

AMENDED IN ASSEMBLY APRIL 13, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2046

Introduced by Assembly Member Goldsmith

February 18, 1998

An act to amend Section 12652 of the Government Code, relating to state actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2046, as amended, Goldsmith. False claims actions: plaintiffs.

Under the False Claims Act, if the state or a political subdivision elects not to proceed with a false claims action, a person as the qui tam plaintiff may proceed with a civil action for the person and either for the State of California in the name of the state, if any state funds are involved, or for the political subdivision in its name, if only political subdivision funds are involved. If the defendant in the qui tam action prevails, the court is authorized to award reasonable attorneys' fees and expenses against the qui tam plaintiff if it finds that the claim was clearly frivolous, clearly vexatious, or brought solely for purposes of harassment.

This bill would also authorize the court in a false claim action under the act to award reasonable attorneys' fees and expenses against the state or the political subdivision ~~whenever the defendant prevails against the state or the political subdivision~~ *if either proceeds with the action and the same conditions are met.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12652 of the Government Code
2 is amended to read:

3 12652. (a) (1) The Attorney General shall diligently
4 investigate violations under Section 12651 involving state
5 funds. If the Attorney General finds that a person has
6 violated or is violating Section 12651, the Attorney
7 General may bring a civil action under this section against
8 that person.

9 (2) If the Attorney General brings a civil action under
10 this subdivision on a claim involving political subdivision
11 funds as well as state funds, the Attorney General shall, on
12 the same date that the complaint is filed in this action,
13 serve by mail with “return receipt request” a copy of the
14 complaint on the appropriate prosecuting authority.

15 (3) The prosecuting authority shall have the right to
16 intervene in an action brought by the Attorney General
17 under this subdivision within 60 days after receipt of the
18 complaint pursuant to paragraph (2). The court may
19 permit intervention thereafter upon a showing that all of
20 the requirements of Section 387 of the Code of Civil
21 Procedure have been met.

22 (b) (1) The prosecuting authority of a political
23 subdivision shall diligently investigate violations under
24 Section 12651 involving political subdivision funds. If the
25 prosecuting authority finds that a person has violated or
26 is violating Section 12651, the prosecuting authority may
27 bring a civil action under this section against that person.

28 (2) If the prosecuting authority brings a civil action
29 under this section on a claim involving state funds as well
30 as political subdivision funds, the prosecuting authority
31 shall, on the same date that the complaint is filed in this
32 action, serve a copy of the complaint on the Attorney
33 General.



1 (3) Within 60 days after receiving the complaint
2 pursuant to paragraph (2), the Attorney General shall do
3 either of the following:

4 (A) Notify the court that it intends to proceed with the
5 action, in which case the Attorney General shall assume
6 primary responsibility for conducting the action and the
7 prosecuting authority shall have the right to continue as
8 a party.

9 (B) Notify the court that it declines to proceed with
10 the action, in which case the prosecuting authority shall
11 have the right to conduct the action.

12 (c) (1) A person may bring a civil action for a
13 violation of this article for the person and either for the
14 State of California in the name of the state, if any state
15 funds are involved, or for a political subdivision in the
16 name of the political subdivision, if political subdivision
17 funds are exclusively involved. The person bringing the
18 action shall be referred to as the qui tam plaintiff. Once
19 filed, the action may be dismissed only with the written
20 consent of the court, taking into account the best interests
21 of the parties involved and the public purposes behind
22 this act.

23 (2) A complaint filed by a private person under this
24 subdivision shall be filed in superior court in camera and
25 may remain under seal for up to 60 days. No service shall
26 be made on the defendant until after the complaint is
27 unsealed.

28 (3) On the same day as the complaint is filed pursuant
29 to paragraph (2), the qui tam plaintiff shall serve by mail
30 with “return receipt requested” the Attorney General
31 with a copy of the complaint and a written disclosure of
32 substantially all material evidence and information the
33 person possesses.

