. The action shall be
13 brought in the name of the state. The action may be dismissed only
14 if the court and the Attorney General give written consent to the
15 dismissal and their reasons for consenting.

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

24 (c) The state may, for good cause shown, move the court for

1 extensions of the time during which the complaint remains under
2 seal. Any such motions may be supported by affidavits or other
3 submissions in camera. The defendant shall not be required to
4 respond to any motion for judgment filed under this section until
5 twenty-one days after the complaint is unsealed and served upon the
6 defendant.

7 (d) Before the expiration of the one hundred twenty day period
8 or any extensions obtained under subsection (c), the state shall
9 proceed with the action, in which case the action shall be
10 conducted by the state, or notify the court that it declines to
11 take over the action, in which case the person bringing the action
12 shall have the right to prosecute the action.

13 (e) When a person brings an action under this section, no
14 person other than the state may intervene or bring a related action
15 based on the facts underlying the pending action.

16 **§14-4-5. Rights of private plaintiff and state.**

17 (a) If the state proceeds with the action, it shall have the
18 primary responsibility for prosecuting the action, and shall not be
19 bound by an act of the person bringing the action. Such person
20 shall have the right to continue as a party to the action, subject
21 to the limitations of this section.

22 (b) The state may dismiss the action notwithstanding the
23 objections of the person initiating the action if the person has
24 been notified by the state of the filing of the complaint and the
25 court has provided the person with an opportunity for a hearing on

1 the complaint.

2 (c) The state may settle the action with the defendant
3 notwithstanding the objections of the person initiating the action
4 if the court determines, after a hearing, that the proposed
5 settlement is fair, adequate, and reasonable under all the
6 circumstances. Upon a showing of good cause, such hearing may be
7 held in camera. The state may, for good cause shown, move the court
8 for a partial lifting of the seal to facilitate the investigative
9 process or settlement.

10 (d) Upon a showing by the state that unrestricted
11 participation during the course of the litigation by the person
12 initiating the action would interfere with or unduly delay the
13 state's prosecution of the case, or would be repetitious,
14 irrelevant, or for purposes of harassment, the court may, in its
15 discretion, impose limitations on the person's participation, such
16 as (1) limiting the number of witnesses the person may call; (2)
17 limiting the length of the testimony of such witnesses; (3)
18 limiting the person's cross-examination of witnesses; and (4)
19 otherwise limiting the participation by the person in the
20 litigation.

21 (e) Upon a showing by the defendant that unrestricted
22 participation during the course of the litigation by the person
23 initiating the action would be for purposes of harassment or would
24 cause the defendant undue burden or unnecessary expense, the court
25 may limit the participation by the person in the litigation.

1 (f) If the state elects not to proceed with the action, the
2 person who initiated the action shall have the right to conduct the
3 action. If the state so requests, it shall be served with copies of
4 all pleadings filed in the action and shall be supplied with copies
5 of all deposition transcripts at the state's expense. When a person
6 proceeds with the action, the court, without limiting the status
7 and rights of the person initiating the action, may nevertheless
8 permit the state to intervene at a later date upon a showing of
9 good cause.

10 (g) Whether or not the state proceeds with the action, upon a
11 showing by the state that certain actions of discovery by the
12 person initiating the action would interfere with the state's
13 investigation or prosecution of a criminal or civil matter arising
14 out of the same facts, the court may stay such discovery for a
15 period of not more than sixty days. Such a showing shall be
16 conducted *in camera*. The court may extend the sixty-day period upon
17 a further showing *in camera* that the state has pursued the criminal
18 or civil investigation or proceedings with reasonable diligence and
19 any proposed discovery in the civil action will interfere with the
20 ongoing criminal or civil investigation or proceedings.

21 (h) Notwithstanding the provisions of subsection (b) of
22 section four, the state may elect to pursue its claim through any
23 alternate remedy available to the state, including any
24 administrative proceeding to determine a civil money penalty. If
25 any such alternate remedy is pursued in another proceeding, the

1 person initiating the action shall have the same rights in such
2 proceeding as such person would have had if the action had
3 continued under this section. Any finding of fact or conclusion of
4 law made in such other proceeding that has become final shall be
5 conclusive on all parties to an action under this article. For
6 purposes of this subsection, a finding or conclusion is final if it
7 has been finally determined on appeal to a court of competent
8 jurisdiction of the state, if the time for filing an appeal with
9 respect to the finding or conclusion has expired, or if the finding
10 or conclusion is not subject to judicial review.

