

## **Nevada Submission of False Claims to State or Local Government**

(Nev. Rev. Stat. §§ 357.010–357.250)<sup>i</sup>

### **§ 357.010. Definitions**

As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 357.020 to 357.030, inclusive, have the meanings ascribed to them in those sections.

### **§ 357.020. “Claim” defined**

1. “Claim” means any request or demand, regardless of whether it is made under a contract or otherwise, for money, property or services, regardless of whether the State or a political subdivision has title to the money or property, that is:

(a) Presented to an officer, employee or agent of this state or of a political subdivision of this state; or

(b) Made to a contractor, grantee or other recipient if the money, property or services are to be spent or used on behalf of the State or a political subdivision and the State or political subdivision:

(1) Provides or has provided any portion of the money, property or services that are requested or demanded; or

(2) Will reimburse the contractor, grantee or other recipient for any portion of the money, property or services that are requested or demanded.

2. The term does not include a request or demand for money or property that the State or a political subdivision has paid or provided to a natural person as:

(a) Compensation for employment; or

(b) An income subsidy with no restriction on the natural person’s use of the money or property.

### **§ 357.022. “Material” defined**

“Material” means having a natural tendency to influence or be capable of influencing the payment or receipt of money, property or services.

### **§ 357.024. “Obligation” defined**

“Obligation” means any established duty, regardless of whether the duty is a fixed duty, arising from:

1. An express or implied contractual relationship;

2. A relationship between a grantor and a grantee;

3. A relationship between a licensor and a licensee;

4. A fee-based or similar relationship;

5. A statute or regulation; or

6. The retention of any overpayment.

### **§ 357.026. “Original source” defined**

“Original source” means a person:

1. Who voluntarily discloses to the State or a political subdivision the information on which the allegations or transactions in an action for a false claim are based before the public disclosure of the information; or
2. Who has knowledge of information that is independent of and materially adds to the publicly disclosed allegations or transactions and who voluntarily provides such information to the State or political subdivision before bringing an action for a false claim based on the information.

### **§ 357.030. “Political subdivision” defined**

“Political subdivision” means a county, city, assessment district or any other local government as defined in NRS 354.474.

### **§ 357.040. Liability for damages and civil penalty for certain acts**

1. Except as otherwise provided in NRS 357.050, a person who, with or without specific intent to defraud, does any of the following listed acts is liable to the State or a political subdivision, whichever is affected, for the amounts set forth in subsection 2:

- (a) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.
- (b) Knowingly makes or uses, or causes to be made or used, a false record or statement that is material to a false or fraudulent claim.
- (c) Has possession, custody or control of public property or money used or to be used by the State or a political subdivision and knowingly delivers or causes to be delivered to the State or a political subdivision less money or property than the amount of which the person has possession, custody or control.
- (d) Is authorized to prepare or deliver a document that certifies receipt of money or property used or to be used by the State or a political subdivision and knowingly prepares or delivers such a document without knowing that the information on the document is true.
- (e) Knowingly buys, or receives as a pledge or security for an obligation or debt, public property from a person who is not authorized to sell or pledge the property.
- (f) Knowingly makes or uses, or causes to be made or used, a false record or statement that is material to an obligation to pay or transmit money or property to the State or a political subdivision.
- (g) Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State or a political subdivision.

- (h) Is a beneficiary of an inadvertent submission of a false claim and, after discovering the falsity of the claim, fails to disclose the falsity to the State or political subdivision within a reasonable time.
  - (i) Conspires to commit any of the acts set forth in this subsection.
2. For each act described in subsection 1 that is committed by a person, the person is liable for:
- (a) Three times the amount of damages sustained by the State or political subdivision, whichever is affected, because of the act of the person;
  - (b) The costs of a civil action brought to recover the damages described in paragraph (a); and
  - (c) Except as otherwise provided in this paragraph, a civil penalty of not less than \$5,500 or more than \$11,000. A civil penalty imposed pursuant to this paragraph must correspond to any adjustments in the monetary amount of a civil penalty for a violation of the federal False Claims Act, 31 U.S.C. § 3729(a), made by the Attorney General of the United States in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended.
3. As used in this section, a person acts “knowingly” with respect to information if he or she:
- (a) Has knowledge of the information;
  - (b) Acts in deliberate ignorance of whether the information is true or false; or
  - (c) Acts in reckless disregard of the truth or falsity of the information.

