

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 2033

Short Title: Medicaid Fraud/Private Civil Actions.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

May 26, 2006

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE CIVIL ACTIONS BY PRIVATE PERSONS FOR  
3 VIOLATIONS OF THE PROVIDER FALSE CLAIMS ACT; AND TO  
4 APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO  
5 IMPLEMENT THIS ACT.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 2 of Chapter 108A of the General Statutes is amended  
8 by adding the following new Part to read:

9 "Part 7A. Civil Action by Private Persons for Provider False Claims.

10 "**§ 108A-70.17. Civil action filed by private persons.**

11 (a) A person may bring a civil action for a violation of G.S. 108A-70.12 on  
12 behalf of the person and the State. The action shall be brought in the name of the State.  
13 The action may be dismissed only if the court and the Attorney General have given  
14 written consent to the dismissal and their reasons for consenting.

15 (b) A copy of the motion for judgment and written disclosure of substantially all  
16 material evidence and information the person possesses shall be served on the State. The  
17 motion for judgment shall be filed in camera, shall remain under seal for at least 120  
18 days, and shall not be served on the defendant until the court so orders. The State may  
19 elect to intervene and proceed with the action within 120 days after it receives both the  
20 motion for judgment and the material evidence and information.

21 (c) The State may, for good cause shown, move the court for extensions of the  
22 time during which the motion for judgment remains under seal. Any of these motions  
23 may be supported by affidavits or other submission in camera. The defendant shall not  
24 be required to respond to any motion for judgment filed under this section until 21 days  
25 after the motion for judgment is unsealed and served upon the defendant.

26 (d) Before the expiration of the 120-day period or any extensions obtained under  
27 subsection (c) of this section, the State shall proceed with the action, in which case the  
28 action shall be conducted by the State, or notify the court that it declines to take over the

1 action, in which case the person bringing the action shall have the right to prosecute the  
2 action.

3 (e) When a person brings an action under this section, no person other than the  
4 State may intervene or bring a related action based on the facts underlying the pending  
5 action.

6 **"§ 108A-70.17A. Rights of private plaintiff and State.**

7 (a) If the State proceeds with the action, it shall have the primary responsibility  
8 for prosecuting the action and shall not be bound by an act of the person bringing the  
9 action. The person bringing the action shall have the right to continue as a party to the  
10 action, subject to the limitations of this section.

11 (b) The State may dismiss the action notwithstanding the objections of the person  
12 initiating the action if the person has been notified by the State of the filing of the  
13 motion, and the court has provided the person with an opportunity for a hearing on the  
14 motion.

15 (c) The State may settle the action with the defendant notwithstanding the  
16 objections of the person initiating the action if the court determines, after a hearing, that  
17 the proposed settlement is fair, adequate, and reasonable under all the circumstances.  
18 Upon a showing of good cause, such hearing may be held in camera. The State may, for  
19 good cause shown, move the court for a partial lifting of the seal to facilitate the  
20 investigative process or settlement.

21 (d) Upon a showing by the State that unrestricted participation during the course  
22 of the litigation by the person initiating the action would interfere with or unduly delay  
23 the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of  
24 harassment, the court may, in its discretion, impose limitations on the person's  
25 participation, such as (i) limiting the number of witnesses the person may call; (ii)  
26 limiting the length of the testimony of such witnesses; (iii) limiting the person's  
27 cross-examination of witnesses; and (iv) otherwise limiting the participation by the  
28 person in the litigation.

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

33 (f) If the State elects not to proceed with the action, the person who initiated the  
34 action shall have the right to conduct the action. If the State so requests, it shall be  
35 served with copies of all pleadings filed in the action and shall be supplied with copies  
36 of all deposition transcripts at the State's expense. When a person proceeds with the  
37 action, the court, without limiting the status and rights of the person initiating the action,  
38 may nevertheless permit the State to intervene at a later date upon a showing of good  
39 cause.

