

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5391

FISCAL
NOTE

By Delegates Steele, Fluharty, Garcia, Kirby, Nestor,
Smith, Gearheart, C. Pritt, McGeehan, and Phillips

[Introduced January 31, 2024; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §9-7-6 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new article, designated §14-4-1, §14-4-2, §14-4-3,
 3 §14-4-4, §14-4-5, §14-4-6, §14-4-7, §14-4-8, §14-4-9, §14-4-10, §14-4-11, and §14-4-12;
 4 all relating to creating the False Claims Act; amending the fraud and abuse provisions in
 5 Medicaid program to provide for damages under the False Claims Act; setting forth
 6 prohibited acts, damages, costs, and civil penalties, limitations on damages, and
 7 responsibilities of the Attorney General; providing for civil actions by private persons, rights
 8 of parties to qui tam proceedings, awards to qui tam plaintiffs, the barring of certain civil
 9 actions; providing that state is not liable for the expenses of private litigants; providing for
 10 private action for retaliatory conduct, limitation of actions, retroactive application, and state
 11 intervention in action by private person; addressing estoppel, jurisdiction and venue,
 12 nonexclusivity of act, liberality of construction, and distribution of proceeds.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

§9-7-6. Civil remedies; statute of limitations.

1 (a) Any person, firm, corporation, or other entity which makes or attempts to make, or
 2 causes to be made, a claim for benefits, payments, or allowances under the medical programs of
 3 the Department of Health and Human Resources, when the person, firm, corporation, or entity
 4 knows, or reasonably should have known, such claim to be false, fictitious, or fraudulent, or, in a
 5 greater amount than that to which he or she or it is entitled, or who undertakes any act falling under
 6 the provisions of §14-4-2 of this code, or who fails to maintain such records as are necessary shall
 7 be liable to the Department of Health and Human Resources Department of Human Services in an
 8 amount equal to three times the amount of such benefits, payments, or allowances to which he or
 9 she or it is not entitled, ~~and shall be liable for the payment of reasonable attorney fees and all other~~

10 ~~fees and costs of litigation.~~ and for civil penalties of:

11 (1) Payment of interest on the amount of the excess benefits or payments at the maximum
12 legal rate in effect on the date the payment was made to said person, firm, corporation, partnership
13 or other legal entity for the period from the date upon which payment was made to the date upon
14 which repayment is made to the state,

15 (2) Payment of an amount not to exceed three times the amount of such excess benefits or
16 payments,

17 (3) Payment in the sum of not less than and not more than the civil penalty allowed under
18 the provisions of §14-4-2 of this code, as it may be adjusted for inflation pursuant to the Federal
19 Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101 410 for each excessive claim for
20 assistance, benefits or payments, and

21 (4) Shall be liable for the payment of reasonable attorney fees and all other fees and costs
22 of litigation.

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

25 (c) A civil action under this section may be prosecuted and maintained on behalf of the
26 ~~Department of Health and Human Resources~~ Department of Human Services by the Attorney
27 General and the Attorney General's assistants or a prosecuting attorney and the prosecuting
28 attorney's assistants or by any attorney in contract with or employed by the ~~Department of Health~~
29 ~~and Human Resources~~ Department of Human Services to provide such representation.

30 (d) Any civil action brought under this section shall be brought within five years from the
31 time the false, fraudulent, or fictitious claim was made. Claims will be judged based on the
32 Medicaid or program rules in existence at the time of the claim submission.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 4. FALSE CLAIMS ACT.

§14-4-1. Definitions.

1 For purposes of this article:

2 (1) "Claim" includes any request or demand, whether under a contract or otherwise, for
3 money or property, whether the state has title to the money or property that:

4 (A) Is presented to an officer, employee, or agent of the state; or

5 (B) Is made to a contractor, grantee, or other recipient of the money or property, if the
6 money or property is to be spent or used on the state's behalf or to advance a state program or
7 interest, and if the state:

8 (i) Provides or has provided any portion of the money or property requested or demanded;

9 or

10 (ii) Will reimburse the contractor, grantee, or other recipient for any portion of the money or
11 property that is requested or demanded.

