

HOUSEAMENDMENT NO. ____Offered byof

1 AMEND House Committee Substitute for Senate Bill No. 12, Page 4,
 2 Section 488.026, Line 12, by inserting after all of said line the
 3 following:

4 "537.800. Sections 537.800 to 537.816 shall be known as the
 5 "Missouri False Claims and Fraud Prevention Act".

6 537.802. 1. As used in this section the following terms
 7 shall mean:

8 (1) "Claim", includes any request or demand, whether under
 9 a contract or otherwise, for money or property and whether or not
 10 the state has title to the money or property, that:

11 (a) Is presented to an officer, employee, or agent of the
 12 state; or

13 (b) Is made to a contractor, grantee, or other recipient,
 14 if the money or property is to be spent or used on the state's
 15 behalf or to advance a state program or interest, and if the
 16 state:

17 a. Provides or has provided any of the money or property
 18 requested or demanded; or

19 b. Will reimburse such contractor, grantee, or other
 20 recipient for any portion of the money or property which is
 21 requested or demanded; and

22 (c) Does not include requests or demands for money or
 23 property that the state has paid to an individual as compensation
 24 for state employment or as an income subsidy with no restrictions
 25 on that individual's use of the money or property;

26 (2) "Knowing" or "knowingly", that a person, with respect
 27 to information:

28 (a) Has actual knowledge of the information;

29 (b) Acts in deliberate ignorance of the truth or falsity of

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1 the information; or

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

4
5 and requires no proof of specific intent to defraud;

6 (3) "Material", having a natural tendency to influence, or
7 be capable of influencing, the payment or receipt of money or
8 property;

9 (4) "Obligation", an established duty, whether or not
10 fixed, arising from an express or implied contractual, grantor-
11 grantee, or licensor-licensee relationship, from a fee-based or
12 similar relationship, from statute or regulation, or from the
13 retention of any overpayment;

14 (5) "Person", any natural person, partnership, corporation,
15 association, or other legal entity;

16 (6) "State", the state of Missouri, any of its agencies,
17 boards, or commissions.

18 537.804. 1. Any person who:

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

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

24 (3) Conspires to commit a violation of any provision of
25 this subsection;

26 (4) Has possession, custody, or control of property or
27 money used, or to be used, by the state and, knowingly delivers,
28 or causes to be delivered, less than all of that money or
29 property;

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

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

1 (7) Knowingly makes, uses, or causes to be made or used, a
2 false record or statement material to an obligation to pay or
3 transmit money or property to the state or knowingly conceals or
4 knowingly and improperly avoids or decreases an obligation to pay
5 or transmit money or property to the state;

6
7 is liable to the state for a civil penalty of not less than five
8 thousand dollars and not more than ten thousand dollars, as
9 adjusted by the Federal Civil Penalties Inflation Adjustment Act
10 of 1990, 28 U.S.C. Section 2461, plus three times the amount of
11 damages which the state sustains because of the act of that
12 person.

13 2. If the court finds that:

14 (1) The person committing the violation of this section
15 furnished officials of the state responsible for investigating
16 false claims violations with all information known to such person
17 about the violation within thirty days after the date on which
18 the defendant first obtained the information;

19 (2) Such person fully cooperated with any investigation of
20 such violation; and

21 (3) At the time such person furnished the state with the
22 information about the violation, no criminal prosecution, civil
23 action, or administrative action had commenced with respect to
24 such violation, and the person did not have actual knowledge of
25 the existence of an investigation into such violation;

26
27 the court may assess not less than two times the amount of
28 damages which the state sustains because of the act of the
29 person. A person violating this section shall also be liable to
30 the state for the costs of a civil action brought to recover any
31 such penalty or damages.

32 3. Any information furnished under subdivisions (1) to (3)
33 of subsection 2 of this section shall be exempt from disclosure
34 under 5 U.S.C. Section 552 and chapter 610.

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

1 537.806. 1. The attorney general diligently shall
2 investigate a violation under section 537.802. If the attorney
3 general finds that a person has violated or is violating section
4 537.802, the attorney general may bring a civil action under this
5 section against the person.

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

11 3. A copy of the complaint and written disclosure of
12 substantially all material evidence and information the person
13 possesses shall be served on the state under the attorney
14 general. The complaint shall be filed in camera, shall remain
15 under seal for at least sixty days, and shall not be served upon
16 the defendant until the court so orders. The attorney general
17 may elect to intervene and proceed with the action within sixty
18 days after it receives both the complaint and the material
19 evidence and information.

20 4. The attorney general may, for good cause shown, move the
21 court for an extension of the time during which the complaint
22 remains under seal under subsection 3 of this section. Any such
23 motion may be supported by affidavits or other submissions in
24 camera.

