



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1715/P2
SWB:ah&klm

Handwritten initials and marks: "1P3" and "RMR" with arrows pointing to the LRB and SWB text.

DOA:.....Schmidt, BB0242 - False claims private authority

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

IN 2/21

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1 AN ACT ... relating to: the budget.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

GENERAL COURTS AND PROCEDURE

1. Qui tam actions for false claims

This bill restores a private individual's authority to bring a qui tam claim against a person who makes a false claim for medical assistance, which was eliminated in 2015 Wisconsin Act 55, and further expands qui tam actions to include any false claims relating to agency moneys. A qui tam claim is a claim initiated by a private individual on his or her own behalf and on behalf of the state against a person who makes a false claim relating to medical assistance or other moneys from a state agency. The bill provides that, of moneys recovered as a result of a qui tam claim, a private individual may be awarded up to 30 percent of the amount recovered, depending upon the extent of the individual's contribution to the prosecution of the action. The individual may also be entitled to reasonable expenses incurred in bringing the action, as well as attorney fees. The bill also includes additional changes not included in the prior law to incorporate provisions enacted in the federal Deficit Reduction Act of 2005 and conform state law to the federal False Claims Act, including expanding provisions to facilitate qui tam actions and modifying the bases for liability to parallel the liability provisions under the federal False Claims Act. In addition to qui tam claims, DOJ has independent authority to bring a claim

or fraudulent claims to a state agency

or fraudulent (circled)

against a person for making a false claim for medical assistance. The bill modifies provisions relating to DOJ's authority to parallel the liability and penalty standards relating to qui tam claims, specifically, applying the definition of the term "claim" and the forfeiture amounts provided under the federal False Claims Act.

and to parallel

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 20.9315 of the statutes is created to read:

2 20.9315 False claims; actions by or on behalf of state. (1) In this section:

3 (b) "Claim" means any request or demand, whether under a contract or
4 otherwise, for money or property and whether the state has title to the money or
5 property, that is presented to an officer, employee, agent, or other representative of
6 the state or to a contractor, grantee, or other person if the money or property is to be
7 spent or used on the state's behalf or to advance a state program or interest, and if
8 the state provides any portion of the money or property which is requested or
9 demanded, or if the state will reimburse directly or indirectly such contractor,
10 grantee, or other person for any portion of the money or property which is requested
11 or demanded. "Claim" does not include requests or demands for money or property

12 that the state has paid to an individual as compensation for state employment or as
13 an income subsidy with no restriction on that individual's use of the money or
14 property.

15 (d) "Knowingly" means, with respect to information, having actual knowledge
16 of the information, acting in deliberate ignorance of the truth or falsity of the
17 information, or acting in reckless disregard of the truth or falsity of the information.

18 "Knowingly" does not mean specifically intending to defraud.

→ "Claim" includes a request or demand for services from a state agency or as part of a state program.

1 (de) "Material" means having a natural tendency to influence, or be capable of
2 influencing, the payment or receipt of money or property *or the receipt of services*

3 (dm) "Medical assistance" has the meaning given under s. 49.43 (8).

4 (dr) "Obligation" has the meaning given in 31 USC 3729 (b) (3).

5 (dt) "Original source" has the meaning given in 31 USC 3730 (e) (4) (B).

6 (e) "Proceeds" includes damages, civil penalties, surcharges, payments for costs
7 of compliance, and any other economic benefit realized by this state as a result of an
8 action or settlement of a claim.

9 (2) Except as provided in sub. (3), any person who does any of the following is
10 liable to this state for 3 times the amount of the damages that were sustained by the
11 state or would have been sustained by the state, whichever is greater, because of the
12 actions of the person, and shall forfeit, for each violation, an amount within the range
13 specified under 31 USC 3729 (a):

14 (a) Knowingly presents or causes to be presented a false or fraudulent claim
15 for medical assistance or for other moneys from a state agency. *including a false or fraudulent claim for medical assistance*

16 (b) Knowingly makes, uses, or causes to be made or used, a false record or
17 statement material to a false or fraudulent claim *to a state agency, including a false* for medical assistance or for other
18 moneys from a state agency. *or fraudulent claim*

19 (dg) Knowingly makes, uses, or causes to be made or used, a false record or
20 statement material to an obligation to pay or transmit money or property to the
21 Medical Assistance program, or knowingly conceals or knowingly and improperly
22 avoids or decreases an obligation to pay or transmit money or property to the Medical
23 Assistance program.

24 (dm) Knowingly makes, uses, or causes to be made or used a false record or
25 statement material to an obligation to pay or transmit money or property to a state

1 agency, or knowingly conceals or knowingly and improperly avoids or decreases an
2 obligation to pay or transmit money or property to a state agency.

****NOTE: Is the term "moneys" broad enough with respect to the state agencies?
I was pondering whether "services" should be included. Please let me know if you would
like to make changes.

3 (dr) Conspires to commit a violation under par. (a), (b), (dg), or (dm).

4 (3) The court may assess against a person who violates sub. (2) not less than
5 2 nor more than 3 times the amount of the damages sustained by the state because
6 of the acts of the person, and shall not assess any forfeiture, if the court finds all of
7 the following:

8 (a) The person who commits the acts furnished the attorney general with all
9 information known to the person about the acts within 30 days after the date on
10 which the person obtained the information.

11 (b) The person fully cooperated with any investigation of the acts by this state.

12 (c) At the time that the person furnished the attorney general with information
13 concerning the acts, no criminal prosecution or civil or administrative enforcement
14 action had been commenced with respect to any such act, and the person did not have
15 actual knowledge of the existence of any investigation into any such act.

