

**BILL ANALYSIS**

Senate Research Center

H.B. 494  
By: Alvarado (Ellis)  
Jurisprudence  
5-16-97  
Engrossed

**DIGEST**

Currently, Texas does not have a statutory provision addressing false claims against state and local entities. There is no offense or remedy under which a governmental entity can find relief when a false claim for money, property, or services is brought against the governmental entity. This bill would create an offense and provide remedies for exposing and prosecuting individuals who present false claims against the state and local entities and their agents.

**PURPOSE**

As proposed, H.B. 494 sets forth an offense and provides remedies for exposing and prosecuting individuals who present false claims against the state and local entities and their agents.

**RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

**SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 10F, Government Code, by adding Chapter 2259, as follows:

CHAPTER 2259. FALSE CLAIMS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2259.001. DEFINITIONS. Defines "claim," "government contractor," "government entity," "local governmental entity," "managing official," and "prosecuting authority."

Sec. 2259.002. PROHIBITED ACTS. Prohibits a person from committing certain acts regarding certain misrepresentation directed toward a governmental entity or government contractor.

SUBCHAPTER B. LIABILITY FOR VIOLATIONS

Sec. 2259.011. LIABILITY FOR KNOWING VIOLATION. Requires a court that finds that a person knowingly violated Section 2259.002 to award the affected governmental entity certain damages. Authorizes the court to reduce the amount of exemplary damages awarded under Subsection (a)(2) to an amount no less than the amount of actual damages if the person who knowingly violated Section 2259.002 performed certain actions. Provides that a person knowingly violates Section 2259.002 if the person performs certain actions.

Sec. 2259.012. CIVIL PENALTY. Authorizes the court, in addition to amounts awarded under Section 2259.011, to award to the affected governmental entity a civil penalty of not more than \$10,000 for each false claim unless the person who knowingly violated Section 2259.002 cooperated in the investigation as described by Sections 2259.011(b)(1) and (2).

Sec. 2259.013. LIABILITY JOINT AND SEVERAL; PROPORTIONATE RESPONSIBILITY INAPPLICABLE. Provides that liability under this subchapter is joint and several for a violation committed by more than one person. Provides that Chapter 33, Civil Practice and Remedies Code, does not apply to an action brought under this chapter.

Sec. 2259.014. EXCEPTIONS. Prohibits a court from awarding exemplary damages and attorney's fees and costs under Section 2259.011 or a civil penalty under Section 2259.012 against a person if the total actual damages resulting from all violations for which damages are being assessed against the person in the case is less than \$500. Provides that this chapter does not apply to a claim made under a workers' compensation law of this state.

Sec. 2259.015. DEPOSIT OF MONEY. Requires money collected on behalf of a governmental entity to be deposited to the credit of the general revenue fund of the state or of the local governmental entity, as appropriate. Requires the court, if the action is brought in the names of both the state and one or more local governmental entities, to apportion the award of damages, exemplary damages, and any civil penalty among the state and those local entities on the basis of the loss incurred. Requires attorney's fees and costs to be awarded to the entity that incurred the fees and costs.

Sec. 2259.016. LIMITATIONS. Requires an action to be brought no later than the third anniversary of the date on which the violation was discovered by a certain person. Prohibits an action from being brought after the 10th anniversary of the date on which the violation was committed.

Sec. 2259.017. APPLICATION OF LAW GOVERNING EXEMPLARY DAMAGES. Provides that Chapter 41, Civil Practice and Remedies Code, does not apply to exemplary damages awarded under Section 2259.011 or to the civil penalty awarded under Section 2259.012.

#### SUBCHAPTER C. ATTORNEY GENERAL ACTION

Sec. 2259.021. ATTORNEY GENERAL INVESTIGATION. Requires the attorney general to investigate alleged violations of Section 2259.002 involving state funds. Authorizes the attorney general, if the attorney general finds that a person has violated Section 2259.002, to bring an action under Subchapter B against the person.

Sec. 2259.022. AFFECTED LOCAL GOVERNMENTAL ENTITY. Requires the attorney general, if the attorney general brings an action under Subchapter B on a claim that involves local government funds as well as state funds, to provide a copy of the complaint to the appropriate prosecuting authority. Requires the attorney general to mail the complaint to the prosecuting authority by certified mail, return receipt requested, no later than the date on which the complaint was filed. Authorizes the prosecuting authority to intervene in an action brought by the attorney general under this subchapter no later than the 60th day after the date the prosecuting authority receives the copy of the complaint. Authorizes the court to permit the prosecuting authority to intervene after the date for good cause.