25 5. Before expiration of the sixty-day period or any
26 extensions obtained under subsection 4 of this section, the
27 attorney general shall:

28 (1) Proceed with the action, in which case the action shall
29 be conducted by the attorney general; or

30 (2) Notify the court that it declines to take over the
31 action, in which case the person bringing the action shall have
32 the right to conduct the action.

33 6. When a person brings an action under this section, no
34 person other than the attorney general shall intervene or bring a
35 related action based on the facts underlying the pending action.

36 537.808. 1. If the attorney general elects to proceed with
37 the action authorized by section 537.806, he or she shall have

1 the primary responsibility for prosecuting the action, and shall
2 not be bound by an act of the person bringing the action. Such
3 person shall have the right to continue as a party to the action,
4 subject to the limitations set forth in subsection 2 of this
5 section.

6 2. The attorney general may dismiss the action
7 notwithstanding the objections of the person initiating the
8 action if the person has been notified by the attorney general of
9 the filing of the motion and the court has provided the person
10 with an opportunity for a hearing on the motion.

11 3. The attorney general may settle the action with the
12 defendant notwithstanding the objections of the person initiating
13 the action if the court determines, after a hearing, that the
14 proposed settlement is fair, adequate, and reasonable under all
15 the circumstances. Upon a showing of good cause, such hearing
16 may be held in camera.

17 4. Upon a showing by the attorney general that unrestricted
18 participation during the course of the litigation by the person
19 initiating the action would interfere with or unduly delay the
20 attorney general's prosecution of the case, or would be
21 repetitious, irrelevant, or is for purposes of harassment, the
22 court may, in its discretion, impose limitations on the person's
23 participation, such as:

24 (1) Limiting the number of witnesses the person may call;
25 (2) Limiting the length of the testimony of witnesses;
26 (3) Limiting the person's cross-examination of witnesses;
27 or

28 (4) Otherwise limiting the participation by the person in
29 the litigation.

30 5. Upon a showing by the defendant that unrestricted
31 participation during the course of the litigation by the person
32 initiating the action would be for purposes of harassment, or
33 would cause the defendant undue burden or unnecessary expense,
34 the court may limit the participation by the person in the
35 litigation.

36 6. If the attorney general elects not to proceed with the
37 action, the person who initiated the action shall have the right

1 to conduct the action. If the attorney general so requests, it
2 shall be served with copies of all pleadings filed in the action
3 and shall be supplied with copies of all deposition transcripts
4 at the attorney general's expense. When a person proceeds with
5 the action, the court, without limiting the status and rights of
6 the person initiating the action, may nevertheless permit the
7 attorney general to intervene at a later date upon a showing of
8 good cause.

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

21 8. Notwithstanding claims authorized under section 537.806,
22 the attorney general may elect to pursue its claim through any
23 alternate remedy available to the attorney general, including any
24 administrative proceeding to determine a civil monetary penalty.
25 If any such alternate remedy is pursued in another proceeding,
26 the person initiating the action under section 537.806 shall have
27 the same rights in such proceeding as such person would have had
28 if the action had continued under this section. Any finding of
29 fact or conclusion of law made in such other proceeding that has
30 become final shall be conclusive on all parties to an action
31 under this section. For purposes of the preceding sentence, a
32 finding or conclusion is final if it has been finally determined
33 on appeal to the appropriate court, if all time for filing such
34 an appeal with respect to the finding or conclusion has expired,
35 or if the finding or conclusion is not subject to judicial
36 review.

37 537.810. 1. If the attorney general proceeds with an

1 action brought by a person under section 537.806, such person
2 shall receive at least fifteen percent but not more than twenty-
3 five percent of the proceeds of the action or settlement of the
4 claim, depending upon the extent to which the person
5 substantially contributed to the prosecution of the action.
6 Where the action is one which the court finds to be based
7 primarily on disclosures of specific information, other than
8 information provided by the person bringing the action, relating
9 to allegations or transactions in a criminal, civil, or
10 administrative hearing, in a congressional, administrative, or
11 Government Accounting Office or state agency report, hearing,
12 audit, or investigation, or from the news media, the court shall
13 award such sums as it considers appropriate, but in no case more
14 than ten percent of the proceeds, taking into account the
15 significance of the information and the role of the person
16 bringing the action in advancing the case to litigation. Any
17 payment made to a person under the first or second sentence of
18 this subsection shall be made from the proceeds. Any such person
19 shall also receive an amount for reasonable expenses which the
20 court finds to have been necessarily incurred, plus reasonable
21 attorneys' fees and costs. All such expenses, fees, and costs
22 shall be awarded against the defendant.