16 (5) (a) Except as provided in subs. (10) and (12), any person may bring a civil
17 action as a qui tam plaintiff against a person who commits an act in violation of sub.
18 (2) for the person and the state in the name of the state.

19 (b) The plaintiff shall serve upon the attorney general a copy of the complaint
20 and documents disclosing substantially all material evidence and information that
21 the person possesses. The plaintiff shall file a copy of the complaint with the court
22 for inspection in camera. Except as provided in par. (c), the complaint shall remain
23 under seal for a period of 60 days from the date of filing, and shall not be served upon

1 the defendant until the court so orders. Within 60 days from the date of service upon
2 the attorney general of the complaint, evidence, and information under this
3 paragraph, the attorney general may intervene in the action.

4 (bm) Any complaint filed by the state in intervention, whether filed separately
5 or as an amendment to the qui tam plaintiff's complaint, shall relate back to the filing
6 date of the qui tam plaintiff's complaint, to the extent that the state's claim arises
7 out of the conduct, transactions, or occurrences set forth, or attempted to be set forth,
8 in the qui tam plaintiff's complaint.

9 (c) The attorney general may, for good cause shown, move the court for one or
10 more extensions of the period during which a complaint in an action under this
11 subsection remains under seal.

12 (d) Before the expiration of the period during which the complaint remains
13 under seal, the attorney general shall do one of the following:

14 1. Proceed with the action or an alternate remedy under sub. (10), in which case
15 the action or proceeding under sub. (10) shall be prosecuted by the state.

16 2. Notify the court that he or she declines to proceed with the action, in which
17 case the person bringing the action may proceed with the action.

18 (e) If a person brings a valid action under this subsection, no person other than
19 the state may intervene or bring a related action while the original action is pending
20 based upon the same facts underlying the pending action.

****NOTE: This provision may require additional consideration in light of recent changes made to s. 803.09 in 2017 Wisconsin Act 369. Act 369 created s. 803.09 (2m) which provides that "[w]hen a party to an action challenges in state or federal court the constitutionality of a statute, facially or as applied, challenges a statute as violating or preempted by federal law, or otherwise challenges the construction or validity of a statute, as part of a claim or affirmative defense, the assembly, the senate, and the legislature may intervene as set forth under s. 13.365 at any time in the action as a matter of right by serving a motion upon the parties as provided in s. 801.14." Because par. (e) limits intervention, a case could give rise to issues with the intervention rights described under s. 803.09 (2m). One way to address any issue would be to add the same "except"

language that this draft adds for s. 803.09 (1) and (2) (i.e., “[e]xcept as provided in s. 20.9315”). See SECTIONS 5 and 6 of this draft. I included those exceptions as they recreate the law as it existed prior to enactment of 2015 Wisconsin Act 55. However, I wanted to flag the provision with respect to s. 803.09 (2m), as it relates to the new language enacted in 2017 Wisconsin Act 369.

1 (f) In any action or other proceeding under sub. (10) brought under this
2 subsection, the plaintiff is required to prove all essential elements of the cause of
3 action or complaint, including damages, by a preponderance of the evidence.

4 (6) If the state proceeds with an action under sub. (5) or an alternate remedy
5 under sub. (10), the state has primary responsibility for prosecuting the action or
6 proceeding under sub. (10). The state is not bound by any act of the person bringing
7 the action, but that person has the right to continue as a party to the action.

8 (7) (b) With the approval of the governor, the attorney general may compromise
9 and settle an action under sub. (5) or an administrative proceeding under sub. (10)
10 to which the state is a party, notwithstanding objection of the person bringing the
11 action, if the court determines, after affording to the person bringing the action the
12 right to a hearing at which the person is afforded the opportunity to present evidence
13 in opposition to the proposed settlement, that the proposed settlement is fair,
14 adequate, and reasonable considering the relevant circumstances pertaining to the
15 violation.

****NOTE: This provision may be affected by changes made in 2017 Wisconsin Act 369, specifically changes made to s. 165.08. 2017 Wisconsin Act 369 changes the attorney general’s authority to settle in civil actions prosecuted by the attorney general, modifying the approval from approval of the governor to approval by a legislative intervenor under new s. 803.09 (2m), if any, or, if none, the joint committee on finance. It is possible that the above specific provision might control, but I don’t think that is entirely clear. The draft could address the issue by adding “notwithstanding” language to this provision (s. 20.9315 (7) (b) (created by the draft)) or by adding language to s. 165.08 to clarify the authority of the attorney general to settle in actions relating to false claims under s. 20.9315 (i.e., indicating which provision would control). I would be happy to discuss options.

16 (c) Upon a showing by the state that unrestricted participation in the
17 prosecution of an action under sub. (5) or an alternate proceeding to which the state

1 is a party by the person bringing the action would interfere with or unduly delay the
2 prosecution of the action or proceeding, or would result in consideration of
3 repetitious or irrelevant evidence or evidence presented for purposes of harassment,
4 the court may limit the person's participation in the prosecution, such as:

5 1. Limiting the number of witnesses that the person may call.

6 2. Limiting the length of the testimony of the witnesses.

7 3. Limiting the cross-examination of witnesses by the person.

8 4. Otherwise limiting the participation by the person in the prosecution of the
9 action or proceeding.

10 (d) Upon showing by a defendant that unrestricted participation in the
11 prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to
12 which the state is a party by the person bringing the action would result in
13 harassment or would cause the defendant undue burden or unnecessary expense, the
14 court may limit the person's participation in the prosecution.

