

SECOND REGULAR SESSION

HOUSE BILL NO. 1790

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FLOOK (Sponsor), KANDER, SCHAD, FAITH, STORCH,
ROORDA, ERVIN, FISHER (125), GRILL, STEVENSON, BIVINS, SCHIEFFER, McNARY,
CORCORAN AND WEBBER (Co-sponsors).

4588L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to the Missouri false claims act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto six new sections, to be
2 known as sections 537.800, 537.802, 537.804, 537.806, 537.808, and 537.810, to read as
3 follows:

**537.800. Sections 537.800 to 537.810 shall be known as the "Missouri False Claims
2 Act".**

537.802. 1. As used in this section the following terms shall mean:

2 (1) "Claim", includes any request or demand, whether under a contract or
3 otherwise, for money or property which is made to a contractor, grantee, or other recipient
4 if the government provides any portion of the money or property which is requested or
5 demanded, or if the government will reimburse such contractor, grantee, or other recipient
6 for any portion of the money or property which is requested or demanded;

7 (2) "Government", the state of Missouri, or political subdivision, including but not
8 limited to any public school district, public charter school of the state, or municipal
9 corporation;

10 (3) "Knowing" and "knowingly", that a person, with respect to information:

11 (a) Has actual knowledge of the information;

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (c) Acts in reckless disregard of the truth or falsity of the information;

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15 and no proof of specific intent to defraud is required;

16 (4) "Person", any individual, entity, corporation, partnership or association, officer
17 or employee of any state or private entity.

18 2. Any person who:

19 (1) Knowingly presents, or causes to be presented, false or fraudulent claim for
20 payment or approval to an officer or employee of the state of Missouri, or political
21 subdivision, or public school district, or public charter school of the state;

22 (2) Knowingly makes, uses, or causes to be made or used, a false record or
23 statement to get a false or fraudulent claim paid or approved by the government;

24 (3) Conspires to defraud the government by getting a false or fraudulent claim
25 allowed or paid;

26 (4) Has possession, custody, or control of property or money used, or to be used,
27 by the government and, intending to defraud the government or willfully to conceal the
28 property, delivers, or causes to be delivered, less property than the amount for which the
29 person receives a certificate or receipt;

30 (5) Authorized to make or deliver a document certifying receipt of property used,
31 or to be used, by the government and, intending to defraud the government, makes or
32 delivers the receipt without completely knowing that the information on the receipt is true;

33 (6) Knowingly buys, or receives as a pledge of an obligation or debt, public
34 property from an officer, employee, or agent of the government who lawfully may not sell
35 or pledge the property;

36 (7) Knowingly makes, uses, or causes to be made or used, a false record or
37 statement to conceal, avoid, or decrease an obligation to pay or transmit money or property
38 to the government; or

39 (8) Violates section 105.452, 105.454, 576.010, 576.020, 576.030, 576.040, 576.050,
40 or 576.080;

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42 is liable to the state of Missouri, or political subdivision, or public school district, or public
43 charter school of the state effected for a civil penalty of not less than ten thousand dollars
44 and not more than one hundred thousand dollars, plus three times the amount of damages
45 which the government sustains because of the act of that person, except that if the court
46 finds that:

47 (a) The person committing the violation of this subsection furnished officials of the
48 government entity responsible for investigating false claims violations with all information

49 known to such person about the violation within thirty days after the date on which the
50 defendant first obtained the information;

51 (b) Such person fully cooperated with any government investigation of such
52 violation; and

53 (c) At the time such person furnished the government with the information about
54 the violation, no criminal prosecution, civil action, or administrative action had
55 commenced under this act with respect to such violation, and the person did not have
56 actual knowledge of the existence of an investigation into such violation;

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58 the court may assess not less than two times the amount of damages which the government
59 sustains because of the act of the person. A person violating this subsection shall also be
60 liable to the government for the costs of a civil action brought to recover any such penalty
61 or damages.

62 3. Any information furnished under paragraphs (a) to (c) of subdivision (8) of
63 subsection 2 of this section shall be exempt from disclosure under this section.

64 4. This section does not apply to claims, records, or statements made under the
65 Internal Revenue Code of 1986, as amended.

537.804. 1. The attorney general of Missouri diligently shall investigate a violation
2 under section 537.802. If the attorney general finds that a person has violated or is
3 violating section 537.802, the attorney general may bring a civil action under this section
4 against the person.

5 2. (1) A person may bring a civil action for a violation of section 537.802 for the
6 person and for the government. The action shall be brought in the name of the
7 government. The action may be dismissed only if the court and the attorney general give
8 written consent to the dismissal and their reasons for consenting.

