

April 6, 2009

H 1135. QUI TAM, LIABILITY FOR FALSE CLAIMS. Filed 4/6/09. *TO DETER AND PUNISH PERSONS WHO MAKE FALSE OR FRAUDULENT CLAIMS FOR PAYMENT BY THE STATE AND TO PROVIDE REMEDIES IN THE FORM OF TREBLE DAMAGES AND CIVIL PENALTIES WHEN MONEY IS OBTAINED FROM THE STATE BY REASON OF SUCH CLAIMS.*

To be summarized in tomorrow's *Daily Bulletin*.

Intro. by Ross.

GS 1, 108A

April 7, 2009

H 1135. QUI TAM/LIABILITY FOR FALSE CLAIMS. Filed 4/6/09. *TO DETER AND PUNISH PERSONS WHO MAKE FALSE OR FRAUDULENT CLAIMS FOR PAYMENT BY THE STATE AND TO PROVIDE REMEDIES IN THE FORM OF TREBLE DAMAGES AND CIVIL PENALTIES WHEN MONEY IS OBTAINED FROM THE STATE BY REASON OF SUCH CLAIMS.*

Adds a new Article 52 to Chapter 1 of the General Statutes. Any person who knowingly submits false claims to any state officer or employee or to any contractor who receives state funds or who engages in listed types of similar conduct is to be civilly liable to the state for three times the amount of the damages sustained by the state as a result, plus costs, plus a civil penalty of between \$5,500 and \$11,000 per violation. The penalties may be reduced by a court if the person voluntarily discloses his or her conduct to authorities and cooperates in any investigation.

Provides that the Attorney General must investigate false claims and may file civil actions based on such claims, but also allows private persons to file such civil actions as qui tam plaintiffs. Civil actions filed by private persons must be filed under seal and provided to the Attorney General, who may choose to intervene within 120 days. If the Attorney General chooses to intervene, the state bears the primary responsibility for prosecuting the case, subject to certain rights of the qui tam plaintiff, and the qui tam plaintiff is entitled to between 15% and 25% of the proceeds of the action, plus attorneys' fees and costs. If the Attorney General chooses not to intervene, the qui tam plaintiff may prosecute the case, subject to certain rights of the state, and the qui tam plaintiff is entitled to between 25% and 30% of the proceeds of the action, plus attorneys' fees and costs. If the qui tam plaintiff conducts the action and a court later determines that it was frivolous, the court may award attorneys' fees and expenses to the defendant.

Certain actions are barred, such as actions against a member of the General Assembly or a member of the judiciary acting in his or her official capacity, or actions based on information obtained by a state employee in the course of his or her employment, unless the employee exhausted all internal channels for reporting the information and seeking redress.

Employers may not fire employees for their participation in qui tam actions, and employees who are fired for that reason are entitled to reinstatement, double back pay, and attorneys' costs and fees.

The Attorney General is empowered to issue a "civil investigative demand," essentially an administrative subpoena, to any person with information relevant to a possible false claims action. Such a demand may be used before the Attorney General brings or intervenes in a false claims action to compel a person to appear and testify under oath, to answer written questions, or to produce documents or other items. Details the time limits and so forth of such demands, which frequently parallel the provisions of the North Carolina Rules of Civil Procedure, and provides consequences, including contempt, for failure to comply with such demands. Generally, responses to civil investigative demands will be maintained by the Department of Justice and will not be available for public inspection.

False claims actions must be brought within six years of the violation, or within three years of the state's learning of the violation, whichever is later, but in any event no later than ten years after the violation. Other procedural requirements for such actions are also specified.

Effective for acts committed on or after January 1, 2010, except that a civil action may be based on an activity occurring before the effective date if the activity would otherwise be covered under GS 108A-70.12 and the period in GS 108A-70.13 has not lapsed.

The bill also enacts a new GS 108A-63.1, which allows the Attorney General to issue subpoenas *duces tecum* to any corporation or governmental entity for any records relevant to a criminal investigation of a health care provider. Effective July 1, 2009.

Finally, the bill amends GS 108A-63, which covers medical assistance provider fraud, to make it a Class H felony for a medical assistance provider to defraud the Medical Assistance Program. If the value of the fraud exceeds \$100,000, the offense is a Class C felony. Effective July 1, 2009.

Intro. by Ross.

GS 1, 108A

June 3, 2009

H 1135. QUI TAM/LIABILITY FOR FALSE CLAIMS. Filed 4/6/09. House committee substitute makes the following changes to 1st edition.