11 **§14-4-6. Award to private plaintiff.**

12 (a) Except as hereinafter provided, if the state proceeds with
13 an action brought by a person under section four, such person shall
14 receive at least fifteen percent but not more than twenty-five
15 percent of the proceeds of the action or settlement of the claim,
16 depending upon the extent to which the person substantially
17 contributed to the prosecution of the action. Where the action is
18 one that the court finds to be based primarily on disclosures of
19 specific information, other than information provided by the person
20 bringing the action, relating to allegations or transactions in a
21 criminal, civil, or administrative hearing, in a legislative,
22 administrative, or state auditor's report, hearing, audit, or
23 investigation, or from the news media, the court may award such
24 sums as it considers appropriate, but in no case more than ten
25 percent of the proceeds, taking into account the significance of

1 the information and the role of the person bringing the action in
2 advancing the case to litigation. Any payment to a person under
3 this section shall be made from the proceeds of the award. Any such
4 person shall also receive an amount for reasonable expenses that
5 the court finds to have been necessarily incurred, plus reasonable
6 attorneys' fees and costs. All such expenses, fees, and costs shall
7 be awarded against the defendant.

8 (b) If the state does not proceed with an action, the person
9 bringing the action or settling the claim shall receive an amount
10 that the court decides is reasonable for collecting the civil
11 penalty and damages. The amount shall be not less than twenty-five
12 percent and not more than thirty percent of the proceeds of the
13 award or settlement and shall be paid out of the proceeds. Such
14 person shall also receive an amount for reasonable expenses that
15 the court finds to have been necessarily incurred, plus reasonable
16 attorneys' fees and costs. All such expenses, fees, and costs shall
17 be awarded against the defendant.

18 (c) Whether or not the state proceeds with the action, if the
19 court finds that the action was brought by a person who planned and
20 initiated the violation of section two of this article upon which
21 the action was brought, or if the person bringing the action is
22 convicted of criminal conduct arising from his role in the
23 violation of section two, that person shall be dismissed from the
24 civil action and shall not receive any share of the proceeds of the
25 action. Such dismissal shall not prejudice the right of the state

1 to continue the action.

2 (d) If the state does not proceed with the action and the
3 person bringing the action conducts the action, the court may award
4 to the defendant its reasonable attorneys' fees and expenses if the
5 defendant prevails in the action and the court finds that the claim
6 of the person bringing the action was clearly frivolous, clearly
7 vexatious, or brought primarily for purposes of harassment.

8 (e) After deducting any distributions made under subsection
9 (a), (b), (c) or (d) of this section, the balance of any funds
10 recovered by the state in an action brought under this article
11 shall be deposited into a special revenue account which is hereby
12 created in the state treasury and shall be known as the "state
13 false claims act fund." The fund shall be administered by the
14 secretary of revenue and all moneys deposited into the fund shall
15 be expended, upon transfer to the appropriate accounts pursuant to
16 appropriation of the Legislature, allocated in such amounts as may
17 be determined by the Legislature, solely for the purposes of
18 secondary road maintenance, volunteer fire departments and Title
19 XIX waiver for senior citizens.

20 **§14-4-7. Certain actions barred; relief from employment**
21 **discrimination; waiver of sovereign immunity.**

22 (a) No court shall have jurisdiction over any action brought
23 under this article by an inmate incarcerated within a state or
24 local correctional facility.

25 (c) No court shall have jurisdiction over an action brought

1 under this article against any department, authority, board,
2 bureau, commission, or agency of the state, any political
3 subdivision of the state, a member of the state legislature, a
4 member of the judiciary, or an exempt official if the action is
5 based on evidence or information known to the State when the action
6 was brought. For purposes of this section, "exempt official" means
7 the Governor, Lieutenant Governor, Attorney General and the
8 secretaries, directors or members of any department, authority,
9 board, bureau, commission or agency of the State or any political
10 subdivision of the state.

