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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Thomas F. Wade.

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## DIGEST

Proposed law provides for the "Louisiana False Claims Act."

Proposed law defines the following terms:

- (1) "Claim" includes any request or demand, including any and all documents or information required by federal or state law or by rule, made against any state funds for payment. Each claim may be treated as a separate claim or several claims may be combined to form one claim.
- (2) "False or fraudulent claim" means a claim which a person submits knowing the claim to be false, fictitious, untrue, or misleading in regard to any material information. "False or fraudulent claim" shall include a claim which is part of a pattern of incorrect submissions in regard to material information or which is otherwise part of a pattern in violation of applicable federal or state law or rule.
- (3) "Knowing" or "knowingly" means that the person has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.
- (4) "Misrepresentation" means the knowing failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required on a claim or a provider agreement or the making of a false or misleading statement to any local, state, or federal agency for the purpose of obtaining funds, property, use of property, or other compensation from the state or a state program.
- (5) "Property" means any and all property, movable and immovable, corporeal and incorporeal.
- (6) "Recovery" means the recovery of overpayments, damages, fines, penalties, costs, expenses, restitution, attorney fees, interest, or settlement amounts.

Proposed law provides that no person shall knowingly present or cause to be presented a false or fraudulent claim for funds, property, use of property, or other compensation from the state or one of its programs. Further provides that no person shall knowingly engage in misrepresentation to obtain, or attempt to obtain, funds, property, use of property, or other compensation from the state or one of its programs. Also provides that no person shall conspire to defraud, or attempt to defraud, the state through misrepresentation or by obtaining, or attempting to obtain, payment for a false or fraudulent claim. Provides that no person shall knowingly make, use, or cause to be made or used a false, fictitious, or misleading statement on any form used for the purpose of

certifying or qualifying any person for eligibility for a state program or to receive any funds, property, use of property, or other compensation from the state which that person is not eligible to receive. Proposed law further provides that each violation may be treated as a separate violation or may be combined into one violation at the option of the attorney general.

Proposed law provides that no action filed under proposed law shall be instituted later than 10 years after the date upon which the alleged violation occurred; however, the action shall be instituted within one year of when the attorney general knew that the prohibited conduct occurred.

Proposed law provides that the attorney general may institute a civil action in the courts of this state to seek recovery from persons who violate the provisions of proposed law. Further provides that an action to recover costs, expenses, fees, and attorney fees shall be ancillary to, and shall be brought and heard in the same court as, the civil action brought under proposed law. Also provides that a prevailing defendant may only seek recovery for costs, expenses, fees, and attorney fees if the court finds, following a contradictory hearing, that either of the following apply:

- (1) The action was instituted by the attorney general pursuant to proposed law after it should have been determined by the attorney general to be frivolous, vexatious, or brought primarily for the purpose of harassment.
- (2) The attorney general proceeded with the action instituted pursuant to proposed law after it should have been determined by the attorney general that proceeding would be frivolous, vexatious, or for the purpose of harassment.

Proposed law also provides that any recovery awarded to a prevailing defendant shall be awarded only for those reasonable, necessary, and proper costs, expenses, fees, and attorney fees actually incurred by the prevailing defendant. Further provides that an action to recover costs, expenses, fees, and attorney fees may be brought no later than sixty days after the rendering of judgment by the district court, unless the district court decision is appealed. If the district court decision is appealed, such action may be brought no later than sixty days after the rendering of the final opinion on appeal by the court of appeal or, if applicable, by the supreme court.

Proposed law provides that actual damages incurred as a result of a violation of proposed law shall be recovered only once on behalf of a state program and shall not be waived by the court. Actual damages shall equal the difference between the value of the benefits received by the person from the state or one of its programs and the value of the benefits that the person should have received had not a violation of proposed law occurred plus interest at the maximum rate of legal interest provided by R.S. 13:4202 from the date the damage occurred to the date of repayment. Further provides that any person who is found to have violated proposed law shall be subject to a civil fine in an amount not to exceed three times the amount of actual damages sustained by the state as a result of the violation. In addition to any other penalty or fine imposed herein, any person who is found to have violated any provision of proposed law shall be subject to a civil monetary penalty of not more than \$10,000 for each false or fraudulent claim,

misrepresentation, illegal remuneration, or other act prohibited by proposed law.

Proposed law provides that any person who is found to have violated proposed law shall be liable for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees. Also provides that all awards of costs, expenses, fees, and attorney fees are subject to review by the court using a reasonable, necessary, and proper standard of review. Provides that the attorney general shall promptly remit awards for those costs, expenses, and fees incurred by the various clerks of court or sheriffs involved in the investigations or proceedings to the appropriate clerk or sheriff.

Proposed law provides that a private person may institute a civil action to seek recovery on behalf of the state and himself, except for the civil monetary penalty provided in proposed law, but only after giving 60-days written notice to the attorney general, inspector general, and legislative auditor, by certified mail, of his intention to file the action. Provides that a qui tam plaintiff shall be an original source of the information which serves as the basis for the alleged violation. Provides that more than one person may serve as a qui tam plaintiff in a qui tam action arising out of the same information and allegations provided each person qualifies as an original source. Provides that the term "original source" means a person who has direct and independent knowledge of the alleged violation and who has voluntarily provided the information to the attorney general before filing a qui tam action with the court. Further provides that no qui tam action shall be instituted later than one year after the date a qui tam complaint is received by the attorney general. Further provides that no court shall have jurisdiction over a qui tam action based upon a disclosure of allegations or transactions in a criminal, civil, or administrative hearing or as the result of disclosure of a governmental audit report, investigation, or hearing unless the person bringing the action is an original source of the information. Also provides that no court shall have jurisdiction over a qui tam action based upon a disclosure through the media unless the person bringing the action is an original source of the information and that fact is confirmed by a person with knowledge of who provided the information.

Proposed law further provides that a person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a qui tam action if the person has or had a duty or obligation to report, investigate, or pursue allegations of wrongdoing or misconduct by persons who apply for relief from or work for the state program involved in the action. Further provides that a person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a qui tam action if the person has or had access to records of the state through the normal course and scope of his employment or other relationship with the state.

Proposed law provides that no employer of a qui tam plaintiff shall discharge, demote, suspend, threaten, harass, or discriminate against a qui tam plaintiff at any time arising out of the fact that the qui tam plaintiff brought an action pursuant to proposed law unless the court finds that the qui tam plaintiff has instituted or proceeded with an action that is frivolous, vexatious, or harassing. Provides that the court shall allow the attorney general to intervene and proceed with the qui tam action in the district court at any time during the qui tam action proceedings.

Proposed law provides that a qui tam complaint and information filed with the attorney general shall not be subject to discovery or become public record until judicial service of the qui tam action is made on any of the defendants, except that the information contained therein may be given to other governmental entities or their authorized agents for review and investigation. Such entities and their authorized agents shall maintain the confidentiality of the information provided to them under proposed law.

Proposed law provides that a copy of the qui tam complaint and written disclosure of substantially all material evidence and information each qui tam plaintiff possesses shall be filed with the attorney general. Provides that the qui tam complaint and written disclosure of substantially all material evidence and information shall be filed with the attorney general within one year of the date the qui tam plaintiff knew or should have known of the information forming the basis of the complaint, and that no qui tam action shall be instituted by a qui tam plaintiff if he fails to timely file a complaint with the attorney general. Further provides that at least 30 days after filing with the attorney general, the qui tam complaint and information may be filed with the appropriate state district court. On the same date as the qui tam action is filed, the qui tam plaintiff shall serve the attorney general with notice of the filing. Also provides that if more than one qui tam action arising out of the same information and allegations is filed, the court shall dismiss all qui tam actions where the complaint and information filed with the attorney general were filed 30 days or more after the first qui tam complaint and information which serve as the basis for the alleged violation were filed with the attorney general. Further provides that the complaint and information filed with the court shall be made under seal, shall remain under seal for at least 90 days from the date of filing, and shall be served on the defendant when the seal is removed. Provides that for good cause shown, the attorney general may request one extension of the 90-day time period for the complaint and information to remain under seal and unserved on the defendant, and that the request be supported by affidavit or other submission in camera and under seal.

Provides that if the attorney general elects to intervene in the action, the attorney general shall not be bound by any act of a qui tam plaintiff. The attorney general shall control the qui tam action proceedings on behalf of the state and the qui tam plaintiff may continue as a party to the action. Provides for full cooperation between the qui tam plaintiff and his counsel and the attorney general during the pendency of the qui tam action.

Proposed law provides that if requested by the attorney general and notwithstanding the objection of the qui tam plaintiff, the court may dismiss the qui tam action provided the qui tam plaintiff has been notified by the attorney general of the filing of the motion to dismiss and the court has provided the qui tam plaintiff a contradictory hearing on the motion. Provides that if the attorney general does not intervene, the qui tam plaintiff may proceed with the qui tam action unless the attorney general shows that proceeding would adversely affect the prosecution of any pending criminal actions or criminal investigations into the activities of the defendant. Provides that such a showing be made to the court in camera and neither the qui tam plaintiff or the defendant shall be informed of the information revealed in camera. Provides that in such case, the qui tam action shall be stayed for no more than one year. Provides that if the qui tam plaintiff objects to a settlement of the qui tam action proposed by the attorney general, the court may authorize the

settlement only after a hearing to determine whether the proposed settlement is fair, adequate, and reasonable under the circumstances. If a qui tam plaintiff fails to comply with any provision of proposed law, after a contradictory hearing, the court may dismiss the qui tam plaintiff on its own motion or on motion made by the attorney general. Provides that a defendant has 30 days from the time a qui tam complaint is served on him to file a responsive pleading. Provides that plaintiff and defendant serve all pleadings and papers filed, as well as discovery, in the qui tam action on the attorney general. Provides that whether or not the attorney general proceeds with the action, upon showing by the attorney general that certain actions of discovery by the qui tam plaintiff or defendant would interfere with a criminal or civil investigation or proceeding arising out of the same facts, the court shall stay the discovery for a period of not more than 90 days. Also provides that upon a proper showing that federal or state authorities have pursued the criminal or civil investigation or proceeding with reasonable diligence and any proposed discovery in the qui tam action would unduly interfere with the criminal or civil investigation or proceeding, the court may stay the discovery for an additional period, not to exceed one year. Provides that the showing be conducted in camera. Provides that if discovery is stayed, the trial and any motion for summary judgment in the qui tam action shall likewise be stayed.

Proposed law provides that the attorney general may elect to pursue an administrative or civil action against a qui tam defendant through any alternative remedy available to the attorney general.

Proposed law provides that if the attorney general intervenes in the action brought by a qui tam plaintiff, the qui tam plaintiff shall receive at least 10%, but not more than 20%, of actual damages and civil fines awarded by the court, exclusive of the civil monetary penalty provided in proposed law. Provides for certain determinations to be made by the court in this process. Further provides that if the attorney general does not intervene in the qui tam action, the qui tam plaintiff shall receive an amount, not to exceed 30% of actual damages, civil fines, and the civil monetary penalty provided for in proposed law, which the court decides is reasonable for the qui tam plaintiff pursuing the action to judgment or settlement. In addition to all other recovery to which he is entitled and if he prevails in the qui tam action, the qui tam plaintiff shall be entitled to an award against the defendant for costs, expenses, fees, and attorney fees, subject to review by the court using a reasonable, necessary, and proper standard of review. Further provides that if the attorney general does not intervene and the qui tam plaintiff conducts the action, the court shall award costs, expenses, fees, and attorney fees to a prevailing defendant if the court finds that the allegations made by the qui tam plaintiff were meritless or brought primarily for the purposes of harassment. A finding by the court that qui tam allegations were meritless or brought primarily for the purposes of harassment may be used by the prevailing defendant in the qui tam action or any other civil proceeding to recover losses or damages sustained as a result of the qui tam plaintiff filing and pursuing such a qui tam action. Further provides that whether or not the attorney general intervenes, if the court finds that the action was brought by a person who participated in the violation which is the subject of the action, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive, taking into account the role that the qui tam plaintiff played in advancing the case to judgment or settlement and any relevant circumstances pertaining to the qui tam plaintiff's participation in the violation. Provides that a person who planned the violation

shall not be entitled to recovery.

Proposed law provides that when more than one party serves as a qui tam plaintiff, the share of recovery each receives shall be determined by the court. In no case, however, shall the total award to multiple qui tam plaintiffs be greater than the total award allowed to a single qui tam plaintiff under proposed law.

Proposed law provides that in no instance shall the attorney general or the state be liable for any costs, expenses, fees, or attorney fees incurred by the qui tam plaintiff or for any award entered against the qui tam plaintiff. Provides that the percentage of the share awarded to or settled for by the qui tam plaintiff shall be determined using the total amount of the award. However, the total amount of funds lost from the state or a state program must be made whole through the payment of any and all actual damages prior to the disbursement of any funds related to the percentage of the damages to be received by the qui tam plaintiff.

Proposed law provides that no employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to proposed law in regard to a person from whom recovery is or could be sought. Provides that such an employee may seek any and all relief for his injury to which he is entitled under state or federal law. Further provides that no individual shall be threatened, harassed, or discriminated against in any manner by a business organization, government agency, or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to proposed law in regard to a person from whom recovery is or could be sought. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law. Provides that an employee of a private entity may bring his action for relief against his employer in the same court as the action or actions were brought pursuant to proposed law. Provides that a person aggrieved of a violation of these whistleblower provisions shall be entitled to treble damages. Further provides that a qui tam plaintiff shall not be entitled to recovery pursuant to these whistleblower provisions if the court finds that the qui tam plaintiff instituted or proceeded with an action that was frivolous, vexatious, or harassing.

Effective August 15, 2008.

(Adds R.S. 49:1151-1161)