12 (C) Exceeds in value the sum of \$25,000 at the time the claim is presented; *Provided, That,*
13 this limit does not apply to claims brought for fraud and abuse in the Medicaid program.

14 (D) "Claim" does not include a request or demand for money or property that the state has
15 paid to an individual as compensation for state employment or as an income subsidy with no
16 restrictions on that individual's use of the money or property.

17 (2) "Employer" includes any natural person, corporation, firm, association, organization,
18 partnership, business, trust or state-affiliated entity involved in proprietary function, including state
19 universities and state hospitals.

20 (3) "Knowingly" or "knowing" means that a person has actual knowledge of the information.
21 Innocent mistake shall be a defense to an action under this act; *Provided,* that for claims brought
22 for fraud and abuse in the Medicaid program, and that for all such claims "knowingly" or "knowing"
23 means that a person, with respect to information

24 (A) Has actual knowledge of the information;

25 (B) Acts in deliberate ignorance of the truth or falsity of the information; or

26 (C) Acts in reckless disregard of the truth or falsity of the information; and

27 (D) "Knowingly" and "knowing" require no specific intent to defraud.

28 (4) "Material" or "materially" means having a natural tendency to influence, or be capable
29 of influencing, the payment or receipt of money or property.

30 (5) "Obligation" means an established duty, whether fixed, arising from an express or
31 implied contractual, grantor grantee or licensor licensee relationship, from a fee based or similar
32 relationship, from statute or rule or from the retention of any overpayment.

33 (6) "Person" means any natural person, partnership, corporation, organization,
34 association, business, trust or other legal entity, including any political subdivision of the state.

§14-4-2. Acts subjecting person to treble damages, costs and civil penalties; exceptions.

1 (a) Any person who commits any of the following acts is liable to the state for three times
2 the amount of damages which the state sustains because of the act of that person. A person who
3 commits any of the following acts is also liable to the state for the costs, including attorneys' fees,
4 of a civil action brought to recover any of those penalties or damages, and may be liable to the
5 state for a civil penalty of not less than and not more than the civil penalty allowed under the
6 federal False Claims Act (31 U.S.C. § 3729 *et. seq.*), as may be adjusted by the Federal Civil
7 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461; Public Law 104 410), for each
8 violation:

9 (1) Knowingly presents or causes to be presented a false or fraudulent claim for payment
10 or approval;

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

13 (3) Has possession, custody, or control of money or property used or to be used by the
14 state and knowingly delivers or causes to be delivered less than all of that money or property;

15 (4) Is authorized to make or deliver a document certifying receipt of property used, or to be
16 used, by the state and, intending to defraud the state, makes or delivers the receipt without

17 completely knowing that the information on the receipt is true;

18 (5) Knowingly buys, or receives as a pledge of an obligation or debt, public property from
19 an officer, employee or agent of the state who is not lawfully authorized to sell or pledge the
20 property;

21 (6) Knowingly makes, uses or causes to be made or used, a false record or statement
22 material to an obligation to pay or transmit money or property to the state;

23 (7) Knowingly conceals, or knowingly and improperly avoids or decreases, an obligation to
24 pay or transmit money or property to the state;

25 (8) Conspires to violate any provision of this section.

26 (b) This section does not apply to claims, records or statements made under the state tax
27 laws contained in chapter eleven of this code.

28 (c) Damages Limitation. Notwithstanding §14-4-2(a) of this code, a person who violates
29 any of the provisions of subdivisions (1) through (8) of §14-4-2(a) of this code is liable to the state
30 for not less than two times the amount of damages that the state sustains because of the violation
31 and the costs of a civil action brought to recover the damages, but no civil penalties, if the court
32 finds all of the following:

33 (1) The person committing the violation provided officials of the state who are responsible
34 for investigating false claims violations with all information known to that person about the violation
35 within 30 days after the date on which the person first obtained the information;

36 (2) The person fully cooperated with any state investigation of the violation; and

37 (3) At the time the person provided the state with information about the violation, a criminal
38 prosecution, civil action or administrative proceeding had not commenced with respect to the
39 violation, and the person did not have actual knowledge of the existence of an investigation into
40 the _____ violation.