15 **(8)** Except as provided in sub. (7), if the state elects not to participate in an
16 action filed under sub. (5), the person bringing the action may prosecute the action.
17 If the attorney general so requests, the attorney general shall, at the state's expense,
18 be served with copies of all pleadings and deposition transcripts in the action. If the
19 person bringing the action initiates prosecution of the action, the court, without
20 limiting the status and rights of that person, may permit the state to intervene at a
21 later date upon showing by the state of good cause for the proposed intervention.

22 **(9)** Whether or not the state participates in an action under sub. (5), upon
23 showing in camera by the attorney general that discovery by the person bringing the
24 action would interfere with the state's ongoing investigation or prosecution of a
25 criminal or civil matter arising out of the same facts as the facts upon which the

1 action is based, the court may stay such discovery in whole or in part for a period of
2 not more than 60 days. The court may extend the period of any such stay upon
3 further showing in camera by the attorney general that the state has pursued the
4 criminal or civil investigation of the matter with reasonable diligence and the
5 proposed discovery in the action brought under sub. (5) will interfere with the
6 ongoing criminal or civil investigation or prosecution.

7 (10) The attorney general may pursue a claim relating to an alleged violation
8 of sub. (2) through an alternate remedy available to the state or any state agency,
9 including an administrative proceeding to assess a civil forfeiture. If the attorney
10 general elects any such alternate remedy, the attorney general shall serve timely
11 notice of his or her election upon the person bringing the action under sub. (5), and
12 that person has the same rights in the alternate venue as the person would have had
13 if the action had continued under sub. (5). Any finding of fact or conclusion of law
14 made by a court or by a state agency in the alternate venue that has become final is
15 conclusive upon all parties named in an action under sub. (5). For purposes of this
16 subsection, a finding or conclusion is final if it has been finally determined on appeal,
17 if all time for filing an appeal or petition for review with respect to the finding or
18 conclusion has expired, or if the finding or conclusion is not subject to judicial review.

19 (11) (a) Except as provided in pars. (b) and (e), if the state proceeds with an
20 action brought by a person under sub. (5) or the state pursues an alternate remedy
21 relating to the same acts under sub. (10), the person who brings the action shall
22 receive at least 15 percent but not more than 25 percent of the proceeds of the action
23 or settlement of the claim, depending upon the extent to which the person
24 contributed to the prosecution of the action or claim.

1 (b) Except as provided in par. (e), if an action or claim is one in which the court
2 or other adjudicator finds to be based primarily upon disclosures of specific
3 information not provided by the person who brings an action under sub. (5) relating
4 to allegations or transactions specifically in a criminal, civil, or administrative
5 hearing, or in a legislative or administrative report, hearing, audit, or investigation,
6 or report made by the news media, the court or other adjudicator may award such
7 amount as it considers appropriate, but not more than 10 percent of the proceeds of
8 the action or settlement of the claim, depending upon the significance of the
9 information and the role of the person bringing the action in advancing the
10 prosecution of the action or claim.

11 (c) Except as provided in par. (e), in addition to any amount received under par.
12 (a) or (b), a person bringing an action under sub. (5) shall be awarded his or her
13 reasonable expenses necessarily incurred in bringing the action together with the
14 person's costs and reasonable actual attorney fees. The court or other adjudicator
15 shall assess any award under this paragraph against the defendant.

16 (d) Except as provided in par. (e), if the state does not proceed with an action
17 or an alternate proceeding under sub. (10), the person bringing the action shall
18 receive an amount that the court decides is reasonable for collection of the civil
19 penalty and damages. The amount shall be not less than 25 percent and not more
20 than 30 percent of the proceeds of the action and shall be paid from the proceeds. In
21 addition, the person shall be paid his or her expenses, costs, and fees under par. (c).

22 (e) Whether or not the state proceeds with the action or an alternate proceeding
23 under sub. (10), if the court or other adjudicator finds that an action under sub. (5)
24 was brought by a person who planned or initiated the violation upon which the action
25 or proceeding is based, then the court may, to the extent that the court considers

1 appropriate, reduce the share of the proceeds of the action that the person would
2 otherwise receive under par. (a), (b), or (d), taking into account the role of that person
3 in advancing the prosecution of the action or claim and any other relevant
4 circumstance pertaining to the violation, except that if the person bringing the action
5 is convicted of criminal conduct arising from his or her role in a violation of sub. (2),
6 the court or other adjudicator shall dismiss the person as a party and the person shall
7 not receive any share of the proceeds of the action or claim or any expenses, costs, and
8 fees under par. (c).

9 (12) Except if the action is brought by the attorney general or the person
10 bringing the action is an original source of the information, the court shall dismiss
11 an action or claim under this section, unless opposed by the state, if substantially the
12 same allegations or transactions as alleged in the action or claim were publicly
13 disclosed in any of the following ways:

14 (a) In a federal criminal, civil, or administrative hearing in which the state or
15 its agent is a party.

16 (b) In a congressional, government accountability office, or other federal report,
17 hearing, audit, or investigation.

18 (c) From the news media.

19 (13) The state is not liable for any expenses incurred by a private person in
20 bringing an action under sub. (5).

