

Amendments to House Bill No. 146  
3rd Reading Copy

Requested by Representative Dave Gallik

For the Senate Judiciary Committee

Prepared by Valencia Lane  
March 29, 2005 (3:28pm)

1. Title, line 5.  
**Following:** "MCA,"  
**Insert:** "REPEALING SECTION 17-8-231, MCA;"
  
2. Page 2, line 4.  
**Following:** "3."  
**Strike:** "Causes of action"  
**Insert:** "False claims -- procedures -- penalties"
  
3. Page 2, line 25.  
**Following:** "(2)"  
**Strike:** "A"  
**Insert:** "In a civil action brought under [section 5 or 6], a"
  
4. Page 3, line 10.  
**Following:** "complaint"  
**Insert:** "or civil action"
  
5. Page 3, line 19.  
**Following:** "complaint"  
**Insert:** "or civil action"
  
6. Page 3, line 21.  
**Following:** "complaint"  
**Insert:** "or civil action"
  
7. Page 3, line 28.  
**Following:** "actions."  
**Strike:** "An"  
**Insert:** "A complaint or civil"  
**Following:** "under"  
**Strike:** "3"  
**Insert:** "5 or 6"
  
8. Page 4, line 3.  
**Following:** "and"  
**Strike:** "complaint"  
**Insert:** "civil action"
  
9. Page 4, line 4.

Following: "violation of"  
Insert: "[section 3]"  
Following: "a"  
Strike: "complaint under [section 3]"  
Insert: "civil action"

10. Page 4, line 6.  
Following: "citizen"  
Insert: "-- civil action"

11. Page 4, line 8.  
Following: "file"  
Insert: "a complaint"  
Following: "attorney"  
Strike: "a brief, including"  
Insert: "that includes"

12. Page 4, line 10.  
Following: "and"  
Strike: "brief"  
Insert: "complaint"

13. Page 4, line 11.  
Following: line 10  
Strike: "complaint under [sections 3 and 5]"  
Insert: "civil action"

14. Page 4, line 12.  
Following: "filing"  
Strike: "a complaint"  
Insert: "an action"

15. Page 4, line 13.  
Following: the first "a"  
Strike: "complaint"  
Insert: "civil action"

16. Page 4, line 15.  
Following: "a"  
Strike: "complaint"  
Insert: "civil action"

17. Page 4, line 16.  
Following: "a"  
Strike: "complaint"  
Insert: "civil action"

18. Page 4, line 22.  
Following: "files a"  
Strike: "complaint"

Insert: "civil action"  
Following: "may file a"  
Strike: "complaint"  
Insert: "civil action"

19. Page 4, line 25.  
Following: "citizen's"  
Strike: "complaint"  
Insert: "civil action"

20. Page 4, line 26.  
Page 4, line 27.  
Following: "citizen's"  
Strike: "complaint"  
Insert: "civil action"

21. Page 5, line 7.  
Following: "under"  
Strike: "3"  
Insert: "5 or 6"

22. Page 5, line 10.  
Following: "under"  
Strike: "3"  
Insert: "5 or 6"

23. Page 5, line 14.  
Following: "entity"  
Insert: "or private citizen"

24. Page 5, line 30.  
Following: line 29  
Insert: "(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state."

25. Page 6, line 2.  
Following: "a"  
Strike: "complaint"  
Insert: "civil action"

26. Page 6, line 12.  
Following: "a"  
Strike: "complaint"  
Insert: "civil action"

27. Page 6, line 13.  
Following: "purposes"  
Insert: "and that the court finds was clearly frivolous or"

brought solely for harassment purposes"

28. Page 6, line 20.

**Following:** "pursuant to [section"

**Strike:** "3"

**Insert:** "5 or 6"

29. Page 7, line 4.

**Following:** line 3

**Insert:** "NEW SECTION. Section 13. {standard} Repealer.

Section 17-8-231, MCA, is repealed.

{Internal References to 17-8-231: None.}"

**Renumber:** subsequent section

- END -

HOUSE BILL NO. 146

INTRODUCED BY GALLIK

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING  
*REPEALING SECTION 17-8-231, MCA;*  
A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; ~~REPEALING SECTION 17-8-231, MCA;~~ AND  
PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be cited as the "Montana False Claims Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

- (a) the chief attorney for a governmental entity; or
- (b) the attorney general with respect to the state, except 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) "Knowingly" means that a person, with respect to information, does any of the following:

- (a) has actual knowledge of the information;
- (b) acts in deliberate ignorance of the truth or falsity of the information; or
- (c) acts in reckless disregard of the truth or falsity of the information.