9 (2) A copy of the complaint and written disclosure of substantially all material
10 evidence and information the person possesses shall be served on the government under
11 the Missouri Supreme Court rules of civil procedure. The complaint shall be filed in
12 camera, shall remain under seal for at least sixty days, and shall not be served on the
13 defendant until the court so orders. The government may elect to intervene and proceed
14 with the action within sixty days after it receives both the complaint and material evidence
15 information.

16 (3) The government may, for good cause shown, move the court for extensions of
17 time during which the complaint remains under seal under subdivision (2) of this
18 subsection. Any such motions may be supported by affidavits or other submissions in
19 camera. The defendant shall not be required to respond to any complaint filed under this

20 section until thirty days after the complaint is unsealed and served upon the defendant
21 under the Missouri Supreme Court rules of civil procedure.

22 (4) Before expiration of the sixty-day period or any extensions obtained under
23 subdivision (3) of this subsection, the government shall:

24 (a) Proceed with the action, in which case the action shall be conducted by the
25 government; or

26 (b) Notify the court that it declines to take over the action, in which case the person
27 bringing the action shall have the right to conduct the action.

28 (5) When a person brings an action under this subsection, no person other than the
29 government may intervene or bring a related action based on the facts underlying the
30 pending action.

31 3. If the government proceeds with the action, it shall have the primary
32 responsibility for prosecuting the action, and shall not be bound by an act of the person
33 bringing the action. Such person shall have the right to continue as a party to the action,
34 subject to the limitations set forth in subsection 4 of this section.

35 4. (1) The government may dismiss the action notwithstanding the objections of
36 the person initiating the action if the person has been notified by the government of the
37 filing of the motion and the court has provided the person with an opportunity for a
38 hearing on the motion.

39 (2) The government may settle the action with the defendant notwithstanding the
40 objections of the person initiating the action if the court determines, after a hearing, that
41 the proposed settlement is fair, adequate, and reasonable under all the circumstances.
42 Upon a showing of good cause, such hearing may be held in camera.

43 (3) Upon a showing by the government that unrestricted participation during the
44 course of the litigation by the person initiating the action would interfere with or unduly
45 delay the government's prosecution of the case, or would be repetitious, irrelevant, or for
46 purposes of harassment, the court may, in its discretion, impose limitations on the person's
47 participation, such as:

48 (a) Limiting the number of witnesses the person may call;

49 (b) Limiting the length of the testimony of such witnesses;

50 (c) Limiting the person's cross-examination of witnesses; or

51 (d) Otherwise limiting the participation by the person in the litigation.

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

56 **5. If the government elects not to proceed with the action, the person who initiated**
57 **the action shall have the right to conduct the action. If the government so requests, it shall**
58 **be served with copies of all pleadings filed in the action and shall be supplied with copies**
59 **of all deposition transcripts, at the government's expense. When a person proceeds with**
60 **the action, the court, without limiting the status and rights of the person initiating the**
61 **action, may nevertheless permit the government to intervene at a later date upon a showing**
62 **of good cause.**

63 **6. Whether or not the government proceeds with the action, upon a showing by the**
64 **government that certain actions of discovery by the person initiating the action would**
65 **interfere with the government's investigation or prosecution of a criminal or civil matter**
66 **arising out of the same facts, the court may stay such discovery for a period of not more**
67 **than sixty days. Such showing shall be conducted in camera. The court may extend the**
68 **sixty-day period upon a further showing in camera that the government has pursued the**
69 **criminal or civil investigation or proceedings with reasonable diligence and any proposed**
70 **discovery in the civil action will interfere with the ongoing criminal or civil investigation**
71 **or proceedings.**

72 **7. Notwithstanding subsection 2 of this section, the government may elect to pursue**
73 **its claim through any alternate remedy available to the government, including any**
74 **administrative proceeding to determine a civil money penalty. If any such alternate**
75 **remedy is pursued in another proceeding, the person initiating the action shall have the**
76 **same rights in such proceeding as such person would have had if the action had continued**
77 **under this section. Any finding of fact or conclusion of law made in such other proceeding**
78 **that has become final shall be conclusive on all parties to an action under this section. For**
79 **purposes of the preceding sentence, a finding or conclusion is final if it has been finally**
80 **determined on appeal to the appropriate court of the United States, if all time for filing**
81 **such an appeal with respect to the finding or conclusion has expired, or if the finding or**
82 **conclusion is not subject to judicial review.**