§14-4-3. Attorney General investigations and prosecutions; prosecutorial authority.

1 The Attorney General shall diligently investigate a violation under §14-4-2(a) of this code. If

2 the Attorney General finds that a person has violated or is violating §14-4-2(a) of this code, the
3 Attorney General may bring a civil action under this section against that person.

§14-4-4. Civil actions by individuals as qui tam plaintiff and as private citizens.

1 (a) A person may bring a civil action for a violation of this article for the person and for the
2 state in the name of the state. The person bringing the action shall be referred to as the qui tam
3 plaintiff. Once filed, the action may be dismissed only with the written consent of the court and the
4 Attorney General, considering the best interest of the parties involved and the public purposes
5 behind this article.

6 (b) A copy of the complaint and written disclosure of substantially all material evidence and
7 information the person possesses shall be served on the Attorney General. The complaint shall
8 also be filed in camera, shall remain under seal for at least 60 days and may not be served on the
9 defendant until the court so orders. The state may elect to intervene and proceed with the action
10 within 60 days after it receives both the complaint and the material evidence and the information.
11 Any information or documents furnished by the relator to the Attorney General in connection with
12 the initiation of a qui tam action or investigation under this subdivision is not a public record and is
13 exempt from disclosure under chapter twenty-nine-b of this code.

14 (c) The state may, for good cause shown, move the court for extensions of the time during
15 which the complaint remains under seal under §14-4-4(b) of this code. Any such motions may be
16 supported by affidavits or other submissions in camera. The defendant may not be required to
17 respond to any complaint filed under this section until after the complaint is unsealed and served
18 upon the defendant pursuant to West Virginia Rules of Civil Procedure.

19 (d) Before the expiration of the 60-day period or any extensions obtained under §14-4-4(c)
20 of this code, the Attorney General shall review the action and shall issue findings that:

21 (1) The cause has a reasonable basis in fact and that the Attorney General's office shall
22 proceed with the action, in which case the Attorney General shall intervene and conduct the action
23 on behalf of the state;

24 (2) The cause has a reasonable basis in fact but the Attorney General's office declines to
25 proceed with the action, in which case the Attorney General shall notify the court that it declines to
26 take over the action, in which case the person bringing the action shall have the right to conduct
27 the action; or

28 (3) In any claims other than those for claims brought for fraud and abuse in the Medicaid
29 program, if the cause does not have a reasonable basis in fact, it may not proceed; *Provided*, that
30 any finding by the Attorney General that the cause is not meritorious is subject to an *en banc*
31 review by the West Virginia Intermediate Court of Appeals, which may approve or reverse such
32 finding. If the person bringing the civil action elects to seek such review of the finding, he must file
33 his request upon forms provided by the Court for that purpose within 60 days after receipt of the
34 finding and deliver a copy of the form to the Attorney General. Within 60 days after receipt of a
35 copy of the form, the Attorney General shall deliver to the Intermediate Court of Appeals copies of
36 the complaint and all evidence and information provided by the person bringing the civil action
37 together with copies of all evidence developed by the Attorney General during his investigation. If,
38 upon review, the West Virginia Intermediate Court of Appeals finds that the cause has a
39 reasonable basis in fact, then the cause may proceed under §14-4-5(d)(2) of this code.

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

42 (f) In any action brought under the provisions of this section, the Attorney General, or any
43 other person bringing the action, shall be required to prove all essential elements of the cause of
44 action, including damages, by a preponderance of the evidence.

§14-4-5. Rights of the parties to qui tam actions.

1 (a) If the Attorney General proceeds with the action, it has the primary responsibility for
2 prosecuting the action, and may not be bound by an act of the person bringing the action. That
3 person may continue as a party to the action, subject to the limitations set forth in §14-4-5(b) of this
4 code.

5 (b)(1) The Attorney General may seek to dismiss the action for good cause
6 notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the
7 Attorney General of the filing of the motion and the court has provided the qui tam plaintiff with an
8 opportunity to oppose the motion and present evidence at a hearing.