Amends proposed GS 108A-63.1 regarding the procedure for production of a subpoena to produce documents. Provides that the NC Attorney General (AG) *acting through the Medical Investigations Unit of the Department of Justice*, may issue a subpoena to any corporation or governmental entity requiring the production of documents that may be relevant to a criminal investigation of a violation of GS 108A-63 (was, AG may issue subpoena for the production of documents involving a violation of GS 14-32.1, 14-32.2, 14-90, 14-100, 14-112.2, 108A-60, or 108A-63).

Permits the subpoena to require an affidavit from the custodian of the records certifying diligence in searching for the requested documents and asserting that the produced documents constitute all the records requested to the best of the custodian's knowledge, information, and belief. Requires the subpoena to indicate a return date for the requested documents of no less than 20 days from the date of service. Specifies acceptable methods by which the subpoenaed documents may be delivered to the Medicaid Investigations Unit.

Deletes provisions regarding immunity from liability based on disclosures of information in compliance with a subpoena for the production of documents and provisions regarding limitations on the disclosure of health information about an individual.

Makes organizational and conforming changes.

Changes the effective date for the provisions of Section 3, amending GS 108A-63 (medical assistance provider fraud), to December 1, 2009 (was, July 1, 2009).

Makes additional technical changes to Sections 1 and 2 of the act.

June 25, 2009

H 1135. QUI TAM/LIABILITY FOR FALSE CLAIMS. Filed 4/6/09. House committee substitute makes the following changes to 2nd edition. Modifies the definition for *claim* in proposed new Article 52 of GS Chapter 1 to mean any request or demand for money or property, whether under a contract or otherwise and *whether or not the state has title to the money or property* that (1) is presented to an officer, employee or agent of the state or (2) is made to a contractor, grantee or other recipient, *if the money or property is to be spent or used on the state's behalf or to advance a state program or interest*. Adds definitions for the following terms: (1) *judiciary*, (2) *obligation*, (3) *material*, (4) *public employee, public official*, and *public employment*, and (5) *senior executive branch official*. Makes organizational changes.

Makes clarifying changes to the list of acts that would subject a person committing any of those acts to liability for treble damages, costs, and civil penalties. Specifies that any person who conspires to commit a violation of subdivisions (1), (2), (4) (5), (6), or (7) of proposed GS 1-607(a) is liable for treble damages, costs and civil penalties.

Deletes provision permitting the state, for good cause shown, to move for a partial lifting of the seal for a complaint under seal. Provides that when a person brings an action under this proposed subsection, *or the federal False Claim Act (31 USC § 3729 et seq.), or any similar provision of law in any other state* that only North Carolina may intervene or bring a related action based on the facts underlying the pending action; however, provides that this provision does not prohibit a person from amending a pending action in another jurisdiction to allege a claim under this subsection. Authorizes the Attorney General (AG) to retain a portion of the damages recovers for a state agency as reimbursement for costs incurred by the AG in pursuing the case.

Provides that the state may dismiss (was, seek to dismiss) the action for good cause despite the objections of the *qui tam* plaintiff providing that the *qui tam* plaintiff has received notice of the filing of the motion to dismiss and an opportunity for a hearing on the motion.

Deletes provision barring an action by a present or former employee of the state who did not in good faith exhaust all internal procedures for reporting the false claims. Instead bars a civil action by a person who is or was a public employee or public official if the allegations of the civil action are based on (1) allegations of wrongdoing or misconduct which that person has a duty or obligation to report within the scope of the person's public employment or office, or (2) information or records to which the person had access as a result of the person's public employment or office.

Deletes requirement that the civil investigative demand (administrative subpoena) contain a copy of the written interrogatories to be answered and specify a place for the testimony to be taken. Makes conforming changes deleting guidelines relevant to interrogatories and oral examination. Deletes time limit specifications as to when a person must appear to testify in response to the civil investigative demand. Adds provision that the civil investigative demand designate a person to whom any document or object is to be produced. Provides that the AG may designate (was, shall designate) an employee of the NC Department of Justice to serve as a custodian of documents and objects. Amends the false claims procedure to provide that the state may file its own complaint or amend the complaint of person bringing an action under proposed GS 1-608(b) if the AG elects to intervene and proceed with an action under GS 1-608(b). Provides requirements for service on federal, state, or local authorities. Adds a requirement for annual reporting as to the number *qui tam* cases in the state and the number pending in other jurisdictions involving the state, and the percentage of the proceeds and the amount paid to the *qui tam* plaintiff under proposed GS 1-610.

