

## 1 SENATE BILL NO. 345

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DAMAGES AND PENALTY DISTRIBUTION UNDER  
5 THE MONTANA FALSE CLAIMS ACT; AND AMENDING SECTION 17-8-410, MCA."

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

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9 **Section 1.** Section 17-8-410, MCA, is amended to read:

10 **"17-8-410. Distribution of damages and civil penalty.** (1) Except as provided in subsection (2), if  
11 the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must  
12 receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in  
13 settlement of the claim, depending on the extent to which the person substantially contributed to the  
14 prosecution of the action.

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

18 (i) a criminal, civil, or administrative hearing;

19 (ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

20 (iii) the news media.

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

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

27 (4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person  
28 bringing the action or settling the claim must receive an amount that the court decides is reasonable for

1 collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The  
 2 amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or  
 3 settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for  
 4 reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs.  
 5 All expenses, fees, and costs must be awarded against the defendant.

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

14 (6) The governmental entity is entitled to any damages and civil penalty not awarded to the person,  
 15 ~~and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that~~  
 16 ~~if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund~~  
 17 ~~must first be fully reimbursed for the loss.~~ Any damages and civil penalties that remain after calculation and  
 18 distribution to the person under subsections (1) through (5) must be distributed first to fully reimburse any  
 19 losses suffered by the governmental entity as a result of the defendant's actions, and the remainder of the  
 20 damages and any civil penalty must be deposited in the general fund of the governmental entity.  
 21 Reimbursement must be made to the trust fund or program of the governmental entity that suffered the loss. If  
 22 more than one trust fund or program suffered a loss and there are not enough recovered funds to fully  
 23 reimburse each, then the distribution must be proportionate.

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

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