23 2. If the attorney general does not proceed with an action
24 brought by a person under section 537.806, the person bringing
25 the action or settling the claim shall receive an amount which
26 the court decides is reasonable for collecting the civil penalty
27 and damages. The amount shall not be less than twenty-five
28 percent and no more than thirty percent of the proceeds of the
29 action or settlement and shall be paid out of such proceeds.
30 Such person shall also receive an amount for reasonable expenses
31 which the court finds to have been necessarily incurred, plus
32 reasonable attorneys' fees and costs. All such expenses, fees,
33 and costs shall be awarded against the defendant.

34 3. Whether or not the attorney general proceeds with the
35 action, if the court finds that the action was brought by a
36 person who planned and initiated the violation of section 537.804
37 upon which the action was brought, then the court may, to the

1 extent the court considers appropriate, reduce the share of the
2 proceeds of the action which the person would otherwise receive
3 under subsection 1 or 2 of this section, taking into account the
4 role of that person in advancing the case to litigation and any
5 relevant circumstances pertaining to the violation. If the
6 person bringing the action is convicted of criminal conduct
7 arising from his or her role in the violation of section 537.804,
8 that person shall be dismissed from the civil action and shall
9 not receive any share of the proceeds of the action. Such
10 dismissal shall not prejudice the right of the attorney general
11 to continue the action.

12 4. If the attorney general does not proceed with the action
13 and the person bringing the action conducts the action, the court
14 may award to the defendant its reasonable attorneys' fees and
15 expenses if the defendant prevails in the action and the court
16 finds that the claim of the person bringing the action was
17 clearly frivolous, clearly vexatious, or brought primarily for
18 purposes of harassment.

19 5. A person other than the attorney general shall not bring
20 an action under section 537.806 that is based on allegations or
21 transactions that are the subject of a civil suit or on
22 administrative proceeding in which the state or the federal
23 government is already a party. The court shall dismiss any such
24 action.

25 6. No court shall have jurisdiction over an action under
26 section 537.806 based upon the public disclosure of allegations
27 or transactions in a criminal, civil, or administrative hearing,
28 in a congressional, state legislative, administrative or
29 Government Accounting Office report, hearing, audit, or
30 investigation, or the news media, unless the action is brought by
31 the attorney general or the person bringing the action is an
32 original source of the information. For purposes of this
33 subsection "original source" means an individual who has direct
34 and independent knowledge of the information on which the
35 allegations are based and voluntarily provided the information to
36 the attorney general before filing an action under section
37 537.806 which is based on the information.

1 7. The state shall not be liable for any expenses which a
2 person incurs in bringing an action under section 537.806.

3 537.812. 1. A civil action brought under section 537.806
4 may not be brought:

5 (1) More than six years after the date on which the
6 violation of section 537.804 is committed; or

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

13 2. If the attorney general elects to intervene and proceed
14 with an action brought under section 537.806, the state may file
15 its own complaint or amend the complaint of a person who has
16 brought an action under section 537.806 to clarify or add detail
17 to the claims in which the state is intervening and to add any
18 additional claims with respect to which the state contends it is
19 entitled to relief. For statute of limitations purposes, any
20 such state pleading shall relate back to the filing date of the
21 complaint of the person who originally brought the action, to the
22 extent that the claim of the state arises out of the conduct,
23 transactions, or occurrences set forth, or attempted to be set
24 forth, in the prior complaint of that person.

25 3. In any action brought under section 537.806, the person
26 or the attorney general shall be required to prove all essential
27 elements of the cause of action, including damages, by a
28 preponderance of evidence.

29 4. Notwithstanding any other provision of law, the Federal
30 Rules of Criminal Procedure, or the Federal Rules of Evidence, a
31 final judgment rendered in favor of the state in any criminal
32 proceeding charging fraud or false statements, whether upon a
33 verdict after trial or upon a plea of guilty or nolo contendere,
34 shall estop the defendant from denying the essential elements of
35 the offense in any action which involves the same transaction as
36 in the criminal proceeding and which is brought under section
37 537.804.

1 5. Any action brought under section 537.806 may be brought
2 in any circuit court in which the defendant or, in the case of
3 multiple defendants, any one defendant can be found, resides,
4 transacts business, or in which any act proscribed by section
5 537.806 occurred. In addition, the federal district courts shall
6 have jurisdiction over any action brought under the laws of any
7 state or local government if the action arises from the same
8 transaction or occurrence as an action brought under 31 U.S.C.
9 Section 3730.

10 6. With respect to the state or any local government that
11 is named as a co-plaintiff with the United States in an action
12 brought under section 537.806, a seal on the action ordered by
13 the court under subsection 3 of section 537.806 shall not
14 preclude the state or the person bringing the action from serving
15 the complaint, any other pleadings, or the written disclosure of
16 substantially all material evidence and information by the person
17 bringing the action on the law enforcement authorities that are
18 authorized under state law or local ordinance to investigate and
19 prosecute such actions on behalf of the state or local
20 government, except that such seal applies to the law enforcement
21 authorities so served to the same extent as the seal applies to
22 the other parties in the action.