1 (5) "Person" includes any natural person, corporation, firm, association, organization, partnership,  
2 limited liability company, business, or trust.

3  
4 *False claims -- procedures -- penalties*  
NEW SECTION. Section 3. Causes of action. (1) A person causing damages in excess of \$500 to  
5 a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

6 (a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity  
7 a false claim for payment or approval;

8 (b) knowingly making, using, or causing to be made or used a false record or statement to get a false  
9 claim paid or approved by the governmental entity;

10 (c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the  
11 governmental entity;

12 (d) having possession, custody, or control of public property or money used or to be used by the  
13 governmental entity and knowingly delivering or causing to be delivered less property or money than the amount  
14 for which the person receives a certificate or receipt;

15 (e) being authorized to make or deliver a document certifying receipt of property used or to be used by  
16 the governmental entity and knowingly making or delivering a receipt that falsely represents the property used  
17 or to be used;

18 (f) knowingly buying or receiving as a pledge of an obligation or debt public property of the  
19 governmental entity from any person who may not lawfully sell or pledge the property;

20 (g) knowingly making, using, or causing to be made or used a false record or statement to conceal,  
21 avoid, or decrease an obligation to pay or transmit money or property to the governmental entity; or

22 (h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity,  
23 subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity  
24 within a reasonable time after discovery of the false claim.

25 *IN a civil action brought under [section 5 or 6], a*  
(2) <sup>A</sup> court shall assess not less than two times and not more than three times the amount of damages  
26 that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may  
27 impose a civil penalty of up to \$10,000 for each act. The court may not assess a civil penalty if the court finds  
28 all of the following:

29 (a) The person committing the act furnished the government attorney with all information known to that  
30 person about the act within 30 days after the date on which the person first obtained the information.

1 (b) The person fully cooperated with any investigation of the act by the government attorney.

2 (c) At the time that the person furnished the government attorney with information about the act, a  
3 criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and  
4 the person did not have actual knowledge of the existence of an investigation into the act.

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

6 (4) This section does not apply to claims, records, or statements made in relation to claims filed with  
7 the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or  
8 statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources  
9 and conservation under Title 77.

10 (5) A private citizen or governmental entity may not file a complaint: <sup>OR civil action</sup>

11 (a) against a governmental entity or an officer or employee of a governmental entity arising from  
12 conduct by the officer or employee related to the officer's or employee's service to the governmental entity;

13 (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative  
14 civil penalty proceeding in which an agency of the governmental entity is already a party;

15 (c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or  
16 administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the  
17 senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a  
18 political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the

19 information on which the allegations are based and, before filing the complaint, voluntarily provided the <sup>OR civil action</sup>  
20 information to the agency of the governmental entity that is involved with the claim that is the basis for the

21 complaint <sup>OR civil action</sup> and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit  
22 that led to the public disclosure; or

23 (d) that is based upon information discovered by a present or former employee of the governmental  
24 entity during the course of employment unless the employee first, in good faith, exhausted existing internal  
25 procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the  
26 governmental entity failed to act on the information provided within a reasonable period of time.

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28 NEW SECTION. Section 4. Limitation of actions. <sup>A complaint OR civil</sup> An action may not be filed under [section <sup>506</sup> ~~27~~] more  
29 than 3 years after the date on which an official of the governmental entity charged with responsibility to act in  
30 the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever



1 occurs first.

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3 NEW SECTION. Section 5. Investigation and <sup>civil action</sup>complaint by government attorney. A government  
4 attorney may investigate an alleged violation of <sup>[section 3]</sup> and file a <sup>civil action</sup> complaint under ~~[section 3]~~.

5

6 NEW SECTION. Section 6. Complaint by private citizen. <sup>-- civil action</sup> (1) A private citizen may file with the  
7 government attorney a notice alleging a violation of ~~[section 3]~~ against a governmental entity of which the private  
8 citizen is a resident. The private citizen shall file <sup>a complaint</sup> with the government attorney <sup>that includes</sup> a ~~brief~~, including a written  
9 disclosure of material evidence and information alleging violations.

10 (2) Within 60 days after receiving a notice and <sup>complaint</sup> ~~brief~~, the government attorney may elect to file a  
11 <sup>civil action</sup> complaint under ~~[sections 3 and 5]~~ and may, for good cause shown, move the court for extensions of the time  
12 for filing <sup>an action</sup> ~~a complaint~~.

13 (3) If the government attorney files a <sup>civil action</sup> ~~complaint~~, the private citizen may enter the action as a coplaintiff,  
14 but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the  
15 government attorney does not file a <sup>civil action</sup> ~~complaint~~ within the time allowed under subsection (2), the private citizen  
16 may file a <sup>civil action</sup> ~~complaint~~.