40 (g) Whether or not the State proceeds with the action, upon a showing by the  
41 State that certain actions of discovery by the person initiating the action would interfere  
42 with the State's investigation or prosecution of a criminal or civil matter arising out of  
43 the same facts, the court may stay the discovery for a period of not more than 60 days.  
44 The showing by the State shall be conducted in camera. The court may extend the

1 60-day period upon a further showing in camera that the State has pursued the criminal  
2 or civil investigation or proceedings with reasonable diligence, and any proposed  
3 discovery in the civil action will interfere with the ongoing criminal or civil  
4 investigation or proceedings.

5 (h) Notwithstanding G.S. 108A-70.17(b), the State may elect to pursue its claim  
6 through any alternate remedy available to the State, including any administrative  
7 proceeding to determine a civil money penalty. If an alternate remedy is pursued in  
8 another proceeding, the person initiating the action shall have the same rights in the  
9 alternate proceeding as the person would have had if the action had continued under this  
10 section. Any finding of fact or conclusion of law made in the alternate proceeding that  
11 has become final shall be conclusive on all parties to an action under this Part. For  
12 purposes of this subsection, a finding or conclusion is final if it has been finally  
13 determined on appeal to a court of competent jurisdiction of the State, if the time for  
14 filing an appeal with respect to the finding or conclusion has expired, or if the finding or  
15 conclusions are not subject to judicial review.

16 **"§ 108A-70.17B. Award to private plaintiff.**

17 (a) Except as otherwise provided in this section, if the State proceeds with an  
18 action brought by a person under G.S. 108A-70.17, the person shall receive at least  
19 fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of  
20 the action or settlement of the claim, depending upon the extent to which the person  
21 substantially contributed to the prosecution of the action. The plaintiff's share in the  
22 proceeds of the action or settlement is administrative costs of the action. Where the  
23 action is one that the court finds to be based primarily on disclosures of specific  
24 information, other than information proved by the person bringing the action, relating to  
25 allegations or transaction in a criminal, civil, or administrative hearing, in a legislative,  
26 administrative, or State Auditor's report, hearing, audit, or investigation, or from the  
27 news media, the court may award such sums as it considers appropriate, but in no case  
28 more than ten percent (10%) of the proceeds of the award. The person shall also receive  
29 an amount for reasonable expenses that the court finds to have been necessarily  
30 incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs  
31 shall be awarded against the defendant. A share of the proceeds of an action or  
32 settlement of the claim shall not be awarded to the person bringing the action in State  
33 court under this Part if the person has received or may receive a share of the proceeds or  
34 settlement of an action or claim on the same facts brought in federal court.

35 (b) If the State does not proceed with an action, the person bringing the action or  
36 settling the claim shall receive an amount that the court decides is reasonable for  
37 collecting the civil penalty and damages. The amount shall be not less than twenty-five  
38 percent (25%) and not more than thirty percent (30%) of the proceeds of the award or  
39 settlement and shall be paid out of the proceeds. The person shall also receive an  
40 amount for reasonable expenses that the court finds to have been necessarily incurred,  
41 plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be  
42 awarded against the defendant.

43 (c) Whether or not the State proceeds with the action, if the court finds that the  
44 action was brought by a person who planned and initiated the violation of

1 G.S. 108A-70.12 upon which the action was brought, or if the person bringing the  
2 action is convicted of criminal conduct arising from the person's role in the violation of  
3 G.S. 108A-70.12, that person shall be dismissed from the civil action and shall not  
4 receive any share of the proceeds of the action. The dismissal shall not prejudice the  
5 right of the State to continue the action.

6 (d) If the State does not proceed with the action and the person bringing the  
7 action conducts the action, the court may award to the defendant its reasonable  
8 attorneys' fees and expenses if the defendant prevails in the action and if the court finds  
9 that the claim of the person bringing the action was clearly frivolous, clearly vexatious,  
10 or brought primarily for purposes of harassment.