9 (A) Upon a hearing on the Attorney General's motion to dismiss the action, the Court shall
10 consider, and is authorized to grant, a proposal by the qui tam plaintiff to proceed with the action
11 without the Attorney General's participation.

12 (B) Any award resulting from an action authorized by the Court pursuant to §14-4-
13 5(b)(1)(A) of this code shall be made pursuant to the provisions of §14-4-6 of this code.

14 (2) The Attorney General may settle the action with the defendant notwithstanding the
15 objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam
16 plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and
17 reasonable under all of the circumstances.

18 (3) Upon a showing by the Attorney General that unrestricted participation during the
19 course of the litigation by the person initiating the action would interfere with or unduly delay the
20 Attorney General's prosecution of the case or would be repetitious, irrelevant or for purposes of
21 harassment, the court may impose limitations on the person's participation, such as:

22 (A) Limiting the number of witnesses the person may call;

23 (B) Limiting the length of the testimony of such witnesses;

24 (C) Limiting the person's cross-examination of witnesses; or

25 (D) Otherwise limiting the participation by the person in the litigation.

26 (4) Upon a showing by the defendant that unrestricted participation during the course of the
27 litigation by the person initiating the action would be for purposes of harassment or would cause
28 the defendant undue burden or unnecessary expense, the court may limit the participation by the
29 person in the litigation.

30 (c) If the Attorney General elects not to proceed with the action, the person who initiated

31 the action may conduct the action. If the Attorney General so requests, it shall be served with
32 copies of all pleadings filed in the action and shall be supplied with copies of all deposition
33 transcripts at the state's expense. When a person proceeds with the action the court, without
34 limiting the status and rights of the person initiating the action, may nevertheless permit the
35 Attorney General to intervene at a later date upon a showing of good cause.

36 (d) Whether or not the Attorney General proceeds with the action, upon a showing by the
37 state that certain actions of discovery by the person initiating the action would interfere with the
38 state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the
39 court may stay discovery for a period of not more than 60 days. Such a showing shall be
40 conducted in camera. The court may extend the 60-day period upon a further showing in camera
41 that the state has pursued the criminal or civil investigation or proceedings with reasonable
42 diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or
43 civil investigation or proceedings.

44 (e) Notwithstanding the provisions of §14-4-4 of this code, the state may elect to pursue its
45 claim through any alternate remedy available to the state, including any administrative proceeding
46 to determine a civil money penalty. If any alternate remedy is pursued in another proceeding, the
47 person initiating the action has the same rights in that proceeding as the person would have had if
48 the action had continued under §14-4-4 of this code. Any finding of fact or conclusion of law made
49 in such other proceeding that has become final shall be conclusive on all parties to an action under
50 §14-4-4 of this code. A finding or conclusion is final if it has been finally determined on appeal to
51 the appropriate court of the state, if all time for filing an appeal with respect to the finding or
52 conclusion has expired or if the finding or conclusion is not subject to judicial review.

§14-4-6. Award to qui tam plaintiff.

1 (a) (1) In any claims brought for fraud and abuse in the Medicaid program, if the Attorney
2 General proceeds with an action brought by a person under §14-4-4 of this code, that person shall
3 receive at least 15 percent but not more than 25 percent of the proceeds of the action or

4 settlement of the claim, depending upon the extent to which the person substantially contributed to
5 the prosecution of the action. Where the action is one that the court finds to be based primarily on
6 disclosures of specific information, other than information provided by the person bringing the
7 action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a
8 legislative, administrative, or state auditor's report, hearing, audit, or investigation, or from the
9 news media, the court may award such sums as it considers appropriate, but in no case more than
10 10 percent of the proceeds, taking into account the significance of the information and the role of
11 the person bringing the action in advancing the case to litigation. Any such person shall also
12 receive an amount for reasonable expenses which the court finds to have been necessarily
13 incurred, plus reasonable attorneys' fees and costs prior to the attorney general's intervention. All
14 expenses, fees, and costs shall be awarded against the defendant.

