

## **Montana False Claims Act**

(Mont. Code Ann. §§ 17-8-401 to 416)<sup>1</sup>

### **17-8-401 Short title.**

This part may be cited as the "Montana False Claims Act".

### **17-8-402 Definitions.**

As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services, whether made pursuant to a contract and regardless of whether a governmental entity holds title to the money or property, that is made to:

(a) an employee, officer, agent, or other representative of a governmental entity; or

(b) a contractor, grantee, or other person, whether under contract or not, if any portion of the money, property, or services requested or demanded is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity:

(i) provides or has provided any portion of the money, property, or services requested or demanded; or

(ii) will reimburse a contractor, grantee, or other person for any portion of the money, property, or services requested or demanded.

(2) "Government attorney" means the attorney general except for complaints involving a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) (a) "Knowingly" means that a person, with respect to information, does any of the following:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information.

(b) A specific intent to defraud is not required.

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

(6) "Obligation" means an established duty, whether fixed or not, arising from:

(a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

(b) a fee-based or similar relationship;

(c) a statute or regulation; or

(d) the retention of any overpayment.

(7) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, trust, or other legal or business entity.

(8) "State" means the state of Montana.

**17-8-403 False claims -- procedures -- penalties.**

(1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than \$ 5,500 and not more than \$ 11,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains, along with expenses, costs, and attorney fees, if the person:

- (a) knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- (b) knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
- (c) conspires to commit a violation of this subsection (1);
- (d) has possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivers or causes to be delivered less than all of the property or money;
- (e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;
- (f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;
- (g) knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity; or
- (h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) In a civil action brought under *17-8-405* or *17-8-406*, a court shall assess a civil penalty of not less than \$ 5,500 and not more than \$ 11,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains if the court finds all of the following:

- (a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.
- (b) The person fully cooperated with any investigation of the act by the government attorney.
- (c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

(4) Liability under this section is joint and several for any act committed by two or more persons.

(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under *17-8-406*, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in:

- (i) a criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

- (ii) a state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or
- (iii) the news media.
- (b) The production of a record pursuant to *Article II, section 9, of the Montana constitution* or Title 2, chapter 6, is not a public disclosure for purposes of this section.
- (c) For purposes of this subsection (6), "original source" means an individual who:
  - (i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or
  - (ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.
- (7) A person may not file a complaint or civil action brought under *17-8-406* against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the state unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises.
- (8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410.
- (9) If a governmental entity does not intervene, the person who initiated the action has the same right to conduct the action as the government attorney would have had if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity.

**17-8-404 Limitation of actions.**

- (1) A complaint or civil action filed under *17-8-405* or *17-8-406* must be brought by the later of:
  - (a) 6 years after the date on which the violation was committed; or
  - (b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances.
- (2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the violation was committed.
- (3) If the governmental entity elects to intervene in any action brought under *17-8-406*, the complaint in intervention must relate back to the filing date of the original complaint to the extent that the governmental entity's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original complaint.

**17-8-405 Investigation and civil action by government attorney.**

The government attorney shall investigate an alleged violation of *17-8-403* and may file a civil action against any person who has violated or is violating *17-8-403*.

**17-8-406 Complaint by person -- civil action.**

- (1) A person may bring a civil action for a violation of *17-8-403* on behalf of the person and the governmental entity. The action must be brought in the name of the governmental entity. The action may be dismissed only if the court and the government attorney give written consent to the dismissal and provide their reasons for consenting to the dismissal.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information that the person possesses must be served on the government attorney pursuant to Rule 4(c)(2)(C), (c)(2)(D), and (d) through (s) Montana Rules of Civil Procedure. The complaint must be filed under seal and must remain under seal for at least 60 days. The complaint may not be served upon the defendant until the court orders that it be served.

(3) Within 60 days after receiving the complaint and the material evidence and information, the government attorney may elect to intervene and proceed with the action or to notify the court that the government attorney declines to take over the action. If the government attorney declines to intervene or take over the action, the person bringing the action has the right to conduct the action. The government attorney may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal.