#### SUBCHAPTER D. ACTION BROUGHT BY PROSECUTING AUTHORITY

Sec. 2259.031. PROSECUTING AUTHORITY INVESTIGATION. Requires a prosecuting authority to investigate alleged violations of Section 2259.002 involving funds belonging to a local governmental entity. Authorizes the prosecuting authority, if the prosecuting authority finds that a person has violated Section 2259.002, to bring an action under Subchapter B against the person.

Sec. 2259.032. ATTORNEY GENERAL. Requires the prosecuting authority, if the prosecuting authority brings an action under Subchapter B on a claim that involves state funds as well as local government funds, to provide a copy of the complaint to the attorney general. Requires the prosecuting authority to mail the complaint to the attorney general by certified mail, return receipt requested, by a certain date. Requires the attorney general, no later than the 60th day after the date the attorney general receives a copy of the complaint, to notify the court of certain information. Authorizes the prosecuting authority, if the attorney general assumes primary responsibility for conducting the action, to continue as a party in the action. Authorizes the prosecuting authority, if the attorney general declines to assume primary

responsibility for conducting the action, to continue to conduct the action.

#### SUBCHAPTER E. PRIVATE CAUSE OF ACTION

Sec. 2259.041. PRIVATE ACTION. Authorizes a person to bring a civil action in a district court in this state for a violation of Section 2259.002 in the name of the person on behalf of the state, in the name of the person on behalf of the prosecuting authority, or in the name of the person on behalf of both the state and the prosecuting authority, as appropriate.

Sec. 2259.042. SERVICE OF PETITION. Requires a person who brings an action under this subchapter to serve a copy of the petition in the action on certain persons. Requires service under this section to be made in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

Sec. 2259.043. INTERVENTION. (a) Authorizes the attorney general, in an action involving only state funds, to assume responsibility for prosecution of the action by entering an appearance no later than the 60th day after the date the attorney general receives service of the petition under Section 2259.042.

(b) Authorizes the prosecuting authority, in an action involving only local governmental funds, to assume responsibility for prosecution of the action by entering an appearance no later than the 60th day after the date the prosecuting authority receives service of the petition under Section 2259.042.

(c) Authorizes the attorney general, in an action involving state and local government funds, to assume responsibility for prosecution of the action by entering an appearance no later than the 60th day after the date the attorney general receives service of the petition under Section 2259.042.

(d) Authorizes the prosecuting authority, if the attorney general assumes responsibility for prosecution of the action under Subsection (c), no later than the 60th day after the date the prosecuting authority receives service of the petition under Section 2259.042, to enter an appearance and proceed as a party in the action.

(e) Authorizes the prosecuting authority, if the attorney general does not assume responsibility for prosecution of the action under Subsection (c), to assume responsibility for prosecution of the action no later than the 30th day after the last date the attorney general may enter an appearance under this section.

Sec. 2259.044. AWARD TO PRIVATE PARTY IF GOVERNMENT PROSECUTES ACTION. Requires the court, if the attorney general or the prosecuting authority assumes responsibility for prosecution of the action and the action is settled or the court enters a judgment for the state or the local government, to award a reasonable portion of the settlement or judgment to the person who commenced the action under this subchapter. Requires the court, in determining the amount to award a person under this section, to consider the value of any information or evidence disclosed by the person. Provides that an award of 10 percent of the settlement or judgment is presumed to be reasonable.

Sec. 2259.045. AWARD TO PRIVATE PARTY IF GOVERNMENT DOES NOT PROSECUTE ACTION. Requires the court to award, if the attorney general or the prosecuting authority does not assume responsibility for prosecution of the action under Section 2259.043 and the action is settled or the court enters a judgment for the state or the local government, to award a reasonable portion of the settlement or judgment to the person who prosecuted the action under this subchapter. Requires the court, in determining the amount to award a person under Subsection (a), to consider the value of the person's prosecution of the action. Provides that an award of 25 percent of the settlement or judgment is presumed to be reasonable. Authorizes the court to also award to the person who prosecuted the action reasonable expenses incurred by the person in prosecuting the action.

## SUBCHAPTER F. INTERFERENCE WITH DISCLOSURE BY EMPLOYEES

Sec. 2259.051. RIGHT TO DISCLOSE INFORMATION AND PARTICIPATE IN ACTION. Entitles a person to perform certain actions relating to disclosure of information, assisting the investigation, and participating in the action.

Sec. 2259.052. PROHIBITED CONDUCT BY EMPLOYER. Prohibits an employer from performing certain actions relating to an employee exercising the employee's rights under Section 2259.051. Provides that an employer who violates Subsection (a) is liable to the employee for certain damages. Prohibits an employee from recovering under Subsection (b) unless certain conditions are established. Provides that this section does not apply to an employer who is subject to the provisions of Chapter 554, Government Code.

SECTION 2. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 3. Emergency clause.