537.806. 1. If the government proceeds with an action brought by a person under
2 **subsection 2 of section 537.804, such person shall, subject to the second sentence of this**
3 **subsection, receive at least fifteen percent but not more than twenty-five percent of the**
4 **proceeds of the action or settlement of the claim, depending upon the extent to which the**
5 **person substantially contributed to the prosecution of the action. Where the action is one**
6 **which the court finds to be based primarily on disclosures of specific information, other**
7 **than information provided by the person bringing the action, relating to allegations or**
8 **transactions in a criminal, civil, or administrative hearing, in a congressional,**
9 **administrative, or government report, hearing, audit, or investigation, or from the news**

10 media, the court may award such sums as it considers appropriate, but in no case more
11 than ten percent of the proceeds, taking into account the significance of the information
12 and the role of the person bringing the action in advancing the case to litigation. Any
13 payment to a person under the first or second sentence of this subsection shall be made
14 from the proceeds. Any such person shall also receive an amount for reasonable expenses
15 which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and
16 costs. All such expenses, fees, and costs shall be awarded against the defendant.

17 2. If the government does not proceed with an action under subsection 2 of section
18 537.804, the person bringing the action or settling the claim shall receive an amount which
19 the court decides is reasonable for collecting the civil penalty and damages. The amount
20 shall not be less than twenty-five percent and not more than thirty percent of the proceeds
21 of the action or settlement and shall be paid out of such proceeds. Such person shall also
22 receive an amount for reasonable expenses which the court finds to have been necessarily
23 incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall
24 be awarded against the defendant.

25 3. Whether or not the government proceeds with the action, if the court finds that
26 the action was brought by a person who planned and initiated the violation of section
27 537.802 upon which the action was brought, then the court may, to the extent the court
28 considers appropriate, reduce the share of the proceeds of the action which the person
29 would otherwise receive under subsection 1 or 2 of this section, taking into account the role
30 of that person in advancing the case to litigation and any relevant circumstances pertaining
31 to the violation. If the person bringing the action is convicted of criminal conduct arising
32 from his or her role in the violation of section 537.802, that person shall be dismissed from
33 the civil action and shall not receive any share of the proceeds of the action. Such dismissal
34 shall not prejudice the right of the government to continue the action, represented by the
35 attorney general.

36 4. If the government does not proceed with the action and the person bringing the
37 action conducts the action, the court may award to the defendant its reasonable attorneys'
38 fees and expenses if the defendant prevails in the action and the court finds that the claim
39 of the person bringing the action was clearly frivolous, clearly vexatious, or brought
40 primarily for purposes of harassment.

41 5. (1) No court shall have jurisdiction over an action brought by a former or
42 present member of the armed forces under subsection 2 of section 537.804 against a
43 member of the armed forces arising out of such person's service in the armed forces.

44 (2) No court shall have jurisdiction over an action brought under subsection 2 of
45 section 537.804 against a member of the legislature, a member of the judiciary, or a senior

46 executive branch official if the action is based on evidence or information known to the
47 government when the action was brought.

48 (3) In no event may a person bring an action under subsection 2 of section 537.804
49 which is based upon allegations or transactions which are the subject of a civil suit or an
50 administrative civil money penalty proceeding in which the government is already a party.

51 (4) No court shall have jurisdiction over an action under section 537.804 based
52 upon the public disclosure of allegations or transactions in a criminal, civil, or
53 administrative hearing, in a legislative, administrative, or government report, hearing,
54 audit, or investigation, or from the news media, unless the action is brought by the attorney
55 general or the person bringing the action is an original source of the information.

56 6. As used in this section "original source" means an individual who has direct and
57 independent knowledge of the information on which the allegations are based and has
58 voluntarily provided the information to the government before filing an action under
59 section 537.804 which is based on the information.

60 7. The government is not liable for expenses which a person incurs in bringing an
61 action under section 537.804.

537.808. 1. In civil actions brought under section 537.804 by the state of Missouri
2 the provisions of sections 537.800 to 537.810 shall apply.

3 2. Any employee who is discharged, demoted, suspended, threatened, harassed, or
4 in any other manner discriminated against in the terms and conditions of employment by
5 his or her employer because of lawful acts done by the employee on behalf of the employee
6 or others in furtherance of an action under this section, including investigation for,
7 initiation of, testimony for, or assistance in an action filed or to be filed under section
8 537.804, shall be entitled to all relief necessary to make the employee whole. Such relief
9 shall include reinstatement with the same seniority status such employee would have had
10 but for the discrimination, two times the amount of back pay, interest on the back pay, and
11 compensation for any special damages sustained as a result of the discrimination, including
12 litigation costs and reasonable attorneys' fees. An employee may bring an action in the
13 appropriate circuit court for the relief provided in this subsection.

537.810. This act shall not apply to hospitals and medical providers governed under
2 section 208.164 or sections 191.900 to 191.910.

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