15 (2) In any claims other than those for claims brought for fraud and abuse in the Medicaid
16 program, if the Attorney General proceeds with an action brought by a person under §14-4-4 of
17 this code, that person shall receive not more than 20 percent of the proceeds of the action or
18 settlement of the claim, or \$250,000 whichever is lesser, depending upon the extent to which the
19 person substantially contributed to the prosecution of the action. Where the action is one that the
20 court finds to be based primarily on disclosures of specific information, other than information
21 provided by the person bringing the action, relating to allegations or transactions in a criminal, civil,
22 or administrative hearing, in a legislative, administrative, or state auditor's report, hearing, audit, or
23 investigation, or from the news media, the court may award such sums as it considers appropriate,
24 but in no case more than 10 percent of the proceeds, taking into account the significance of the
25 information and the role of the person bringing the action in advancing the case to litigation. Any
26 payment to a person shall be made from the proceeds. Any such person shall also receive an
27 amount for reasonable expenses which the court finds to have been necessarily incurred, plus
28 reasonable attorneys' fees and costs prior to the Attorney General's intervention. All expenses,
29 fees, and costs shall be awarded against the defendant.

30 (b)(1) If the Attorney General does not proceed with an action under §14-4-4 of this code,
31 in any claims brought for fraud and abuse in the Medicaid program, the person bringing the action
32 or settling the claim shall receive an amount which the court decides is reasonable for collecting
33 the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30
34 percent of the proceeds of the action or settlement and shall be paid out of the proceeds. The
35 person shall also receive an amount for reasonable expenses which the court finds to have been
36 necessarily incurred. All expenses, fees, and costs shall be awarded against the defendant.

37 (2) If the Attorney General does not proceed with an action under §14-4-4 of this code, the
38 person bringing the action or settling the claim shall receive an amount which the court decides is
39 reasonable for collecting the civil penalty and damages. The amount may not exceed more than
40 30 percent of the proceeds of the action or settlement and shall be paid out of the proceeds; nor, in
41 any circumstance, shall the award exceed \$1,000,000 absent a specific finding by the judge that
42 such award is necessary and proper based upon specific factual circumstances unique to the
43 action. The person shall also receive an amount for reasonable expenses which the court finds to
44 have been necessarily incurred, which, at the court's discretion may include reasonable attorneys'
45 fees and costs up to an amount not to exceed 50 percent of the plaintiff's recovery. All expenses,
46 fees, and costs are the contractual obligation of the person bringing the action and are not the
47 responsibility of the state; *Provided*, the court shall award to the defendant its reasonable
48 attorney's fees and expenses against the person bringing the civil action if the defendant prevails
49 in the civil action and the court finds that the claim of the person bringing the civil action was clearly
50 frivolous, clearly vexatious, or brought primarily for purposes of harassment.

51 (c) Whether or not the Attorney General proceeds with the action, if the court finds that the
52 action was brought by a person who planned and initiated the violation of §14-4-2 of this code
53 upon which the action was brought, then the court may, to the extent the court considers
54 appropriate, reduce the share of the proceeds of the action which the person would otherwise
55 receive under §14-4-6(a) or §14-4-6(b) of this code, taking into account the role of that person in

56 advancing the case to litigation and any relevant circumstances pertaining to the violation. If the
57 person bringing the action is convicted of criminal conduct arising from his or her role in the
58 violation of §14-4-2 of this code, that person shall be dismissed from the civil action and may not
59 receive any share of the proceeds of the action. The dismissal does not prejudice the right of the
60 state to continue the action.

61 (d) Following any distributions under sections §14-4-6(a), §14-4-6(b), or §14-4-6(c) of this
62 code the agency injured by the submission of a false claim shall be awarded an amount not to
63 exceed its compensatory damages. All remaining proceeds, including civil penalties awarded
64 under this article, shall be deposited in accordance with §14-4-12 of this code.

§14-4-7. Certain actions barred.