11 (d) In no event may a person bring an action under this
12 article that is based upon allegations or transactions that are the
13 subject of a civil suit or an administrative proceeding in which
14 the state is already a party.

15 (e) The court shall dismiss an action or claim under four
16 unless opposed by the state if substantially the same allegations
17 or transactions as alleged in the action or claim were publicly
18 disclosed in a criminal, civil or administrative hearing in which
19 the State or its agent is a party, in a West Virginia legislative,
20 administrative, or state auditor's report, hearing, audit, or
21 investigation, or from the news media, unless the action is brought
22 by the Attorney General or the person bringing the action is an
23 original source of the information. For purposes of this section,
24 "original source" means an individual (1) who either prior to a
25 public disclosure has voluntarily disclosed to the state the

1 information on which the allegations or transactions in a claim are
2 based or (2) who has knowledge that is independent of and
3 materially adds to the publicly disclosed allegations or
4 transactions and who has voluntarily provided the information to
5 the state before filing an action under this article.

6 (f) Except as otherwise provided in this section, the state
7 may not be liable for expenses a person incurs in bringing an
8 action under this article.

9 **§14-4-8. Private action for retaliatory actions.**

10 (a) Any employee, contractor, or agent shall be entitled to
11 all relief necessary to make that employee, contractor, or agent
12 whole, if that employee, contractor, or agent is discharged,
13 demoted, suspended, threatened, harassed, or in any other manner
14 discriminated against in the terms and conditions of employment
15 because of lawful acts done by the employee, contractor, agent, or
16 associated others in furtherance of an action under this article or
17 other efforts to stop one or more violations of this article.

18 (b) Relief shall include reinstatement with the same seniority
19 status that employee, contractor, or agent would have had but for
20 the discrimination, two times the amount of back pay, interest on
21 the back pay, and compensation for any special damages sustained as
22 a result of the discrimination, including litigation costs and
23 reasonable attorney fees.

24 (c) Any relief awarded to an employee under this section shall
25 be reduced by any amount awarded to the employee through a state or

1 local grievance process. An action under this section may be
2 brought in a court of competent jurisdiction for the relief
3 provided in this section, but may not be brought more than three
4 years after the date the discrimination occurred.

5 (d) This section shall constitute a waiver of sovereign
6 immunity and creates a cause of action by an employee against the
7 State if the state is the employer responsible for the adverse
8 employment action that would entitle the employee to the relief set
9 forth in this section.

10 **§14-4-10. Procedure; statute of limitations.**

11 (a) A subpoena requiring the attendance of a witness at a
12 trial or hearing conducted under this article may be served at any
13 place in the state.

14 (b) A civil action under section three or four may not be
15 brought (1) more than six years after the date on which the
16 violation is committed or (2) more than three years after the date
17 when facts material to the right of action are known or reasonably
18 should have been known by the official of the state charged with
19 responsibility to act in the circumstances, but in that event no
20 more than ten years after the date on which the violation is
21 committed, whichever occurs last.

22 (c) If the state elects to intervene and proceed with an
23 action brought under section four, the state may file its own
24 complaint or amend the complaint of a person who has brought an
25 action under section four to clarify or add detail to any claim in

1 which the state is intervening and to add any additional claim for
2 which the state contends it is entitled to relief. Any complaint
3 filed by the state pursuant to this subsection shall relate back to
4 the filing date of the complaint of the person who originally
5 brought the action, to the extent that the claim of the state
6 arises out of the conduct, transactions, or occurrences set forth,
7 or attempted to be set forth, in such person's complaint.

8 (d) In any action brought under section three or four, the
9 state shall be required to prove all essential elements of the
10 cause of action, including damages, by a preponderance of the
11 evidence.

12 (e) Notwithstanding any other provision of law, a final
13 judgment rendered in favor of the state in any criminal proceeding
14 charging fraud or false statements, whether upon a verdict after
15 trial or upon a plea of guilty or *nolo contendere*, shall estop the
16 defendant from denying the essential elements of the offense in any
17 action that involves the same transaction as in the criminal
18 proceeding and which is brought under section three or four.