**§ 357.050. Limitation of damages and waiver of penalty for cooperation of defendant**

In a civil action pursuant to this chapter, the court may give judgment for not less than twice or more than three times the amount of damages sustained, and no civil penalty, if it finds that:

1. The person against whom the judgment is entered:
- (a) Furnished all information known to the person concerning the act, within 30 days after becoming aware of the information, to the Attorney General or a designee of the Attorney General pursuant to NRS 357.070; and
  - (b) Fully cooperated with any investigation of the act by the State or political subdivision; and
2. At the time the information was furnished, no criminal prosecution or civil or administrative proceeding had commenced with respect to the act and the person had no knowledge of the existence of any investigation with respect to the act.

**§ 357.060. Joint and several liability**

Liability pursuant to this chapter is joint and several for an act done by two or more persons.

### **§ 357.070. Investigation and action by Attorney General or certain designees**

1. Except as otherwise provided in subsection 2, the Attorney General shall investigate diligently any alleged liability pursuant to this chapter and may bring a civil action pursuant to this chapter against the person liable.
2. A district attorney or city attorney may accept a designation from the Attorney General to investigate any alleged liability pursuant to this chapter and may bring a civil action pursuant to this chapter against the person liable.

### **§ 357.080. Action by private plaintiff; venue of actions**

1. Except as otherwise provided in this section and NRS 357.100, a private plaintiff may bring an action pursuant to this chapter for a violation of NRS 357.040 on his or her own account and that of the State or a political subdivision, or both the State and a political subdivision. The action must be brought in the name of the State or the political subdivision, or both. After such an action is commenced, it may be dismissed only with written consent of the court and the Attorney General. The court and the Attorney General shall take into account the public purposes of this chapter and the best interests of the parties in dismissing the action or consenting to the dismissal, as applicable, and provide the reasons for dismissing the action or consenting to the dismissal, as applicable.
2. If a private plaintiff brings an action pursuant to this chapter, no person other than the Attorney General or the Attorney General's designee may intervene or bring a related action pursuant to this chapter based on the facts underlying the first action.
3. An action may not be maintained by a private plaintiff pursuant to this chapter:
  - (a) Against a member of the Legislature or the Judiciary, an elected officer of the Executive Department of the State Government, or a member of the governing body of a political subdivision, if the action is based upon evidence or information known to the State or political subdivision at the time the action was brought.
  - (b) If the action is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding for a monetary penalty to which the State or political subdivision is already a party.
4. A complaint filed pursuant to this section must be placed under seal and so remain for at least 60 days or until the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 has elected whether to intervene. No service may be made upon the defendant until so ordered by the court.
5. On the date the private plaintiff files a complaint, he or she shall send a copy of the complaint to the Attorney General by mail with return receipt requested. The private plaintiff shall send with each copy of the complaint a written disclosure of substantially all material evidence and information he or she possesses. If a district attorney or city attorney has accepted a designation from the Attorney General pursuant to NRS 357.070, the Attorney General shall forward a copy of the complaint to the district attorney or city attorney, as applicable.

6. An action pursuant to this chapter may be brought in any judicial district in this State in which the defendant can be found, resides, transacts business or in which any of the alleged fraudulent activities occurred.

**§ 357.100. Action based upon certain public disclosures may only be brought by Attorney General, designee or original source of information; exceptions**

Unless the Attorney General objects, a court shall dismiss an action or a claim made pursuant to this chapter that is substantially based on the same allegations or transactions that have been disclosed publicly:

1. In a criminal, civil or administrative hearing to which the State, a political subdivision, or an agent of the State or a political subdivision is a party;
2. In an investigation, report, hearing or audit conducted by or at the request of a house of the Legislature, an auditor or the governing body of a political subdivision; or
3. By the news media, unless the action or claim is brought by the Attorney General, a designee of the Attorney General pursuant to NRS 357.070 or an original source of the information.

**§ 357.110. Attorney General or designee may elect to intervene in action by private plaintiff; motion to extend time for election**

1. Within 60 days after receiving a complaint and disclosure, the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 may intervene and proceed with the action or, for good cause shown, move the court to extend the time for his or her election whether to proceed. The motion may be supported by affidavits or other submissions in chambers.
2. If the Attorney General or the Attorney General's designee elects not to intervene, the private plaintiff may proceed with the action.
3. If the Attorney General or the Attorney General's designee elects to intervene, the Attorney General or the Attorney General's designee may file his or her own complaint or amend the complaint of the private plaintiff who brought the action pursuant to NRS 357.080. For the purposes of the statute of limitations set forth in NRS 357.170, any such pleading relates back to the filing date of the complaint of the private plaintiff, to the extent that any claim made by the Attorney General or the Attorney General's designee arises out of the conduct, transactions or occurrences set forth or attempted to be set forth in the prior complaint of the private plaintiff.