1 (a) Except in any claim brought for fraud and abuse in the Medicaid program, a court does
2 not have jurisdiction over an action brought under §14-4-4 of this code, based on information
3 discovered by a present or former employee of the state during the course of his employment
4 unless that employee, first, in good faith, exhausted existing internal procedures for reporting and
5 seeking recovery of the falsely claimed sums through official channels and unless the state failed
6 to act on the information provided within a reasonable period of time.

7 (b) A court does not have jurisdiction over an action brought under §14-4-4 of this code,
8 against any department, authority, board, bureau, commission, or agency of the state, any political
9 subdivision of the state, a member of the Legislature, a member of the judiciary, or an exempt
10 official if the action is based on evidence or information known to the state when the action was
11 brought. For purposes of this section, "exempt official" means the Governor, Attorney General,
12 and the directors or members of any department, authority, board, bureau, commission, or agency
13 of the state or any political subdivision of the state.

14 (c) A court does not have jurisdiction over an action brought under §14-4-42 of this code
15 by an inmate incarcerated within a state or local correctional facility as defined in this code.

16 (d) A person may not bring an action under §14-4-4 of this code which is based upon

17 allegations or transactions which are the subject of a civil suit or an administrative civil money
18 penalty proceeding in which the state is already a party.

19 (e) (1) The court shall dismiss an action or claim under this article, unless opposed by the
20 state, if substantially the same allegations or transactions as alleged in the action or claim were
21 publicly disclosed:

22 (A) In a criminal, civil or administrative hearing in which the state or its agent is a party;

23 (B) In a West Virginia legislative or other state report, hearing, audit or investigation; or

24 (C) From the news media, unless the action is brought by the Attorney General or the
25 person bringing the action is an original source of the information.

26 (2) For purposes of this section, "original source" means an individual who either:

27 (A) Prior to a public disclosure, has voluntarily disclosed to the state the information on
28 which allegations or transactions in a claim are based, or

29 (B) Who has knowledge that is independent of and materially adds to the publicly disclosed
30 allegations or transactions, and who has voluntarily provided the information to the state before
31 filing an action under this article.

§14-4-8. State not liable for certain expenses.

1 The state is not liable for expenses which a person incurs in bringing an action under this
2 article.

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

1 (a) Any employee, contractor, or agent who is discharged, demoted, suspended,
2 threatened, harassed or in any other manner discriminated against in the terms and conditions of
3 employment by the employer of the employee, contractor or agent because of lawful acts done by
4 the employee, contractor, agent, or associated others in furtherance of an action brought or to be
5 brought under §14-4-3 or §14-4-4 of this code, or other efforts to stop one or more violations of this
6 article, including investigation for, initiation of, testimony for, or assistance in the action, is entitled
7 to all relief necessary to make the employee, contractor, or agent whole. The relief shall include

8 reinstatement with the same seniority status the employee, contractor, or agent would have had
9 but for the discrimination, two times the amount of back pay, interest on the back pay and
10 compensation for any special damages sustained as a result of the discrimination, including
11 litigation costs and reasonable attorney's fees.

12 (b) An employee, contractor or agent may bring an action in the appropriate court for the
13 relief provided under this section. The action may not be brought under this section more than
14 three years after the last act of the employer that is alleged to violate this section.

15 (c) Any state employee who has suffered as a result of lawful acts done by the employee,
16 contractor, agent, or associated others in furtherance of an action brought or to be brought under
17 §14-4-3 or §14-4-4 of this code, or other efforts to stop one or more violations of this article may
18 pursue a grievance under the West Virginia Public Employees Grievance Procedure, or through a
19 local grievance process, if applicable; *Provided*, That, any relief awarded to an employee under
20 this section shall be reduced by any amount awarded to the employee through a state or local
21 grievance process.

22 (d) Nothing in this article shall disparage impair or limit any other right or legal action of an
23 employee, _____ contractor, _____ or _____ agent.

§14-4-10. Limitation of actions; activities antedating this article; burden of proof.

1 (a) A civil action under §14-4-2 or §14-4-3 of this code, may not be brought:

2 (1) More than six years after the date on which the violation of §14-4-2 of this code is
3 committed, or

4 (2) More than three years after the date when facts material to the right of action are known
5 or reasonably should have been known by the official of the state charged with responsibility to act
6 in the circumstances, but in no event more than 10 years after the date on which the violation is
7 committed, whichever occurs last.