21 (14) Any employee, contractor, or agent who is discharged, demoted,
22 suspended, threatened, harassed, or in any other manner discriminated against in
23 the terms and conditions of employment because of lawful actions taken by the
24 employee, contractor, agent, or by others in furtherance of an action or claim filed
25 under this section or on behalf of the employee, contractor, or agent, including

1 investigation for, initiation of, testimony for, or assistance in an action or claim filed
2 or to be filed under sub. (5) is entitled to all necessary relief to make the employee,
3 contractor, or agent whole. Such relief shall in each case include reinstatement with
4 the same seniority status that the employee, contractor, or agent would have had but
5 for the discrimination, 2 times the amount of back pay, interest on the back pay at
6 the legal rate, and compensation for any special damages sustained as a result of the
7 discrimination, including costs and reasonable attorney fees. An employee,
8 contractor, or agent may bring an action to obtain the relief to which the employee,
9 contractor, or agent is entitled under this subsection within 3 years after the date the
10 retaliation occurred.

11 (15) A civil action may be brought based upon acts occurring prior to the
12 effective date of this subsection [LRB inserts date], if the action is brought within
13 the period specified in s. 893.9815.

14 (16) A judgment of guilty entered against a defendant in a criminal action in
15 which the defendant is charged with fraud or making false statements estops the
16 defendant from denying the essential elements of the offense in any action under sub.
17 (5) that involves the same elements as in the criminal action.

18 (17) The remedies provided for under this section are in addition to any other
19 remedies provided for under any other law or available under the common law.

20 (18) This section shall be liberally construed and applied to promote the public
21 interest and to effect the congressional intent in enacting 31 USC 3729 to 3733, as
22 reflected in the act and the legislative history of the act.

23 **SECTION 2.** 49.485 of the statutes is renumbered 20.9315 (19) and amended to

24 read:

INS
11-23

1 20.9315 (19) ~~Whoever knowingly presents or causes to be presented to any~~
2 ~~officer, employee, or agent of this state a false claim for medical assistance~~ Except
3 ~~as provided under sub. (3), whoever commits an act in violation of sub. (2) shall forfeit~~
4 ~~not less than \$5,000 nor more than \$10,000~~ an amount within the range specified
5 ~~under 31 USC 3729 (a), plus 3 times the amount of the damages that were sustained~~
6 ~~by the state or would have been sustained by the state, whichever is greater, as a~~
7 ~~result of the false claim. The attorney general may bring an action on behalf of the~~
8 ~~state to recover any forfeiture incurred under this section.~~

9 **SECTION 3.** 165.25 (11m) of the statutes is created to read:

10 165.25 (11m) FALSE CLAIMS. Diligently investigate possible violations of s.
11 20.9315, and, if the department determines that a person has committed an act that
12 is punishable under s. 20.9315, may bring a civil action against that person.

13 **SECTION 4.** 801.02 (1) of the statutes is amended to read:

14 801.02 (1) ~~A~~ Except as provided in s. 20.9315 (5) (b), a civil action in which a
15 personal judgment is sought is commenced as to any defendant when a summons and
16 a complaint naming the person as defendant are filed with the court, provided service
17 of an authenticated copy of the summons and of the complaint is made upon the
18 defendant under this chapter within 90 days after filing.

19 **SECTION 5.** 803.09 (1) of the statutes is amended to read:

20 803.09 (1) Upon Except as provided in s. 20.9315, upon timely motion anyone
21 shall be permitted to intervene in an action when the movant claims an interest
22 relating to the property or transaction which is the subject of the action and the
23 movant is so situated that the disposition of the action may as a practical matter
24 impair or impede the movant's ability to protect that interest, unless the movant's
25 interest is adequately represented by existing parties.

1 **SECTION 6.** 803.09 (2) of the statutes is amended to read:

2 803.09 (2) ~~Upon~~ Except as provided in s. 20.9315, upon timely motion anyone
3 may be permitted to intervene in an action when a movant's claim or defense and the
4 main action have a question of law or fact in common. When a party to an action
5 relies for ground of claim or defense upon any statute or executive order or rule
6 administered by a federal or state governmental officer or agency or upon any
7 regulation, order, rule, requirement or agreement issued or made pursuant to the
8 statute or executive order, the officer or agency upon timely motion may be permitted
9 to intervene in the action. In exercising its discretion the court shall consider
10 whether the intervention will unduly delay or prejudice the adjudication of the rights
11 of the original parties.

12 **SECTION 7.** 804.01 (2) (intro.) of the statutes is amended to read:

13 804.01 (2) SCOPE OF DISCOVERY. (intro.) ~~Unless~~ Except as provided in s. 20.9315
14 (9), and unless otherwise limited by order of the court in accordance with the
15 provisions of this chapter, the scope of discovery is as follows:

16 **SECTION 8.** 805.04 (1) of the statutes is amended to read:

17 805.04 (1) BY PLAINTIFF; BY STIPULATION. ~~An~~ Except as provided in sub. (2p), an
18 action may be dismissed by the plaintiff without order of court by serving and filing
19 a notice of dismissal at any time before service by an adverse party of responsive
20 pleading or motion or by the filing of a stipulation of dismissal signed by all parties
21 who have appeared in the action. Unless otherwise stated in the notice of dismissal
22 or stipulation, the dismissal is not on the merits, except that a notice of dismissal
23 operates as an adjudication on the merits when filed by a plaintiff who has once
24 dismissed in any court an action based on or including the same claim.

