

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 378

Short Title: Update NC False Claims Act.-AB (Public)

Sponsors: Senators Hise, Pate, and Krawiec (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 27, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ALIGN THE NORTH CAROLINA FALSE CLAIMS ACT WITH THE
3 FEDERAL FALSE CLAIMS ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 1-606(7) is repealed.

6 SECTION 2. G.S. 1-607(a) reads as rewritten:

7 "§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and
8 civil penalties; exceptions.

9 (a) Liability. – Any person who commits any of the following acts shall be liable to the
10 State for three times the amount of damages that the State sustains because of the act of that
11 person. A person who commits any of the following acts also shall be liable to the State for the
12 costs of a civil action brought to recover any of those penalties or damages and shall be liable
13 to the State for a civil penalty of not less than five thousand five hundred dollars (\$5,500) and
14 not more than eleven thousand dollars ~~(\$11,000)~~ (\$11,000), as may be adjusted by Section 5 of
15 the Federal Civil Penalties Inflation Adjustment Act of 1990, P.L. 101-410, as amended, for
16 each violation:

17 "...."

18 SECTION 3. G.S. 1-608(b) reads as rewritten:

19 "(b) Actions by Private Persons. – A person may bring a civil action for a violation of
20 G.S. 1-607 for the person and for the State, as follows:

21 (1) The action shall be brought in the name of the State, and the person bringing
22 the action shall be referred to as the qui tam plaintiff. ~~Once filed, the~~ The
23 ~~action may be dismissed voluntarily by the person bringing the action only if~~
24 ~~the court and Attorney General have given written consent to the~~
25 ~~dismissal.~~ dismissal and the reasons for consenting.

26 (2) A copy of the complaint and written disclosure of substantially all material
27 evidence and information the person possesses shall be served on the
28 Attorney General pursuant to applicable rules of the North Carolina Rules of
29 Civil Procedure. The complaint shall be filed in camera, shall remain under
30 seal for at least 120 days, and shall not be served on the defendant until the
31 court so orders. The State may elect to intervene and proceed with the action
32 within 120 days after it receives both the complaint and the material
33 evidence and information.

34 (3) The State may, for good cause shown, move the court for extensions of the
35 time during which the complaint remains under seal under subdivision (2) of
36 this subsection. Any such motions may be supported by affidavits or other



1 submissions in camera. The defendant shall not be required to respond to
 2 any complaint filed under this section until 30 days after the complaint is
 3 unsealed and served upon the defendant pursuant to the North Carolina
 4 Rules of Civil Procedure.

5 (4) Before the expiration of the 120-day period or any extensions obtained under
 6 subdivision (3) of this subsection, the State shall:

7 a. Proceed with the action, in which case the action shall be conducted
 8 by the State; or

9 b. Notify the court that it declines to take over the action, in which case
 10 the person bringing the action shall have the right to conduct the
 11 action.

12 (5) ~~When a person brings an action under this subsection, the federal False~~
 13 ~~Claims Act, 31 U.S.C. § 3729 et seq., or any similar provision of law in any~~
 14 ~~other state, no person other than the State may intervene or bring a related~~
 15 ~~action based on the facts underlying the pending action; provided, however,~~
 16 ~~that nothing in this subdivision prohibits a person from amending a pending~~
 17 ~~action in another jurisdiction to allege a claim under this subsection.~~

18 When a person brings an action under this subsection, no person other than the State may
 19 intervene or bring a related action based on the facts underlying the pending action."

20 **SECTION 4.** G.S. 1-610(b) reads as rewritten:

21 "(b) Where the action is one which the court finds to be based primarily on disclosures
 22 of specific information, other than information provided by the qui tam plaintiff, relating to
 23 allegations or transactions (i) in a State criminal, civil, or administrative hearing at the State or
 24 federal level, hearing, (ii) in a congressional, State legislative, administrative, General
 25 Accounting Office, or Office of the State Auditor's Auditor, or other State report, hearing,
 26 audit, or investigation, or (iii) from the news media, the court may award such sums as it
 27 considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into
 28 account the significance of the information and the role of the qui tam plaintiff in advancing the
 29 case to litigation."