(4) The defendant may not be required to respond to any complaint until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4(c)(2)(C), (c)(2)(D), and (d) through (s) Montana Rules of Civil Procedure.

(5) If the government attorney proceeds with the action, the government attorney has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action subject to the limitations set forth in this part.

(6) If the government attorney elects not to proceed with the action and the person who initiated the action conducts it:

(a) the person who initiated the action shall, upon the government attorney's request, serve the governmental entity with copies of all pleadings filed in the action and shall supply the government attorney with copies of all deposition transcripts at the government attorney's expense;

(b) the court, without limiting the status and rights of the person initiating the action, may permit the government attorney to intervene at a later date upon a showing of good cause.

(7) When a person files a civil action pursuant to this section, no person other than the government attorney may intervene or bring a related action based on the facts underlying the pending action.

(8) Upon a showing by the government attorney that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the government attorney's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may in its discretion impose limitations on the person's participation, including but not limited to:

(a) limiting the number of witnesses the person may call;

(b) limiting the length of testimony of witnesses called by the person;

(c) limiting the person's cross-examination of witnesses; or

(d) otherwise limiting the participation of the person in the litigation.

#### **17-8-407 Dismissal of civil action.**

On the motion of the government attorney, the court may dismiss a civil action notwithstanding the objection of the person who initiated the action if the government attorney has notified the person of the filing of the motion to dismiss and the court has given the person an opportunity to oppose the motion and present evidence at a hearing.

#### **17-8-408 Repealed.**

#### **17-8-409 Burden of proof -- effect of criminal conviction.**

(1) The plaintiff in an action under *17-8-405* or *17-8-406* shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under *17-8-405* or *17-8-406* that involves the same event or events as the criminal proceeding.

#### **17-8-410 Distribution of damages and civil penalty.**

(1) Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to *17-8-406*, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

- (i) a criminal, civil, or administrative hearing;
- (ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or
- (iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to *17-8-406*, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of *17-8-403*, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state.

**17-8-411 Costs and attorney fees.**

The governmental entity that filed a civil action or intervened is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the defendant's reasonable costs and attorney fees. If the governmental entity does not intervene, it is not responsible for any of the defendant's fees and costs.

**17-8-412 Retaliatory actions prohibited -- remedies.**

(1) A governmental entity, private entity, or person may not adopt or enforce a rule, regulation, or policy preventing an employee, agent, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of *17-8-403* or an action brought pursuant to *17-8-405* or *17-8-406*.

(2) A governmental entity, private entity, or person may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, agent, or contractor in the terms and conditions of employment, agency, or contract because of the disclosure by the employee, agent, or contractor of information to a government or law enforcement agency pertaining to a violation of *17-8-403*.

(3) An employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this part or other efforts to stop one or more violations of this part.

(4) Relief under subsection (3) includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. A civil action may be brought in the appropriate district court of the state for the relief provided in this subsection.

(5) A civil action under this section may not be brought more than 3 years after the date on which the retaliation occurred.

**17-8-413 Settlement by government attorney.**

A government attorney may settle the case with a defendant notwithstanding the objections of the persons who initiated the action if the court determines, after a hearing, that the settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good cause, the hearing may be held in camera.

**17-8-414 and 17-8-415 reserved.**

**17-8-416 Reporting.**

Beginning February 15, 2014, and by February 15 of each year, the attorney general shall submit to the law and justice interim committee a report containing the following information:

- (1) the number of cases filed under the Montana False Claims Act, Title 17, chapter 8, part 4, that were pending in the state during the previous calendar year;
- (2) the number of cases filed under the Montana False Claims Act that were settled during the previous calendar year;
- (3) the number of cases filed under the Montana False Claims Act in which judgment was entered during the previous calendar year;
- (4) the total proceeds paid to the state and the total proceeds paid to the qui tam plaintiffs in cases filed under the Montana False Claims Act during the previous calendar year; and
- (5) the number of qui tam cases pending in other jurisdictions involving the state in the previous calendar year.

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<sup>i</sup> Last updated June 26, 2014.