25 **SECTION 9.** 805.04 (2p) of the statutes is created to read:

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1715/P3ins
SWB:ahe&klm

INSERT 11-23

1 **SECTION 1.** 49.485 of the statutes is renumbered 20.9315 (19) and amended to
2 read:

3 20.9315 (19) ~~Whoever knowingly presents or causes to be presented to any~~
4 ~~officer, employee, or agent of this state a false claim for medical assistance shall~~
5 ~~forfeit not less than \$5,000 nor more than \$10,000, plus 3 times the amount of the~~
6 ~~damages that were sustained by the state or would have been sustained by the state,~~
7 ~~whichever is greater, as a result of the false claim.~~ The attorney general may bring
8 an action on behalf of the state to recover any forfeiture incurred under this section.

(END 11-23)

PLAIN



Per Miko, expand definition of "claim" to include services from a state agency



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1715/P3
SWB:ahe/klm/ejs

DOA:.....Schmidt, BB0242 - False claims private authority

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

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COURTS AND PROCEDURE

GENERAL COURTS AND PROCEDURE

1. *Qui tam actions for false claims*

This bill restores a private individual's authority to bring a qui tam claim against a person who makes a false or fraudulent claim for medical assistance, which was eliminated in 2015 Wisconsin Act 55, and further expands qui tam actions to include any false or fraudulent claims to a state agency. A qui tam claim is a claim initiated by a private individual on his or her own behalf and on behalf of the state against a person who makes a false claim relating to medical assistance or other moneys from a state agency. The bill provides that, of moneys recovered as a result of a qui tam claim, a private individual may be awarded up to 30 percent of the amount recovered, depending upon the extent of the individual's contribution to the prosecution of the action. The individual may also be entitled to reasonable expenses incurred in bringing the action, as well as attorney fees. The bill also includes additional changes not included in the prior law to incorporate provisions enacted in the federal Deficit Reduction Act of 2005 and conform state law to the federal False Claims Act, including expanding provisions to facilitate qui tam actions and modifying the bases for liability to parallel the liability provisions under the federal False Claims Act. In addition to qui tam claims, DOJ has independent authority to

bring a claim against a person for making a false claim for medical assistance. The bill modifies provisions relating to DOJ's authority to parallel the liability and penalty standards relating to qui tam claims and to parallel the forfeiture amounts provided under the federal False Claims Act.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.9315 of the statutes is created to read:

2 **20.9315 False claims; actions by or on behalf of state.** (1) In this section:

3 (b) "Claim" means any request or demand, whether under a contract or
4 otherwise, for money or property and whether the state has title to the money or
5 property, that is presented to an officer, employee, agent, or other representative of
6 the state or to a contractor, grantee, or other person if the money or property is to be
7 spent or used on the state's behalf or to advance a state program or interest, and if
8 the state provides any portion of the money or property which is requested or
9 demanded, or if the state will reimburse directly or indirectly such contractor,
10 grantee, or other person for any portion of the money or property which is requested
11 or demanded. "Claim" includes a request or demand for services from a state agency
12 or as part of a state program. "Claim" does not include requests or demands for
13 money or property that the state has paid to an individual as compensation for state
14 employment or as an income subsidy with no restriction on that individual's use of
15 the money or property.

16 (d) "Knowingly" means, with respect to information, having actual knowledge
17 of the information, acting in deliberate ignorance of the truth or falsity of the
18 information, or acting in reckless disregard of the truth or falsity of the information.
19 "Knowingly" does not mean specifically intending to defraud.

1 (de) "Material" means having a natural tendency to influence, or be capable of
2 influencing, the payment or receipt of money or property or the receipt of services.

3 (dm) "Medical assistance" has the meaning given under s. 49.43 (8).

4 (dr) "Obligation" has the meaning given in 31 USC 3729 (b) (3).

5 (dt) "Original source" has the meaning given in 31 USC 3730 (e) (4) (B).

6 (e) "Proceeds" includes damages, civil penalties, surcharges, payments for costs
7 of compliance, and any other economic benefit realized by this state as a result of an
8 action or settlement of a claim.

9 (2) Except as provided in sub. (3), any person who does any of the following is
10 liable to this state for 3 times the amount of the damages that were sustained by the
11 state or would have been sustained by the state, whichever is greater, because of the
12 actions of the person, and shall forfeit, for each violation, an amount within the range
13 specified under 31 USC 3729 (a):

14 (a) Knowingly presents or causes to be presented a false or fraudulent claim
15 to a state agency, including a false or fraudulent claim for medical assistance.

16 (b) Knowingly makes, uses, or causes to be made or used, a false record or
17 statement material to a false or fraudulent claim to a state agency, including a false
18 or fraudulent claim for medical assistance.

19 (dg) Knowingly makes, uses, or causes to be made or used, a false record or
20 statement material to an obligation to pay or transmit money or property to the
21 Medical Assistance program, or knowingly conceals or knowingly and improperly
22 avoids or decreases an obligation to pay or transmit money or property to the Medical
23 Assistance program.

24 (dm) Knowingly makes, uses, or causes to be made or used a false record or
25 statement material to an obligation to pay or transmit money or property to a state

SECTION 1

1 agency, or knowingly conceals or knowingly and improperly avoids or decreases an
2 obligation to pay or transmit money or property to a state agency.

3 (dr) Conspires to commit a violation under par. (a), (b), (dg), or (dm).

4 (3) The court may assess against a person who violates sub. (2) not less than
5 2 nor more than 3 times the amount of the damages sustained by the state because
6 of the acts of the person, and shall not assess any forfeiture, if the court finds all of
7 the following:

8 (a) The person who commits the acts furnished the attorney general with all
9 information known to the person about the acts within 30 days after the date on
10 which the person obtained the information.

11 (b) The person fully cooperated with any investigation of the acts by this state.