17 (4) The court shall permit the government attorney to intervene in an action that the government  
18 attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity  
19 are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains  
20 principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must  
21 be awarded under [sections 10 and 11] as if the government attorney had not intervened.

22 (5) After a private citizen files a <sup>civil action</sup> ~~complaint~~, no other private citizen may file a <sup>civil action</sup> ~~complaint~~ based on the  
23 facts underlying the pending action.

24

25 NEW SECTION. Section 7. Dismissal of private citizen's <sup>civil action</sup>complaint. On the motion of a government  
26 attorney, the court may dismiss a private citizen's <sup>civil action</sup> ~~complaint~~ for good cause. If an intervening government  
27 attorney seeks dismissal of a private citizen's <sup>civil action</sup> ~~complaint~~, the private citizen must be notified by the government  
28 attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present  
29 evidence at a hearing.

30

1            NEW SECTION. Section 8. Settlement. An action may be settled if the court determines after a  
 2 hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private  
 3 citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may  
 4 present evidence at the settlement hearing.

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 6            NEW SECTION. Section 9. Burden of proof -- effect of criminal conviction. (1) The plaintiff in an  
 7 action under [section <sup>5076</sup> 3] shall prove each essential element of the cause of action, including damages, by a  
 8 preponderance of the evidence.

9            (2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny  
 10 the essential elements of the offense in an action under [section <sup>5076</sup> 3] that involves the same event or events as  
 11 the criminal proceeding.

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 13            NEW SECTION. Section 10. Distribution of damages and civil penalty. If an action is settled or the  
 14 governmental entity <sup>or private citizen</sup> prevails in an action:

15            (1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the  
 16 action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and  
 17 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the  
 18 settlement or judgment;

19            (2) filed by a private citizen, except as provided in subsection (3), the private citizen is entitled to  
 20 between 25% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental  
 21 entity in the settlement or judgment;

22            (3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be  
 23 in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the  
 24 court;

25            (4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen  
 26 and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that  
 27 if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must  
 28 first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited  
 29 in the general fund of the governmental entity.

30 (5) Unless otherwise provided, the remedies or  
 penalties provided by [sections 1 through 12] are cumulative  
 to each other and to the remedies or penalties available  
 under all other laws of the state."

1            **NEW SECTION. Section 11. Costs and attorney fees.** A governmental entity in an action in which  
 2 its government attorney filed a <sup>civil action</sup> ~~complaint~~ or intervened is entitled to its reasonable costs and attorney fees if the  
 3 action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which  
 4 outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity  
 5 must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney  
 6 fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a  
 7 governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice  
 8 agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of  
 9 attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred  
 10 in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and  
 11 attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in  
 12 the action. A person who is the subject of a <sup>civil action</sup> ~~complaint~~ and who prevails in an action that is not settled and that  
 13 ~~the court finds was clearly frivolous or brought solely for harassment purposes~~ <sup>and that the court finds was clearly frivolous or brought solely for harassment purposes</sup> is entitled to the person's  
 14 reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and  
 15 governmental entity if a private citizen and a governmental entity were coplaintiffs.

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 17            **NEW SECTION. Section 12. Prohibitions on employers -- employee remedies.** (1) A governmental  
 18 entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information  
 19 to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of  
 20 a violation of [section 3] or an action brought pursuant to [section <sup>5 or 6</sup> 3].

21            (2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion  
 22 to or in any other manner discriminate against an employee in the terms and conditions of employment because  
 23 of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation  
 24 of [section 3].

25            (3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

- 26            (i) reinstatement to the same position with the same seniority status, salary, benefits, and other  
 27 conditions of employment that the employee would have had but for the discrimination;  
 28            (ii) back pay plus interest on the back pay;  
 29            (iii) compensation for any special damages sustained as a result of the discrimination; and  
 30            (iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

1 (b) An employee may file an action for the relief provided in this subsection (3).

2

3 ~~NEW SECTION. Section 13. Repealer. Section 17-8-231, MCA, is repealed.~~

4 NEW SECTION. Section 13. Repealer. Section 17-8-231, MCA, is repealed.

5 NEW SECTION. Section 13. Applicability. [This act] applies to causes of action arising after [the  
6 effective date of this act].

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- END -

*if HB 40 (Harris) and HB 146 pass, we do want to repeal 17-8-231 (amended in HB 40), so, if put repealer back in, it's OK for both bills to pass. [would be a problem if don't repeal 17-8-231 and both bills pass].*

