

SUBJECT: Civil liability for filing false claims with governmental entities.

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 7 ayes — Gray, Hilbert, Alvarado, Bosse, Nixon, Roman, Zbranek
0 nays
2 absent — Dutton, Goodman

WITNESSES: For — Rick Levy, Texas AFL-CIO
Against — None
On — Robin Herskowitz, Texas Performance Review

DIGEST: HB 494 would create a civil cause of action against persons or entities making false claims to governmental entities. Prohibited activities would include:

- making a false claim for payment or approval;
- making or using a false record to obtain payment or approval;
- conspiring to defraud a governmental entity using a false claim;
- delivering to a governmental entity or contractor less property than the amount for which a receipt is given;
- making or delivering a receipt that falsely represents the amount of property to be used by a governmental entity or contractor;
- making or using a false claim to avoid or decrease an obligation to pay a governmental entity; and
- accepting the benefits of a false claim.

A person who knowingly makes a false claim would be subject to civil liability, including actual damages, punitive damages of two times actual damages, and attorney's fees and costs. The award of punitive damages could be reduced in return for cooperation with an investigation. Absent cooperation with an investigation, a court could award a civil penalty of up to \$10,000 to the governmental entity affected by the false claim. A court

could not award punitive damages or attorney's fees if actual damages were less than \$500. The bill would not apply to worker's compensation claims.

The statute of limitations for an action based on a false claim would be three years after the claim was discovered or a maximum of 10 years. Limitations on joint and several liability would not apply to actions committed by more than person; each person would be held responsible for the entire damage award.

The attorney general would be responsible for investigating and prosecuting false claims involving state funds. The prosecuting authority of a local government entity would have authority over claims for local funds. When both state and local funds were involved in a false claim, either prosecuting authority could begin the action. The initiating entity would have to notify the other appropriate authorities and allow them to intervene in the case. If the case were commenced by a local authority and state funds were involved, the attorney general could take over primary responsibility for the prosecution of the claim.

A private party could file a civil suit on behalf of the state or local government to recover damages on a false claim. Private parties filing suit would have to notify the appropriate state or local governmental entities and allow them to intervene. The entity, at its discretion, could assume primary responsibility for the prosecution of the claim filed by a private party. If the governmental entity took primary responsibility, the private party could receive a portion of the damages awarded based on the false claim. Under HB 494, 10 percent would be a reasonable portion for awarding the private party. If the governmental entity did not take over primary responsibility for the case, the private party could receive a portion of the award as high as 25 percent, as well as other reasonable expenses incurred in the prosecution of the claim.

HB 494 would provide that all persons had the right to conduct or assist in an investigation on a false claim. Employers that interfered with an employee's pursuit of or involvement in such an action or discriminated against the employee for pursuit of such actions could be held liable for actual damages, exemplary damages, and attorney's fees and costs.

HB 494 would take effect September 1, 1997, and would apply only to conduct after that date. Any claims made to a governmental entity before that date would not be subject to the provisions of this bill.

**SUPPORTERS
SAY:**

HB 494 would build on a common law principle to help citizens exercise their civic rights and responsibilities to support honest government. The common law principle of *qui tam* allows individuals to bring actions on behalf of the government. False claims against governmental bodies can cost taxpayers millions of dollars a year. However, these bodies lack sufficient resources to investigate and prosecute claims, and civil liability laws do not provide any means of recovering the money. HB 494 would solve these problem by creating a civil cause of action for these claims and allowing private citizens to investigate and prosecute these claims in return for a portion of the damages recovered.

This legislation was recommended by the Texas Performance Review in its latest report, *Disturbing the Peace*, recommendation FR-11. The federal government has a similar False Claims Act with like penalties for violations. The federal act also allows individuals to bring claims on behalf of the government. The federal law has been used successfully to prosecute false claims made to the Department of Defense, among others. Other states — such as Florida, California, Oklahoma and Washington — have enacted similar broad based false claims legislation. Their experiences have shown that legislation with sufficient protections built in neither distracts government employees from their duties nor encourages filing frivolous lawsuits.

HB 494 could be applied to a wide range of fraudulent conduct. Its primary application would be to discourage people from filing false benefits claims with the state or local governments. The bill would encourage those who know of a person's false claim to come forward. It could also be used to recover damages from suppliers and contractors who overcharge governmental entities or deliver fewer goods and services than the governmental entity paid for.

HB 494 would provide necessary protections. It would keep authority for handling these claims with the attorney general or the appropriate local authorities. Any claim brought would have to be reported to the appropriate

authority and that authority could take over the claim. The purpose of allowing individuals to prosecute these claims is to save on the resources of the attorney general or local authorities. In many cases, the local authorities may not have the resources to devote to the investigation of such claims.

OPPONENTS
SAY:

HB 494 could distract government employees from their jobs by encouraging them to scrutinize and investigate any large transactions in the hope of winning a payoff for discovering a false claim. Employees should not be made an enforcement arm of the state. They are not trained to investigate claims. If there is a problem in this state with filing false claims against the government, investigators from the Attorney General's Office or local authorities should be solely responsible for investigating such cases.

HB 494 could encourage frivolous lawsuits because of the possibility of a large payoff to the person filing the suit. In the rush to be the first to file suit, individuals could easily fail to fully investigate a claim.

NOTES:

The companion bill, SB 1528 by Moncrief, has been reported favorably by the Senate Jurisprudence Committee.