Provides a corporation or government entity to move to quash or modify a subpoena issued under proposed new GS 108A-63.1 that does not comply with the requirements of the section.

Amends GS 108A-63, medical assistance provider fraud, to make a violation of (e) a Class H felony (was, Class H or C depending on the value of the benefits). Defines *scheme* to include a plan or course of action for the purposes of this section. Includes in (f) the intent to obstruct, delay, or mislead and investigation of a violation of this section as an element. Effective July 1, 2009 (was, December 1, 2009).

Provides that a civil action may be filed after January 1, 2010 under Section 1 of this act based on an activity occurring before the effective date if the activity would otherwise be covered under Part 7 of Article 2 of GS Chapter 108A and if the limitation period set forth in GS 1-615(a) and GS 108A-70.13 has not lapsed.

June 29, 2009

H 1135. QUI TAM/LIABILITY FOR FALSE CLAIMS. Filed 4/6/09. House amendment makes the following changes to 3rd edition. Amends proposed GS 1-617 to direct the Attorney General to submit a report, on or before February 1 of each year, to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate, regarding the number of *qui tam* cases under proposed Article 52 of GS Chapter 1 that are *pending* in the state and the number of *qui tam* cases pending in other jurisdictions involving the state *during the previous calendar year*.

August 3, 2009

H 1135. QUI TAM/LIABILITY FOR FALSE CLAIMS. Filed 4/6/09. Senate committee substitute makes the following changes to 4th edition. Amends GS 1-614 to require the Attorney General to notify the person to whom a civil investigative demand is issued of the date on which the copy was served. Requires within 30 days after service of the demand, that the person from whom the discovery was obtained or on whom the demand was served must serve on the Attorney General a copy of any protective order that prevents or restrains disclosure of the product of discovery (was, any demand that is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this statute, preventing or restraining disclosure of the product of discovery to any person). Allows the Attorney General to petition the

court that issued the protective order to modify the order to allow compliance with the demand. Allows any person who has received a civil investigative demand, or the person from whom the discovery was obtained in the case of an express demand for any product of discovery, to petition for an order of the court to modify or set aside a civil investigative demand (was, may file and serve a petition for an order of the court to modify or set aside the demand on the investigator in the demand). Requires in the case of a petition to modify an express demand for any product of discovery that the petition be filed in the court in which the proceeding was pending when the product of discovery was obtained (was, in which the discovery was obtained or was last pending). Provides that in the case of documents or objects the producing party has designated as a trade secret or other confidential research, development, or commercial information (was, the court has designated as confidential business, trade secrets, or personal information), the Attorney General may also petition the court for an order directing the producing party to either appear and support the designation or withdraw the designation. Amends GS 1-617 to expand upon the information that the Attorney General must report. Amends GS 108A-63(e) to make conspiracy to violate the subsection a Class I felony. Makes clarifying changes in GS 1-609, GS 1-614, GS 1-615, and GS 108A-63.1. Also makes technical changes.

With the exception of Section 1 (enacting Article 52), which is effective January 1, 2010, and Section 3 (amending GS 108A-63), which is effective December 1, 2009, the remainder of the act is effective when the act becomes law (was, July 1, 2009).

August 4, 2009

H 1135. QUI TAM/LIABILITY FOR FALSE CLAIMS. Filed 4/6/09. Senate amendment makes the following changes to 5th edition. Amends GS 1-613 to extend protections from retaliatory actions to cover contractors and agents as well as employees.

September 1, 2009

SL 2009-554 (H 1135). QUI TAM/LIABILITY FOR FALSE CLAIMS. AN ACT TO DETER AND PUNISH PERSONS WHO MAKE FALSE OR FRAUDULENT CLAIMS FOR PAYMENT BY THE STATE AND TO PROVIDE REMEDIES IN THE FORM OF TREBLE DAMAGES AND CIVIL PENALTIES WHEN MONEY IS OBTAINED FROM THE STATE BY REASON OF SUCH CLAIMS. Summarized in *Daily Bulletin* 4/7/09, 6/3/09, 6/25/09, 6/29/09, 8/3/09, and 8/4/09. Enacted August 28, 2009. Section 1 is effective January 1, 2010. Section 3 is effective December 1, 2009. The remainder is effective August 28, 2009.