23 537.814. 1. Whenever the attorney general, or a designee,
24 for the purposes of this section, has reason to believe that any
25 person may be in possession, custody, or control of any
26 documentary material or information relevant to a Missouri false
27 claims and fraud prevention act investigation, the attorney
28 general, or a designee, may, before commencing a civil proceeding
29 under section 537.806 or making an election under section
30 537.808, issue in writing and cause to be served upon such
31 person, a civil investigative demand requiring such person:

32 (1) To produce such documentary material for inspection and
33 copying;

34 (2) To answer in writing written interrogatories with
35 respect to such documentary material or information;

36 (3) To give oral testimony concerning such documentary
37 material or information; or

1 (4) To furnish any combination of such material, answers,
2 or testimony.

3
4 The attorney general may delegate the authority to issue civil
5 investigative demands under this subsection. Whenever a civil
6 investigative demand is an express demand for any product of
7 discovery, the attorney general shall cause to be served, in any
8 manner authorized by this section, a copy of such demand upon the
9 person from whom the discovery was obtained and shall notify the
10 person to whom such demand is issued of the date on which such
11 copy was served. Any information obtained by the attorney
12 general or a designee of the attorney general under this section
13 may be shared with any qui tam relator if the attorney general or
14 designee determine it is necessary as part of any investigation
15 under the Missouri false claims and fraud prevention act.

16 2. Each civil investigative demand issued under subsection
17 1 of this section shall state the nature of the conduct
18 constituting the alleged violation of the Missouri false claims
19 and fraud prevention act which is under investigation, and the
20 applicable provision of law alleged to be violated.

21 3. If such demand is for the production of documentary
22 material, the demand shall:

23 (1) Describe each class of documentary material to be
24 produced with such definiteness and certainty as to permit such
25 material to be fairly identified;

26 (2) Prescribe a return date for each such class which will
27 provide a reasonable period of time within which the material so
28 demand may be assembled and made available for inspection and
29 copying; and

30 (3) Identify the investigator to whom such material shall
31 be made available.

32 4. If such demand is for answers to written
33 interrogatories, the demand shall:

34 (1) Set forth with specificity the written interrogatories
35 to be answered;

36 (2) Prescribe the dates at which time answers to written
37 interrogatories shall be submitted; and

1 (3) Identify the investigator to whom such answers shall be
2 submitted.

3 5. If such demand is for the giving of oral testimony, the
4 demand shall:

5 (1) Prescribe a date, time, and place at which oral
6 testimony shall be commenced;

7 (2) Identify an investigator who shall conduct the
8 examination and the custodian to whom the transcript of such
9 examination shall be submitted;

10 (3) Specify that such attendance and testimony are
11 necessary to the conduct of the investigation;

12 (4) Notify the person receiving the demand of the right to
13 be accompanied by an attorney and any other representative; and

14 (5) Describe the general purpose for which the demand is
15 being issued and the general nature of the testimony, including
16 the primary areas of inquiry, which will be taken pursuant to the
17 demand.

18 6. Any civil investigative demand issued under this section
19 which is an express demand for any product of discovery shall not
20 be returned or returnable until twenty days after a copy of such
21 demand has been served upon the person from whom the discovery
22 was obtained.

23 7. The date prescribed for the commencement of oral
24 testimony pursuant to a civil investigative demand issued under
25 this section shall be a date which is not less than seven days
26 after the date on which demand is received, unless the attorney
27 general or designee determines that exceptional circumstances are
28 present which warrant the commencement of such testimony within a
29 lesser period of time.

30 8. The attorney general shall not authorize the issuance
31 under this section of more than one civil investigative demand
32 for oral testimony by the same person unless the person requests
33 otherwise or unless the attorney general, after investigation,
34 notifies that person in writing that an additional demand for
35 oral testimony is necessary.

36 537.816. 1. Any employee, contractor, or agent shall be
37 entitled to all relief necessary to make that employee,

1 contractor, or agent whole, if that employee, contractor, or
2 agent is discharged, demoted, suspended, threatened, harassed, or
3 in any other manner discriminated against in the terms and
4 conditions of employment because of lawful acts done by the
5 employee, contractor, or agent on behalf of the employee,
6 contractor, or agent or associated others in furtherance of other
7 efforts to stop one or more violations of section 537.804.

8 2. Relief under subsection 1 of this section shall include
9 reinstatement with the same seniority status that employee,
10 contractor, or agent would have had but for the discrimination,
11 two times the amount of back pay, interest on the back pay, and
12 compensation for any special damages sustained as a result of the
13 discrimination, including litigation costs and reasonable
14 attorneys' fees. An action under this section may be brought in
15 the appropriate court for the relief provided in this
16 subsection."; and
17

18 Further amend said title, enacting clause and intersectional
19 references accordingly.