30 **SECTION 5.** G.S. 1-611 reads as rewritten:

31 "**§ 1-611. Certain actions barred.**

32 (a) No court shall have jurisdiction over an action brought under G.S. 1-608(b) against
 33 a member of the General Assembly, a member of the judiciary, or a senior executive branch
 34 official acting in their official capacity if the action is based on evidence or information known
 35 to the State when the action was brought.

36 (b) In no event may a person bring an action under G.S. 1-608(b) that is based upon
 37 allegations or transactions that are the subject of a civil suit or an administrative civil money
 38 penalty proceeding in which the State is already a party.

39 ~~(c) No civil action may be brought under this Article by a person who is or was a public~~
 40 ~~employee or public official if the allegations of such action are based substantially upon either~~
 41 ~~of the following:~~

42 (1) ~~Allegations of wrongdoing or misconduct which such person had a duty or~~
 43 ~~obligation to report or investigate within the scope of his or her public~~
 44 ~~employment or office.~~

45 (2) ~~Information or records to which the person had access as a result of his or~~
 46 ~~her public employment or office.~~

47 (d) ~~No court shall have jurisdiction over an action under G.S. 1-608(b) based upon the~~
 48 ~~public disclosure of allegations or transactions (i) in a criminal, civil, or administrative hearing~~
 49 ~~at the State or federal level, (ii) in a congressional, legislative, administrative, General~~
 50 ~~Accounting Office, or State Auditor's report, hearing, audit, or investigation, or (iii) from the~~
 51 ~~news media, unless the action is brought by the Attorney General, or the person bringing the~~

1 ~~action is an original source of the information. For purposes of this section, "original source"~~
2 ~~means an individual who has direct and independent knowledge of the information on which~~
3 ~~the allegations are based and has voluntarily provided the information to the State before filing~~
4 ~~an action under G.S. 1-608(b) that is based on the information.~~

5 (e) Unless opposed by the State, the court shall dismiss an action or claim under this
6 Article if substantially the same allegations or transactions as alleged in the action or claim
7 were publicly disclosed by any of the following:

8 (1) A State criminal, civil, or administrative hearing in which the State or its
9 agent is a party.

10 (2) A State legislative, Office of the State Auditor, or other State report, hearing,
11 audit, or investigation.

12 (3) The news media.

13 This subsection shall not apply to any action brought by the Attorney General or when the
14 person bringing the action is an original source of the information.

15 (f) For the purposes of this section, the term "original source" means an individual who
16 meets one of the following descriptions:

17 (1) Prior to public disclosure under subsection (e) of this section, the individual
18 has voluntarily disclosed to the State the information on which allegations or
19 transactions in a claim are based.

20 (2) The individual (i) has knowledge that is independent of, and materially adds
21 to, the publicly disclosed allegations or transactions and (ii) has voluntarily
22 provided the information to the State before filing an action under this
23 Article."

24 **SECTION 6.** G.S. 1-613 reads as rewritten:

25 **"§ 1-613. Private action for retaliation action.**

26 Any employee, contractor, or agent who is discharged, demoted, suspended, threatened,
27 harassed, or in any other manner discriminated against in the terms and conditions of
28 employment because of lawful acts done by the employee, contractor, ~~or agent on behalf of the~~
29 ~~employee, contractor, or agent or agent, or~~ associated others in furtherance of an action under
30 this Article, ~~or in furtherance of Article or other efforts to stop one or more violations of G.S.~~
31 ~~1-607, including investigation for, initiation of, testimony for, or assistance in an action filed or~~
32 ~~to be filed under this Article, G.S. 1-607~~ shall be entitled to all relief necessary to make the
33 ~~employee~~ employee, contractor, or agent whole. Such relief shall include reinstatement with the
34 same seniority status the employee, contractor, or agent would have had but for the
35 discrimination, two times the amount of back pay, interest on the back pay, and compensation
36 for any special damages sustained as a result of the discrimination, including litigation costs
37 and reasonable attorneys' fees. ~~An employee, contractor, or agent may bring an action~~ may be
38 brought in North Carolina superior court for the relief provided in this section. A civil action
39 under this section may not be brought more than three years after the date when the retaliation
40 occurred."

41 **SECTION 7.** This act is effective when it becomes law and applies to actions
42 brought on or after that date.