**§ 357.120. Effect of intervention of Attorney General or designee in action by private plaintiff; motion to dismiss; settlement**

1. If the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 intervenes, the private plaintiff remains a party to an action pursuant to NRS 357.080.
2. The Attorney General or the Attorney General's designee may move to dismiss the action for good cause. The private plaintiff must be notified of the filing of the motion and is entitled to oppose it and present evidence at the hearing.

3. Except as otherwise provided in this subsection, the Attorney General or the Attorney General's designee may settle the action. If the Attorney General or the Attorney General's designee intends to settle the action, the Attorney General or the Attorney General's designee shall notify the private plaintiff of that fact. Upon the request of the private plaintiff, the court shall determine, after a hearing, whether the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing for good cause, the court may conduct such hearing in camera.

**§ 357.130. Effect of declination of Attorney General or designee to intervene in action by private plaintiff; authority for and effect of election by Attorney General or designee to intervene subsequently in such action**

1. If the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 elects not to intervene in an action pursuant to NRS 357.080, the private plaintiff has the same rights in conducting the action as the Attorney General or the Attorney General's designee would have had. A copy of each pleading or other paper filed in the action, and a copy of the transcript of each deposition taken, must be mailed to the Attorney General or the Attorney General's designee if the Attorney General or the Attorney General's designee so requests and pays the cost thereof.

2. For good cause shown, the Attorney General or the Attorney General's designee may intervene in an action in which he or she has previously declined to intervene, if the interest of the State or a political subdivision in recovery of the money or property involved is not being adequately represented by the private plaintiff.

3. If the Attorney General or the Attorney General's designee so intervenes, the private plaintiff retains primary responsibility for conducting the action and any recovery must be apportioned as if the Attorney General or the Attorney General's designee had not intervened.

**§ 357.140. Response by defendant**

The defendant is entitled to 20 days in which to respond after a complaint filed pursuant to NRS 357.080 is unsealed and served upon the defendant.

**§ 357.150. Stay of discovery by private plaintiff; extension**

1. The court may stay discovery by a private plaintiff for not more than 60 days if the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 shows that the proposed discovery would interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, whether or not the Attorney General or the Attorney General's designee participates in the action.

2. The court may extend the stay upon a further showing that the Attorney General or the Attorney General's designee has pursued the civil or criminal investigation or proceeding with reasonable diligence and the proposed discovery would interfere with its continuation.

Discovery may not be stayed for a total of more than 6 months over the objection of the private

plaintiff, except for good cause shown by the Attorney General or the Attorney General's designee.

3. A showing made pursuant to this section must be made in chambers.

### **§ 357.160. Court-imposed limitation upon participation of private plaintiff in action**

Upon a showing by the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 that unrestricted participation by a private plaintiff would interfere with or unduly delay the conduct of an action, or would be repetitious, irrelevant or solely for harassment, the court may limit the participation of the private plaintiff by, among other measures, limiting:

1. The number of witnesses he or she may call;
2. The length of the testimony of the witnesses; or
3. His or her cross-examination of witnesses.

### **§ 357.170. Limitation of actions; standard of proof; effect of certain findings of guilt in criminal proceeding on action**

1. An action pursuant to this chapter may not be commenced:
  - (a) More than 3 years after the date on which the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 discovers, or reasonably should have discovered, the fraudulent activity, but in no event more than 10 years after the fraudulent activity occurred; or
  - (b) More than 6 years after the fraudulent activity occurred, whichever occurs later.Within those limits, an action may be based upon fraudulent activity that occurred before May 27, 2015.
2. In an action pursuant to this chapter, the standard of proof is a preponderance of the evidence. A finding of guilty or guilty but mentally ill in a criminal proceeding charging false statement or fraud, whether upon a verdict of guilty or guilty but mentally ill or a plea of guilty, guilty but mentally ill or nolo contendere, estops the person found guilty or guilty but mentally ill from denying an essential element of that offense in an action pursuant to this chapter based upon the same transaction as the criminal proceeding.