8 (b) If the state elects to intervene and proceed with an action brought under §14-4-4 of this
9 code, the state may file its own complaint or amend the complaint of a person who has brought an

10 action under §14-4-4 of this code to clarify or add detail to the claims in which the state is
11 intervening and to add any additional claims with respect to which the state contends it is entitled
12 to relief. For statute of limitations purposes, any such state pleading shall relate back to the filing
13 date of the complaint of the person who originally brought the action, to the extent that the claim of
14 the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set
15 forth, in the prior complaint of that person.

16 (c) Estoppel. Notwithstanding any other provision of law, a guilty verdict rendered in a
17 criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a
18 plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of
19 the offense in any action which involves the same transaction as in the criminal proceeding and
20 which is brought under §14-4-3 or §14-4-4 of this code.

21 (d) An action under §14-4-3 or §14-4-4 of this code may be brought in a circuit court of any
22 county in which the defendant or any one of multiple defendants can be found, resides, or
23 transacts business, or in any county in which any act prohibited by §14-4-2 of this code occurred.
24 The Attorney General or the person who brought the action shall prove all essential elements of
25 the cause of action, including damages, by a preponderance of the evidence.

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

§14-4-11. Remedies under other laws; liberality of construction.

1 (a) The provisions of this article are not exclusive, and the remedies provided for in this
2 article shall be in addition to any other remedies provided in any other law or available under
3 common law.

4 (b) This article shall be liberally construed and applied to promote the public interest.

§14-4-12. Proceeds; how distributed.

1 Following the satisfaction of the provisions of §14-4-6(d) of this code, for the fiscal year
2 beginning July 1, 2024, all proceeds the state shall receive from successful actions brought under

3 the provisions of this article shall be deposited as follows:

4 (1) Ten percent into the account of the Office of the Attorney General for operation of the
5 Consumer Protection Division of that Office;

6 (2) Ten percent into the account of the Office of the Attorney General for operations in that
7 office to carry out the mandates of this article;

8 (3) Ten percent into the Education Improvement Fund for appropriation by the Legislature
9 to the PROMISE Scholarship Fund created in §18C-7-7 of this code;

10 (4) Ten percent into the account of the School Building Authority School Construction Fund
11 created pursuant to §18-9D-6 of this code;

12 (5) Ten percent into the Feed to Achieve initiative nonprofit foundation of the State Board of
13 Education created pursuant to §18-5D-4 of this code, to be spent in accordance with the
14 provisions of said article;

15 (6) Ten percent into the State Road Fund in the State Treasury and expended by the
16 Commissioner of Highways for design, maintenance, and construction of roads in the state
17 highway system;

18 (7) Ten percent into a fund to enable the Bureau of Senior Services to carry out programs
19 pursuant to §16-5P-9 of this code;

20 (8) Ten percent into a fund to be established to enable the Department of Human Services
21 to build substance abuse centers;

22 (9) Ten percent into the Teachers' Retirement System created pursuant to §18-1-7a of this
23 code;

24 (10) Five percent into a fund to be established to provide mental health services to
25 veterans under the direction of the Department of Veteran's Affairs; and

26 (11) Five percent into a fund to be established to provide mental health services to first
27 responders under the direction of the Department of Homeland Security.

NOTE: The purpose of this bill relates to creating the False Claims Act. The bill amends the fraud and abuse provisions in Medicaid program to provide for damages under the False Claims Act; sets forth prohibited acts, damages, costs and civil penalties, limitations on damages, and responsibilities of the Attorney General; provides for civil actions by private persons, rights of parties to qui tam proceedings, awards to qui tam plaintiffs, the barring of certain civil actions; provides that state is not liable for the expenses of private litigants; provides for private action for retaliatory conduct, limitation of actions, retroactive application, and state intervention in action by private person; addresses estoppel, jurisdiction and venue, nonexclusivity of act, liberality of construction, and distribution of proceeds.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.