12 (c) At the time that the person furnished the attorney general with information
13 concerning the acts, no criminal prosecution or civil or administrative enforcement
14 action had been commenced with respect to any such act, and the person did not have
15 actual knowledge of the existence of any investigation into any such act.

16 (5) (a) Except as provided in subs. (10) and (12), any person may bring a civil
17 action as a qui tam plaintiff against a person who commits an act in violation of sub.
18 (2) for the person and the state in the name of the state.

19 (b) The plaintiff shall serve upon the attorney general a copy of the complaint
20 and documents disclosing substantially all material evidence and information that
21 the person possesses. The plaintiff shall file a copy of the complaint with the court
22 for inspection in camera. Except as provided in par. (c), the complaint shall remain
23 under seal for a period of 60 days from the date of filing, and shall not be served upon
24 the defendant until the court so orders. Within 60 days from the date of service upon

1 the attorney general of the complaint, evidence, and information under this
2 paragraph, the attorney general may intervene in the action.

3 (bm) Any complaint filed by the state in intervention, whether filed separately
4 or as an amendment to the qui tam plaintiff's complaint, shall relate back to the filing
5 date of the qui tam plaintiff's complaint, to the extent that the state's claim arises
6 out of the conduct, transactions, or occurrences set forth, or attempted to be set forth,
7 in the qui tam plaintiff's complaint.

8 (c) The attorney general may, for good cause shown, move the court for one or
9 more extensions of the period during which a complaint in an action under this
10 subsection remains under seal.

11 (d) Before the expiration of the period during which the complaint remains
12 under seal, the attorney general shall do one of the following:

13 1. Proceed with the action or an alternate remedy under sub. (10), in which case
14 the action or proceeding under sub. (10) shall be prosecuted by the state.

15 2. Notify the court that he or she declines to proceed with the action, in which
16 case the person bringing the action may proceed with the action.

17 (e) If a person brings a valid action under this subsection, no person other than
18 the state may intervene or bring a related action while the original action is pending
19 based upon the same facts underlying the pending action.

****NOTE: This provision may require additional consideration in light of recent changes made to s. 803.09 in 2017 Wisconsin Act 369. Act 369 created s. 803.09 (2m) which provides that "[w]hen a party to an action challenges in state or federal court the constitutionality of a statute, facially or as applied, challenges a statute as violating or preempted by federal law, or otherwise challenges the construction or validity of a statute, as part of a claim or affirmative defense, the assembly, the senate, and the legislature may intervene as set forth under s. 13.365 at any time in the action as a matter of right by serving a motion upon the parties as provided in s. 801.14." Because par. (e) limits intervention, a case could give rise to issues with the intervention rights described under s. 803.09 (2m). One way to address any issue would be to add the same "except" language that this draft adds for s. 803.09 (1) and (2) (i.e., "[e]xcept as provided in s. 20.9315"). See SECTIONS 5 and 6 of this draft. I included those exceptions as they recreate

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the law as it existed prior to enactment of 2015 Wisconsin Act 55. However, I wanted to flag the provision with respect to s. 803.09 (2m), as it relates to the new language enacted in 2017 Wisconsin Act 369.

1 (f) In any action or other proceeding under sub. (10) brought under this
2 subsection, the plaintiff is required to prove all essential elements of the cause of
3 action or complaint, including damages, by a preponderance of the evidence.

4 (6) If the state proceeds with an action under sub. (5) or an alternate remedy
5 under sub. (10), the state has primary responsibility for prosecuting the action or
6 proceeding under sub. (10). The state is not bound by any act of the person bringing
7 the action, but that person has the right to continue as a party to the action.

8 (7) (b) With the approval of the governor, the attorney general may compromise
9 and settle an action under sub. (5) or an administrative proceeding under sub. (10)
10 to which the state is a party, notwithstanding objection of the person bringing the
11 action, if the court determines, after affording to the person bringing the action the
12 right to a hearing at which the person is afforded the opportunity to present evidence
13 in opposition to the proposed settlement, that the proposed settlement is fair,
14 adequate, and reasonable considering the relevant circumstances pertaining to the
15 violation.

****NOTE: This provision may be affected by changes made in 2017 Wisconsin Act 369, specifically changes made to s. 165.08. 2017 Wisconsin Act 369 changes the attorney general's authority to settle in civil actions prosecuted by the attorney general, modifying the approval from approval of the governor to approval by a legislative intervenor under new s. 803.09 (2m), if any, or, if none, the joint committee on finance. It is possible that the above specific provision might control, but I don't think that is entirely clear. The draft could address the issue by adding "notwithstanding" language to this provision (s. 20.9315 (7) (b) (created by the draft)) or by adding language to s. 165.08 to clarify the authority of the attorney general to settle in actions relating to false claims under s. 20.9315 (i.e., indicating which provision would control). I would be happy to discuss options.

16 (c) Upon a showing by the state that unrestricted participation in the
17 prosecution of an action under sub. (5) or an alternate proceeding to which the state
18 is a party by the person bringing the action would interfere with or unduly delay the

1 prosecution of the action or proceeding, or would result in consideration of
2 repetitious or irrelevant evidence or evidence presented for purposes of harassment,
3 the court may limit the person's participation in the prosecution, such as:

- 4 1. Limiting the number of witnesses that the person may call.
- 5 2. Limiting the length of the testimony of the witnesses.
- 6 3. Limiting the cross-examination of witnesses by the person.
- 7 4. Otherwise limiting the participation by the person in the prosecution of the
8 action or proceeding.