### **§ 357.180. Award of expenses and attorney's fees**

1. If the Attorney General, a designee of the Attorney General pursuant to NRS 357.070 or a private plaintiff prevails in or settles an action pursuant to NRS 357.080, the private plaintiff is entitled to a reasonable amount for expenses that the court finds were necessarily incurred, including reasonable costs, attorney's fees and the fees of expert consultants and expert witnesses. Those expenses must be awarded against the defendant, and may not be allowed against the State or a political subdivision.
2. If the Attorney General or the Attorney General's designee does not proceed with the action and the defendant prevails in the action brought by a private plaintiff, the court may award the defendant reasonable expenses and attorney's fees against the party or parties who participated in

the action if it finds that the action was clearly frivolous, clearly vexatious or brought primarily for the purposes of harassment.

### **§ 357.190. “Recovery” defined**

As used in NRS 357.190 to 357.230, inclusive, “recovery” includes civil penalties and does not include any allowance of expenses or attorney’s fees.

### **§ 357.200. Distribution in certain actions to special account in State General Fund or to general fund of political subdivision**

1. If the Attorney General initiates an action pursuant to this chapter, 33 percent of any recovery must be paid into the State General Fund to the credit of a special account, for use by the Attorney General as appropriated or authorized by the Legislature in the investigation and prosecution of false claims.
2. If a designee of the Attorney General pursuant to NRS 357.070 initiates an action pursuant to this chapter, 33 percent of any recovery must be paid into the general fund of the political subdivision that employs the Attorney General’s designee.

### **357.210. Distribution to private plaintiff in certain actions; court authorized to reduce recovery in certain circumstances**

1. Except as otherwise provided in subsection 3, if the Attorney General or a designee of the Attorney General pursuant to NRS 357.070 intervenes at the outset in an action pursuant to NRS 357.080, the private plaintiff is entitled to receive not less than 15 percent or more than 25 percent of any recovery, according to the extent of his or her contribution to the conduct of the action.
2. Except as otherwise provided in subsection 3, if the Attorney General or the Attorney General’s designee does not intervene in the action at the outset, the private plaintiff is entitled to receive not less than 25 percent or more than 30 percent of any recovery, as the court determines to be reasonable.
3. Regardless of whether the Attorney General or the Attorney General’s designee intervenes in the action, if the court finds that the action was brought by a private plaintiff who planned or initiated the violation of NRS 357.040 upon which the action is based, the court may reduce the recovery to which the private plaintiff is otherwise entitled pursuant to subsection 1 or 2. The court shall consider the role of the private plaintiff in advancing the action and any other relevant circumstances. If the private plaintiff is convicted of criminal conduct arising from his or her role in the violation of NRS 357.040, the private plaintiff must be dismissed from the civil action and must not receive any share of the recovery pursuant to subsection 1 or 2. Any such dismissal does not prejudice the right of the Attorney General or the Attorney General’s designee to continue the action.



**§ 357.230. Distribution of unapportioned portion to general fund of State or political subdivision, or both**

The portion of any recovery not apportioned pursuant to NRS 357.200 and 357.210 must be paid into the State General Fund if the money, property or services were provided only by the State, or into the general fund of the political subdivision if they were provided only by a political subdivision. If the action involved both the State and a political subdivision, the court shall apportion the remaining portion of any recovery between them according to the respective values of the money, property or services provided by each.

**§ 357.250. Entitlement of employee, contractor or agent to remedies in certain circumstances**

1. If an employee, contractor or agent is discharged, demoted, suspended, threatened, harassed or discriminated against in the terms and conditions of employment as a result of any lawful act of the employee, contractor, agent or associated others in furtherance of an action brought pursuant to this chapter or any other effort to stop a violation of this chapter, the employee, contractor or agent is entitled to all relief necessary to make the employee, contractor or agent whole, including, without limitation, reinstatement with the same seniority as if the discharge, demotion, suspension, threat, harassment or discrimination had not occurred or damages in lieu of reinstatement if appropriate, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discharge, demotion, suspension, threat, harassment or discrimination and punitive damages if appropriate. The employee, contractor or agent may also receive compensation for expenses recoverable pursuant to NRS 357.180, costs and attorney's fees.
2. A civil action brought pursuant to this section may not be brought more than 3 years after the date on which the discharge, demotion, suspension, threat, harassment or discrimination occurred.