11 **"§ 108A-70.17C. Certain actions barred.**

12 (a) No court shall have jurisdiction over an action brought under this Part based  
13 on information discovered by a present or former employee of the State during the  
14 course of the present or former employee's employment unless that employee first, in  
15 good faith, exhausted existing internal procedures for reporting and seeking recovery of  
16 the falsely claimed sums through official channels and unless the State failed to act on  
17 the information provided within a reasonable period of time.

18 (b) No court shall have jurisdiction over any action brought under this Part by an  
19 inmate incarcerated within a State or local correctional facility.

20 (c) No court shall have jurisdiction over an action brought under this Part against  
21 any department, authority, board, bureau, commission, or agency of the State, any  
22 political subdivision of the State, a member of the General Assembly, a member of the  
23 judiciary, or an exempt official if the action is based on evidence or information known  
24 to the State when the action was brought. For purposes of this section, "exempt official"  
25 means the Governor, Lieutenant Governor, Attorney General, and the directors or  
26 members of any department, authority, board, bureau, commission, or agency of the  
27 State or any political subdivision of the State.

28 (d) In no event may a person bring an action under this Part that is based upon  
29 allegations or transactions that are the subject of a civil suit or an administrative  
30 proceeding in which the State is already a party.

31 (e) No court shall have jurisdiction over an action under this Part based upon the  
32 public disclosure of allegations or transactions in a criminal, civil, or administrative  
33 hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or  
34 investigation, or from the news media, unless the action is brought by the Attorney  
35 General, or the person bringing the action is an original source of the information. For  
36 purposes of this section, "original source" means an individual who has direct and  
37 independent knowledge of the information on which the allegations are based and has  
38 voluntarily provided the information to the State before filing an action under this Part  
39 that is based on the information.

40 (f) The State is not liable for expenses a person incurs in bringing an action  
41 under this Part.

42 (g) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part.

43 **"§ 108A-70.17D. Procedure; statute of limitations.**

1       (a) A subpoena requiring the attendance of a witness at a trial or hearing  
2 conducted under this Part may be served at any place in the State.

3       (b) A civil action under this Part may not be brought (i) more than six years after  
4 the date on which the violation is committed, or (ii) more than three years after the date  
5 when facts material to the right of the action are known or reasonably should have been  
6 known by the official of the State charged with responsibility to act in the  
7 circumstances, but in that event no more than 10 years after the date on which the  
8 violation is committed, whichever occurs last."

9               **SECTION 2.** G.S. 108A-70.15 reads as rewritten

10 **"§ 108A-70.15. Employee remedies.**

11       (a) In the absence of fraud or malice, no person who furnishes information to  
12 officials of the State responsible for investigating false claims violations shall be liable  
13 for damages in a civil action for any oral or written statement made or any other action  
14 that is necessary to supply information required pursuant to this ~~Part~~Part or Part 7A of  
15 this Article.

16       (b) Any employee of a provider who is discharged, demoted, suspended,  
17 threatened, harassed, or in any other manner discriminated against in the terms and  
18 conditions of employment by the employee's employer because of lawful acts done by  
19 the employee on behalf of the employee or others in furtherance of an action under  
20 ~~G.S. 108A-70.12,~~ 108A-70.12, or Part 7A of this Article, including investigation for,  
21 initiation of, testimony for, or assistance in an action filed or to be filed under  
22 ~~G.S. 108A-70.12,~~ 108A-70.12, or Part 7A of this Article, shall be entitled to all relief  
23 necessary to make the employee whole. Relief shall include reinstatement with the same  
24 seniority status as the employee would have had but for the discrimination, two times  
25 the amount of back pay, interest on the back pay, and compensation for any special  
26 damages sustained as a result of the discrimination, including litigation costs and  
27 reasonable attorneys' fees. An employee may bring an action in the appropriate court for  
28 the relief provided in this section."

29               **SECTION 3.** There is appropriated from the General Fund to the  
30 Department of Justice the sum of \$ for the 2006-2007 fiscal year. These funds shall be  
31 used for additional investigative positions needed to carry out the provisions of this act.

32               **SECTION 4.** Sections 1 and 2 of this act become effective December 1,  
33 2006. The remainder of this act becomes effective July 1, 2006.