9 (d) Upon showing by a defendant that unrestricted participation in the
10 prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to
11 which the state is a party by the person bringing the action would result in
12 harassment or would cause the defendant undue burden or unnecessary expense, the
13 court may limit the person's participation in the prosecution.

14 **(8)** Except as provided in sub. (7), if the state elects not to participate in an
15 action filed under sub. (5), the person bringing the action may prosecute the action.
16 If the attorney general so requests, the attorney general shall, at the state's expense,
17 be served with copies of all pleadings and deposition transcripts in the action. If the
18 person bringing the action initiates prosecution of the action, the court, without
19 limiting the status and rights of that person, may permit the state to intervene at a
20 later date upon showing by the state of good cause for the proposed intervention.

21 **(9)** Whether or not the state participates in an action under sub. (5), upon
22 showing in camera by the attorney general that discovery by the person bringing the
23 action would interfere with the state's ongoing investigation or prosecution of a
24 criminal or civil matter arising out of the same facts as the facts upon which the
25 action is based, the court may stay such discovery in whole or in part for a period of

1 not more than 60 days. The court may extend the period of any such stay upon
2 further showing in camera by the attorney general that the state has pursued the
3 criminal or civil investigation of the matter with reasonable diligence and the
4 proposed discovery in the action brought under sub. (5) will interfere with the
5 ongoing criminal or civil investigation or prosecution.

6 (10) The attorney general may pursue a claim relating to an alleged violation
7 of sub. (2) through an alternate remedy available to the state or any state agency,
8 including an administrative proceeding to assess a civil forfeiture. If the attorney
9 general elects any such alternate remedy, the attorney general shall serve timely
10 notice of his or her election upon the person bringing the action under sub. (5), and
11 that person has the same rights in the alternate venue as the person would have had
12 if the action had continued under sub. (5). Any finding of fact or conclusion of law
13 made by a court or by a state agency in the alternate venue that has become final is
14 conclusive upon all parties named in an action under sub. (5). For purposes of this
15 subsection, a finding or conclusion is final if it has been finally determined on appeal,
16 if all time for filing an appeal or petition for review with respect to the finding or
17 conclusion has expired, or if the finding or conclusion is not subject to judicial review.

18 (11) (a) Except as provided in pars. (b) and (e), if the state proceeds with an
19 action brought by a person under sub. (5) or the state pursues an alternate remedy
20 relating to the same acts under sub. (10), the person who brings the action shall
21 receive at least 15 percent but not more than 25 percent of the proceeds of the action
22 or settlement of the claim, depending upon the extent to which the person
23 contributed to the prosecution of the action or claim.

24 (b) Except as provided in par. (e), if an action or claim is one in which the court
25 or other adjudicator finds to be based primarily upon disclosures of specific

1 information not provided by the person who brings an action under sub. (5) relating
2 to allegations or transactions specifically in a criminal, civil, or administrative
3 hearing, or in a legislative or administrative report, hearing, audit, or investigation,
4 or report made by the news media, the court or other adjudicator may award such
5 amount as it considers appropriate, but not more than 10 percent of the proceeds of
6 the action or settlement of the claim, depending upon the significance of the
7 information and the role of the person bringing the action in advancing the
8 prosecution of the action or claim.

9 (c) Except as provided in par. (e), in addition to any amount received under par.
10 (a) or (b), a person bringing an action under sub. (5) shall be awarded his or her
11 reasonable expenses necessarily incurred in bringing the action together with the
12 person's costs and reasonable actual attorney fees. The court or other adjudicator
13 shall assess any award under this paragraph against the defendant.

14 (d) Except as provided in par. (e), if the state does not proceed with an action
15 or an alternate proceeding under sub. (10), the person bringing the action shall
16 receive an amount that the court decides is reasonable for collection of the civil
17 penalty and damages. The amount shall be not less than 25 percent and not more
18 than 30 percent of the proceeds of the action and shall be paid from the proceeds. In
19 addition, the person shall be paid his or her expenses, costs, and fees under par. (c).

20 (e) Whether or not the state proceeds with the action or an alternate proceeding
21 under sub. (10), if the court or other adjudicator finds that an action under sub. (5)
22 was brought by a person who planned or initiated the violation upon which the action
23 or proceeding is based, then the court may, to the extent that the court considers
24 appropriate, reduce the share of the proceeds of the action that the person would
25 otherwise receive under par. (a), (b), or (d), taking into account the role of that person

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1 in advancing the prosecution of the action or claim and any other relevant
2 circumstance pertaining to the violation, except that if the person bringing the action
3 is convicted of criminal conduct arising from his or her role in a violation of sub. (2),
4 the court or other adjudicator shall dismiss the person as a party and the person shall
5 not receive any share of the proceeds of the action or claim or any expenses, costs, and
6 fees under par. (c).

7 (12) Except if the action is brought by the attorney general or the person
8 bringing the action is an original source of the information, the court shall dismiss
9 an action or claim under this section, unless opposed by the state, if substantially the
10 same allegations or transactions as alleged in the action or claim were publicly
11 disclosed in any of the following ways:

12 (a) In a federal criminal, civil, or administrative hearing in which the state or
13 its agent is a party.

14 (b) In a congressional, government accountability office, or other federal report,
15 hearing, audit, or investigation.

16 (c) From the news media.

17 (13) The state is not liable for any expenses incurred by a private person in
18 bringing an action under sub. (5).

