

SECOND REGULAR SESSION

# HOUSE BILL NO. 1646

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES ENGLER (Sponsor), QUINN, WILSON (130), BYRD,  
STEFANICK AND YATES (Co-sponsors).

Read 1<sup>st</sup> time March 9, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4308L.02I

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### AN ACT

To amend chapter 537, RSMo, by adding thereto two new sections relating to false claims against the state.

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

Section A. Chapter 537, RSMo, is amended by adding thereto two new sections, to be  
2 known as sections 537.805 and 537.810, to read as follows:

**537.805. 1. Any person who:**

- 2       (1) Knowingly presents or causes to be presented, to an official or employee of the  
3 state, a false or fraudulent claim for payment or approval;
- 4       (2) Knowingly makes, uses, or causes to be made or used, a false record or  
5 statement to get a false or fraudulent claim paid or approved by the state;
- 6       (3) Knowingly delivers, or causes to be delivered, less property or money used, or  
7 to be used, by the state, than the amount for which the person receives a certificate or  
8 receipt;
- 9       (4) Knowingly delivers a document certifying receipt of property used, or to be  
10 used, by the state without completely knowing that the information on the receipt is true;
- 11       (5) Knowingly buys or receives as a pledge of an obligation or debt, public property  
12 from an official or employee of the state who lawfully may not sell or pledge the property;
- 13       (6) Knowingly makes, uses, or causes to be made or used, a false record or  
14 statement to conceal, avoid, or decrease an obligation to pay or transmit money or property  
15 to the state;
- 16       (7) Conspires to defraud the state by getting a false or fraudulent claim allowed or

17 **paid;**

18

19 **is liable to the state for a penalty for each false claim of not less than five thousand dollars**  
20 **and not more than ten thousand dollars, plus three times the amount of actual damages**  
21 **which the state sustains because of the act of that person.**

22 **2. If the court finds that:**

23 **(1) The person committing the violation of this section furnished officials of the**  
24 **state responsible for investigating false claims violations with all information known to**  
25 **such person about the violation within thirty days after the date on which the defendant**  
26 **first obtained the information;**

27 **(2) Such person fully cooperated with any state investigation of such violation; and**

28 **(3) At the time such person furnished the state with the information about the**  
29 **violation, no criminal prosecution, civil action, or administrative action had commenced**  
30 **with respect to such violation, and the person did not have actual knowledge of the**  
31 **existence of an investigation into such violation;**

32

33 **the court may assess only the amount of damages which the state sustains because of the**  
34 **act of the person. The court may also grant immunity from criminal prosecution to such**  
35 **person for good cause at the request of the state. Any person violating subsection 1 of this**  
36 **section shall also be liable for the costs of any civil action brought to recover any such**  
37 **damages or penalties.**

38 **3. The state may dismiss the action, notwithstanding the objections of the person**  
39 **initiating the action if the person has been notified by the state of the filing of the motion**  
40 **and the court has provided the person with an opportunity for a hearing on the motion.**

41 **4. The state may settle the action with the defendant notwithstanding the objections**  
42 **of the person initiating the action if the court determines, after a hearing, that the proposed**  
43 **settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing**  
44 **of good cause, such hearing may be held in camera.**

45 **5. As used in this section the following terms shall mean:**

46 **(1) "Claim", includes, but is not limited to, each request or demand, whether under**  
47 **a contract or otherwise, for money or property which is made to the state or to a**  
48 **contractor, grantee, or other recipient if the state provides any portion of the money or**  
49 **property which is requested or demanded, or if the state will reimburse such contractor,**  
50 **grantee, or other recipient for any portion of the money or property which is requested or**  
51 **demand;**

52 **(2) "Knowing" and "Knowingly", a person:**

- 53           (a) Has actual knowledge of the information;  
54           (b) Acts in deliberate ignorance of the truth or falsity of the information; or  
55           (c) Acts in reckless disregard of the truth or falsity of the information.

537.810. 1. The attorney general shall investigate violations of section 537.805. The  
2 attorney general may bring a civil action in the name of the state if the attorney general  
3 finds that a person has violated or is violating section 537.805. But if any action involving  
4 the same violations has already been filed by a person under section 537.805, the state may  
5 only intervene in it as set forth in this section.

6           2. Any person may bring a civil action for a violation of section 537.805 in the name  
7 of the person and on behalf of the state. No such action shall be dismissed without the  
8 written consent of the attorney general after court approval.

9           3. A copy of the petition filed by any person pursuant to sections 537.805 to 537.810  
10 shall be served on the attorney general along with a disclosure statement describing the  
11 fraudulent acts or omissions and setting forth all evidence known to the person in support  
12 of the claims. The attorney general may proceed with the action by entering an appearance  
13 within one hundred eighty days of being served. The attorney general may, for good cause,  
14 extend such one hundred eighty-day period upon request to the court, as necessary. The  
15 person bringing the action may proceed with the action if the attorney general:

16           (1) By the end of the one hundred eighty-day period or whatever extensions are  
17 granted by the court does not file a motion to intervene or obtain a continuance of the  
18 aforesaid time period; or

19           (2) Does not proceed with the action with reasonable diligence within six months  
20 after filing a motion to intervene, or within additional time the court allows after notice to  
21 the person bringing the action.

22           4. If the attorney general initiates or intervenes in the action, it shall be conducted  
23 solely by the state, with notice of all proceedings to the person who filed the action as  
24 another party. The state is not bound by any act of the person bringing the action.

25           5. Unless the state proceeds with the action, the court shall dismiss an action  
26 brought by the person if the action is based on evidence or information known to the state  
27 when the action was brought.

28           6. If the state proceeds with the action, the person bringing the action may receive  
29 an amount the court decides is reasonable. The amount may not be more than twenty-five  
30 percent nor less than fifteen percent of the proceeds of the action and shall be paid out of  
31 those proceeds. The person shall also receive reasonable attorney's fees and costs, to be  
32 awarded against the defendant.

33           7. If the state does not proceed with an action, the person bringing the action may

34 receive an amount the court decides is reasonable. The amount may not be more than  
35 thirty-five percent nor less than twenty-five percent of the proceeds of the action or  
36 settlement and shall be paid out of those proceeds. The person may also recover costs and  
37 reasonable attorney's fees from the defendant.

38       8. The state shall not be liable for costs or attorney's fees a person incurs in  
39 bringing an action pursuant to this section.

40       9. No court shall have jurisdiction over an action brought under this section by a  
41 former or present member of the armed forces against a member of the armed forces  
42 arising out of such person's service in the armed forces.

43       10. No court shall have jurisdiction over an action brought under this section  
44 against a member of the general assembly, a member of the judiciary, or a senior executive  
45 branch official if the action is based on evidence or information known to the government  
46 when the action was brought.

47       11. In no event may a person bring an action which is based upon allegations or  
48 transactions which were the subject of a civil suit or an administrative civil monetary  
49 penalty proceeding in which the government is already a party.

50       12. No court shall have jurisdiction over an action under this section based upon  
51 the public disclosure of allegations or transactions in a criminal, civil, or administrative  
52 hearing, in a report, hearing, audit, or investigation by the general assembly or the  
53 executive branch, or from the news media, unless the action is brought by the attorney  
54 general or the person bringing the action is an original source of the information. For  
55 purposes of this subsection, "original source" means an individual who has direct and  
56 independent knowledge of the information on which the allegations are based and has  
57 voluntarily provided the information to the government before filing an action under this  
58 section which is based on the information.