34 (4) Within 60 days after receiving a complaint and
35 written disclosure of material evidence and information
36 alleging violations that involve state funds but not
37 political subdivision funds, the Attorney General may
38 elect to intervene and proceed with the action.

39 (5) The Attorney General may, for good cause shown,
40 move the court for extensions of the time during which



1 the complaint remains under seal pursuant to paragraph
2 (2). The motion may be supported by affidavits or other
3 submissions in camera.

4 (6) Before the expiration of the 60-day period or any
5 extensions obtained under paragraph (5), the Attorney
6 General shall do either of the following:

7 (A) Notify the court that it intends to proceed with the
8 action, in which case the action shall be conducted by the
9 Attorney General and the seal shall be lifted.

10 (B) Notify the court that it declines to proceed with
11 the action, in which case the seal shall be lifted and the qui
12 tam plaintiff shall have the right to conduct the action.

13 (7) (A) Within 15 days after receiving a complaint
14 alleging violations that exclusively involve political
15 subdivision funds, the Attorney General shall forward
16 copies of the complaint and written disclosure of material
17 evidence and information to the appropriate prosecuting
18 authority for disposition, and shall notify the qui tam
19 plaintiff of the transfer.

20 (B) Within 45 days after the Attorney General
21 forwards the complaint and written disclosure pursuant
22 to subparagraph (A), the prosecuting authority may elect
23 to intervene and proceed with the action.

24 (C) The prosecuting authority may, for good cause
25 shown, move for extensions of the time during which the
26 complaint remains under seal. The motion may be
27 supported by affidavits or other submissions in camera.

28 (D) Before the expiration of the 45-day period or any
29 extensions obtained under subparagraph (C), the
30 prosecuting authority shall do either of the following:

31 (i) Notify the court that it intends to proceed with the
32 action, in which case the action shall be conducted by the
33 prosecuting authority and the seal shall be lifted.

34 (ii) Notify the court that it declines to proceed with
35 the action, in which case the seal shall be lifted and the qui
36 tam plaintiff shall have the right to conduct the action.

37 (8) (A) Within 15 days after receiving a complaint
38 alleging violations that involve both state and political
39 subdivision funds, the Attorney General shall forward
40 copies of the complaint and written disclosure to the



1 appropriate prosecuting authority, and shall coordinate
2 its review and investigation with those of the prosecuting
3 authority.

4 (B) Within 60 days after receiving a complaint and
5 written disclosure of material evidence and information
6 alleging violations that involve both state and political
7 subdivision funds, the Attorney General or the
8 prosecuting authority, or both, may elect to intervene
9 and proceed with the action.

10 (C) The Attorney General or the prosecuting
11 authority, or both, may, for good cause shown, move the
12 court for extensions of the time during which the
13 complaint remains under seal under paragraph (2). The
14 motion may be supported by affidavits or other
15 submissions in camera.

16 (D) Before the expiration of the 60-day period or any
17 extensions obtained under subparagraph (C), the
18 Attorney General shall do either of the following:

19 (i) Notify the court that it intends to proceed with the
20 action, in which case the action shall be conducted by the
21 Attorney General and the seal shall be lifted.

22 (ii) Notify the court that it declines to proceed with
23 the action but that the prosecuting authority of the
24 political subdivision involved intends to proceed with the
25 action, in which case the seal shall be lifted and the action
26 shall be conducted by the prosecuting authority.

27 (iii) Notify the court that both it and the prosecuting
28 authority decline to proceed with the action, in which
29 case the seal shall be lifted and the qui tam plaintiff shall
30 have the right to conduct the action.

31 (E) If the Attorney General proceeds with the action
32 pursuant to clause (i) of subparagraph (D), the
33 prosecuting authority of the political subdivision shall be
34 permitted to intervene in the action within 60 days after
35 the Attorney General notifies the court of its intentions.
36 The court may authorize intervention thereafter upon a
37 showing that all the requirements of Section 387 of the
38 Code of Civil Procedure have been met.

39 (9) The defendant shall not be required to respond to
40 any complaint filed under this section until 30 days after



1 the complaint is unsealed and served upon the defendant
2 pursuant to Section 583.210 of the Code of Civil
3 Procedure.

4 (10) When a person brings an action under this
5 subdivision, no other person may bring a related action
6 based on the facts underlying the pending action.

7 (d) (1) No court shall have jurisdiction over an action
8 brought under subdivision (c) against a member of the
9 State Senate or Assembly, a member of the state judiciary,
10 an elected official in the executive branch of the state, or
11 a member of the governing body of any political
12 subdivision if the action is based on evidence or
13 information known to the state or political subdivision
14 when the action was brought.

15 (2) In no event may a person bring an action under
16 subdivision (c) that is based upon allegations or
17 transactions that are the subject of a civil suit or an
18 administrative civil money penalty proceeding in which
19 the state or political subdivision is already a party.

20 (3) (A) No court shall have jurisdiction over an action
21 under this article based upon the public disclosure of
22 allegations or transactions in a criminal, civil, or
23 administrative hearing, in an investigation, report,
24 hearing, or audit conducted by or at the request of the
25 Senate, Assembly, auditor, or governing body of a
26 political subdivision, or from the news media, unless the
27 action is brought by the Attorney General or the
28 prosecuting authority of a political subdivision, or the
29 person bringing the action is an original source of the
30 information.

31 (B) For purposes of subparagraph (A), “original
32 source” means an individual who has direct and
33 independent knowledge of the information on which the
34 allegations are based, who voluntarily provided the
35 information to the state or political subdivision before
36 filing an action based on that information, and whose
37 information provided the basis or catalyst for the
38 investigation, hearing, audit, or report that led to the
39 public disclosure as described in subparagraph (A).



1 (4) No court shall have jurisdiction over an action
2 brought under subsection (c) based upon information
3 discovered by a present or former employee of the state
4 or a political subdivision during the course of his or her
5 employment, unless that employee first in good faith
6 exhausted existing internal procedures for reporting and
7 seeking recovery of the falsely claimed sums through
8 official channels and unless the state or political
9 subdivision failed to act on the information provided
10 within a reasonable period of time.

11 (e) (1) If the state or political subdivision proceeds
12 with the action, it shall have the primary responsibility for
13 prosecuting the action. The qui tam plaintiff shall have
14 the right to continue as a full party to the action.

15 (2) (A) The state or political subdivision may seek to
16 dismiss the action for good cause notwithstanding the
17 objections of the qui tam plaintiff if the qui tam plaintiff
18 has been notified by the state or political subdivision of
19 the filing of the motion and the court has provided the qui
20 tam plaintiff with an opportunity to oppose the motion
21 and present evidence at a hearing.

22 (B) The state or political subdivision may settle the
23 action with the defendant notwithstanding the objections
24 of the qui tam plaintiff if the court determines, after a
25 hearing providing the qui tam plaintiff an opportunity to
26 present evidence, that the proposed settlement is fair,
27 adequate, and reasonable under all of the circumstances.

28 (f) (1) If the state or political subdivision elects not to
29 proceed, the qui tam plaintiff shall have the same right to
30 conduct the action as the Attorney General or
31 prosecuting authority would have had if it had chosen to
32 proceed under subdivision (c). If the state or political
33 subdivision so requests, and at its expense, the state or
34 political subdivision shall be served with copies of all
35 pleadings filed in the action and supplied with copies of
36 all deposition transcripts.

37 (2) (A) Upon timely application, the court shall
38 permit the state or political subdivision to intervene in an
39 action with which it had initially declined to proceed if
40 the interest of the state or political subdivision in recovery



1 of the property or funds involved is not being adequately
2 represented by the qui tam plaintiff.

3 (B) If the state or political subdivision is allowed to
4 intervene under paragraph (A), the qui tam plaintiff shall
5 retain principal responsibility for the action and the
6 recovery of the parties shall be determined as if the state
7 or political subdivision had elected not to proceed.

8 (g) (1) (A) If the Attorney General initiates an
9 action pursuant to subdivision (a) or assumes control of
10 an action initiated by a prosecuting authority pursuant to
11 subparagraph (A) of paragraph (3) of subdivision (b),
12 the office of the Attorney General shall receive a fixed 33
13 percent of the proceeds of the action or settlement of the
14 claim, which shall be used to support its ongoing
15 investigation and prosecution of false claims.

16 (B) If a prosecuting authority initiates and conducts an
17 action pursuant to subdivision (b), the office of the
18 prosecuting authority shall receive a fixed 33 percent of
19 the proceeds of the action or settlement of the claim,
20 which shall be used to support its ongoing investigation
21 and prosecution of false claims.

22 (C) If a prosecuting authority intervenes in an action
23 initiated by the Attorney General pursuant to paragraph
24 (3) of subdivision (a) or remains a party to an action
25 assumed by the Attorney General pursuant to
26 subparagraph (A) of paragraph (3) of subdivision (b),
27 the court may award the office of the prosecuting
28 authority a portion of the Attorney General's fixed 33
29 percent of the recovery under subparagraph (A), taking
30 into account the prosecuting authority's role in
31 investigating and conducting the action.

32 (2) If the state or political subdivision proceeds with an
33 action brought by a qui tam plaintiff under subdivision
34 (c), the qui tam plaintiff shall, subject to paragraphs (4)
35 and (5), receive at least 15 percent but not more than 33
36 percent of the proceeds of the action or settlement of the
37 claim, depending upon the extent to which the qui tam
38 plaintiff substantially contributed to the prosecution of
39 the action. When it conducts the action, the Attorney
40 General's office or the office of the prosecuting authority



1 of the political subdivision shall receive a fixed 33 percent
2 of the proceeds of the action or settlement of the claim,
3 which shall be used to support its ongoing investigation
4 and prosecution of false claims made against the state or
5 political subdivision. When both the Attorney General
6 and a prosecuting authority are involved in a qui tam
7 action pursuant to subparagraph (C) of paragraph (6) of
8 subdivision (c), the court at its discretion may award the
9 prosecuting authority a portion of the Attorney General's
10 fixed 33 percent of the recovery, taking into account the
11 prosecuting authority's contribution to investigating and
12 conducting the action.

13 (3) If the state or political subdivision does not proceed
14 with an action under subdivision (c), the qui tam plaintiff
15 shall, subject to paragraphs (4) and (5), receive an
16 amount that the court decides is reasonable for collecting
17 the civil penalty and damages on behalf of the
18 government. The amount shall be not less than 25 percent
19 and not more than 50 percent of the proceeds of the
20 action or settlement and shall be paid out of these
21 proceeds.

22 (4) Where the action is one provided for under
23 paragraph (4) of subdivision (d), the present or former
24 employee of the state or political subdivision shall not be
25 entitled to any minimum guaranteed recovery from the
26 proceeds. The court, however, may award the qui tam
27 plaintiff those sums from the proceeds as it considers
28 appropriate, but in no case more than 33 percent of the
29 proceeds if the state or political subdivision goes forth
30 with the action or 50 percent if the state or political
31 subdivision declines to go forth, taking into account the
32 significance of the information, the role of the qui tam
33 plaintiff in advancing the case to litigation, and the scope
34 of, and response to, the employee's attempts to report and
35 gain recovery of the falsely claimed funds through official
36 channels.

37 (5) Where the action is one that the court finds to be
38 based primarily on information from a present or former
39 employee who actively participated in the fraudulent
40 activity, the employee shall not be entitled to any



1 minimum guaranteed recovery from the proceeds. The
2 court, however, may award the qui tam plaintiff any sums
3 from the proceeds that it considers appropriate, but in no
4 case more than 33 percent of the proceeds if the state or
5 political subdivision goes forth with the action or 50
6 percent if the state or political subdivision declines to go
7 forth, taking into account the significance of the
8 information, the role of the qui tam plaintiff in advancing
9 the case to litigation, the scope of the present or past
10 employee's involvement in the fraudulent activity, the
11 employee's attempts to avoid or resist the activity, and all
12 other circumstances surrounding the activity.

13 (6) The portion of the recovery not distributed
14 pursuant to paragraphs (1) to (5), inclusive, shall revert
15 to the state if the underlying false claims involved state
16 funds exclusively and to the political subdivision if the
17 underlying false claims involved political subdivision
18 funds exclusively. If the violation involved both state and
19 political subdivision funds, the court shall make an
20 apportionment between the state and political
21 subdivision based on their relative share of the funds
22 falsely claimed.

23 (7) For purposes of this section, "proceeds" include
24 civil penalties as well as double or treble damages as
25 provided in Section 12651.

26 (8) If the state, political subdivision, or the qui tam
27 plaintiff prevails in or settles any action under subdivision
28 (c), the qui tam plaintiff shall receive an amount for
29 reasonable expenses that the court finds to have been
30 necessarily incurred, plus reasonable costs and attorneys'
31 fees. All expenses, costs, and fees shall be awarded against
32 the defendant and under no circumstances shall they be
33 the responsibility of the state or political subdivision.

34 ~~(9) The court may award to the defendant its~~
35 ~~reasonable attorneys' fees and expenses if the defendant~~

36 *(9) If the state, a political subdivision, or the qui tam*
37 *plaintiff proceeds with the action, the court may award*
38 *to the defendant its reasonable attorneys' fees and*
39 *expenses against the party that proceeded with the action*
40 *if the defendant prevails in the action and the court finds*



1 that the claim was clearly frivolous, clearly vexatious, or
2 brought solely for purposes of harassment.

3 (h) The court may stay an act of discovery of the
4 person initiating the action for a period of not more than
5 60 days if the Attorney General or local prosecuting
6 authority show that the act of discovery would interfere
7 with an investigation or a prosecution of a criminal or civil
8 matter arising out of the same facts, regardless of whether
9 the Attorney General or local prosecuting authority
10 proceeds with the action. This showing shall be
11 conducted in camera. The court may extend the 60-day
12 period upon a further showing in camera that the
13 Attorney General or local prosecuting authority has
14 pursued the criminal or civil investigation or proceedings
15 with reasonable diligence and any proposed discovery in
16 the civil action will interfere with the ongoing criminal or
17 civil investigation or proceedings.

18 (i) Upon a showing by the Attorney General or local
19 prosecuting authority that unrestricted participation
20 during the course of the litigation by the person initiating
21 the action would interfere with or unduly delay the
22 Attorney General's or local prosecuting's authority
23 prosecution of the case, or would be repetitious,
24 irrelevant, or for purposes of harassment, the court may,
25 in its discretion, impose limitations on the person's
26 participation, including the following:

27 (1) Limiting the number of witnesses the person may
28 call.

29 (2) Limiting the length of the testimony of the
30 witnesses.

31 (3) Limiting the person's cross-examination of
32 witnesses.

33 (4) Otherwise limiting the participation by the person
34 in the litigation.

35 (j) The False Claims Act Fund is hereby created in the
36 State Treasury. Proceeds from the action or settlement of
37 the claim by the Attorney General pursuant to this article
38 shall be deposited into this fund. Moneys in this fund,
39 upon appropriation by the Legislature, shall be used by
40 the Attorney General to support the ongoing



- 1 investigation and prosecution of false claims in
- 2 furtherance of this article.

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