19 (14) Any employee, contractor, or agent who is discharged, demoted,
20 suspended, threatened, harassed, or in any other manner discriminated against in
21 the terms and conditions of employment because of lawful actions taken by the
22 employee, contractor, agent, or by others in furtherance of an action or claim filed
23 under this section or on behalf of the employee, contractor, or agent, including
24 investigation for, initiation of, testimony for, or assistance in an action or claim filed
25 or to be filed under sub. (5) is entitled to all necessary relief to make the employee,

1 contractor, or agent whole. Such relief shall in each case include reinstatement with
2 the same seniority status that the employee, contractor, or agent would have had but
3 for the discrimination, 2 times the amount of back pay, interest on the back pay at
4 the legal rate, and compensation for any special damages sustained as a result of the
5 discrimination, including costs and reasonable attorney fees. An employee,
6 contractor, or agent may bring an action to obtain the relief to which the employee,
7 contractor, or agent is entitled under this subsection within 3 years after the date the
8 retaliation occurred.

9 (15) A civil action may be brought based upon acts occurring prior to the
10 effective date of this subsection [LRB inserts date], if the action is brought within
11 the period specified in s. 893.9815.

12 (16) A judgment of guilty entered against a defendant in a criminal action in
13 which the defendant is charged with fraud or making false statements estops the
14 defendant from denying the essential elements of the offense in any action under sub.
15 (5) that involves the same elements as in the criminal action.

16 (17) The remedies provided for under this section are in addition to any other
17 remedies provided for under any other law or available under the common law.

18 (18) This section shall be liberally construed and applied to promote the public
19 interest and to effect the congressional intent in enacting 31 USC 3729 to 3733, as
20 reflected in the act and the legislative history of the act.

21 **SECTION 2.** 49.485 of the statutes is renumbered 20.9315 (19) and amended to
22 read:

23 20.9315 (19) ~~Whoever knowingly presents or causes to be presented to any~~
24 ~~officer, employee, or agent of this state a false claim for medical assistance shall~~
25 ~~forfeit not less than \$5,000 nor more than \$10,000, plus 3 times the amount of the~~

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1 damages that were sustained by the state or would have been sustained by the state,
2 whichever is greater, as a result of the false claim. The attorney general may bring
3 an action on behalf of the state to recover any forfeiture incurred under this section.

4 **SECTION 3.** 165.25 (11m) of the statutes is created to read:

5 165.25 (11m) FALSE CLAIMS. Diligently investigate possible violations of s.
6 20.9315, and, if the department determines that a person has committed an act that
7 is punishable under s. 20.9315, may bring a civil action against that person.

8 **SECTION 4.** 801.02 (1) of the statutes is amended to read:

9 801.02 (1) ~~A~~ Except as provided in s. 20.9315 (5) (b), a civil action in which a
10 personal judgment is sought is commenced as to any defendant when a summons and
11 a complaint naming the person as defendant are filed with the court, provided service
12 of an authenticated copy of the summons and of the complaint is made upon the
13 defendant under this chapter within 90 days after filing.

14 **SECTION 5.** 803.09 (1) of the statutes is amended to read:

15 803.09 (1) ~~Upon~~ Except as provided in s. 20.9315, upon timely motion anyone
16 shall be permitted to intervene in an action when the movant claims an interest
17 relating to the property or transaction which is the subject of the action and the
18 movant is so situated that the disposition of the action may as a practical matter
19 impair or impede the movant's ability to protect that interest, unless the movant's
20 interest is adequately represented by existing parties.

21 **SECTION 6.** 803.09 (2) of the statutes is amended to read:

22 803.09 (2) ~~Upon~~ Except as provided in s. 20.9315, upon timely motion anyone
23 may be permitted to intervene in an action when a movant's claim or defense and the
24 main action have a question of law or fact in common. When a party to an action
25 relies for ground of claim or defense upon any statute or executive order or rule

1 administered by a federal or state governmental officer or agency or upon any
2 regulation, order, rule, requirement or agreement issued or made pursuant to the
3 statute or executive order, the officer or agency upon timely motion may be permitted
4 to intervene in the action. In exercising its discretion the court shall consider
5 whether the intervention will unduly delay or prejudice the adjudication of the rights
6 of the original parties.

7 **SECTION 7.** 804.01 (2) (intro.) of the statutes is amended to read:

8 804.01 (2) SCOPE OF DISCOVERY. (intro.) Unless Except as provided in s. 20.9315
9 (9), and unless otherwise limited by order of the court in accordance with the
10 provisions of this chapter, the scope of discovery is as follows:

11 **SECTION 8.** 805.04 (1) of the statutes is amended to read:

12 805.04 (1) BY PLAINTIFF; BY STIPULATION. An Except as provided in sub. (2p), an
13 action may be dismissed by the plaintiff without order of court by serving and filing
14 a notice of dismissal at any time before service by an adverse party of responsive
15 pleading or motion or by the filing of a stipulation of dismissal signed by all parties
16 who have appeared in the action. Unless otherwise stated in the notice of dismissal
17 or stipulation, the dismissal is not on the merits, except that a notice of dismissal
18 operates as an adjudication on the merits when filed by a plaintiff who has once
19 dismissed in any court an action based on or including the same claim.

20 **SECTION 9.** 805.04 (2p) of the statutes is created to read:

21 805.04 (2p) FALSE CLAIMS. An action filed under s. 20.9315 may be dismissed
22 only by order of the court. In determining whether to dismiss the action filed under
23 s. 20.9315, the court shall take into account the best interests of the parties and the
24 purposes of s. 20.9315.

25 **SECTION 10.** 893.9815 of the statutes is created to read:

