

HOUSE BILL No. 2729

By Committee on Appropriations

1-25

9 AN ACT providing for civil action against the submission of false claims
10 to the state or to local governments; providing for qui tam awards;
11 enacting the Kansas false claims act; amending K.S.A. 21-3910 and
12 repealing the existing section.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. This act may be cited as the “Kansas false claims
16 act”.

17 New Sec. 2. The purpose of the Kansas false claims act is to deter
18 persons from causing or assisting to cause the state or any of its political
19 subdivisions to pay for medicaid claims or any other claims, which are
20 false or procured through fraud, and to provide remedies for obtaining
21 treble damages and civil recoveries for the state or any affected political
22 subdivision when money is obtained from the state or any political sub-
23 division by reason of a false claim.

24 New Sec. 3. This act shall not apply to claims, records or statements
25 made under department of revenue statutes and regulations contained
26 separately in chapter 79 of the Kansas Statutes Annotated, nor shall this
27 act apply to claims for damages involving a value of less than an aggregate
28 of \$5,000.

29 New Sec. 4. As used in the Kansas false claims act, the following
30 words shall, unless the context clearly requires otherwise, have the fol-
31 lowing meaning:

32 (a) “Person” means any natural person, corporation, partnership, as-
33 sociation, trust or other business or legal entity.

34 (b) “Qui tam” means an action brought under a statute that allows a
35 private person to sue for a recovery, on behalf of the government.

36 (c) “False claims action” means an action filed by the office of the
37 attorney general or a relator pursuant to this act.

38 (d) “Relator” means an individual who brings a false claims action on
39 behalf of the state or political subdivision.

40 (e) “Original source” means a person:

41 (1) Who has direct and independent knowledge of the information
42 on which the allegations were based;

43 (2) who voluntarily provided the information to the state or political

1 subdivision before or upon bringing an action based on the information;
2 and

3 (3) whose information provided the first basis or first caused the mak-
4 ing of the investigation, hearing, audit or report that led to the public
5 disclosure.

6 (f) "Political subdivision" means any city, town, county or other gov-
7 ernmental entity authorized or created by state law, including school dis-
8 tricts, public corporations and authorities.

9 (g) "Knowing or knowingly" means possessing actual knowledge of
10 relevant information, acting with deliberate ignorance of the truth or fal-
11 sity of such information, or acting in reckless disregard of the truth or
12 falsity of such information, and no proof of specific intent to defraud shall
13 be required.

14 (h) "Claim" means a response to an information request from, a state-
15 ment made or materially omitted with the intent of inducing investment
16 by, or a request or demand for money, property or services, made to:

17 (1) An officer, employee or agent of this state, or of a political sub-
18 division of this state, while acting in their capacity as officer, employee
19 or agent; or

20 (2) a contractor, grantee or other recipient of money from the state
21 or a political subdivision of this state if any part of the money, property
22 or services requested or demanded was provided by the state or political
23 subdivision.

24 New Sec. 5. Except as otherwise provided in section 6, and amend-
25 ments thereto, a person who, with or without specific intent to defraud,
26 commits any of the following proscribed acts is liable to the state or a
27 political subdivision, whichever is affected, for three times the amount of
28 damages sustained by the state or political subdivision because of the act
29 of such person, for the costs of a civil action brought to recover such
30 damages and for a civil penalty where Medicaid is involved of not less
31 than \$5,500 or more than \$11,000, and in all other cases a civil penalty
32 of not less than \$3,000 or more than \$10,000 for each act:

33 (a) Knowingly presents or causes to be presented a false claim for
34 payment or approval;

35 (b) knowingly makes or uses, or causes to be made or used, a false
36 record or statement to obtain either investment or the payment or ap-
37 proval of a false claim;

38 (c) conspires to defraud by getting a false claim allowed or paid, or
39 conspires to defraud the state or political subdivision by knowingly mak-
40 ing, using, or causing to be made or used, a false record or statement to
41 conceal, avoid or decrease an obligation to pay or transmit money or
42 property to the state or political subdivision;

43 (d) has possession, custody or control of public property or money

1 and knowingly delivers or causes to be delivered to the state or a political
2 subdivision less money or property than the amount for which such per-
3 son receives a receipt;

4 (e) is authorized to prepare or deliver a receipt for money or property
5 to be used by the state or a political subdivision and knowingly prepares
6 or delivers a receipt that falsely represents the money or property;

7 (f) knowingly buys, or receives as security for an obligation, public
8 property from a person who is not authorized to sell or pledge the
9 property;

10 (g) knowingly makes or uses, or causes to be made or used, a false
11 record or statement to conceal, avoid or decrease an obligation to pay or
12 transmit money or property to the state or a political subdivision;

13 (h) is a beneficiary of an inadvertent submission of a false claim and,
14 after discovering the falsity of the claim, fails to disclose the falsity and
15 to pay back the overpayment to the state or political subdivision within
16 90 days of discovering the error; or

17 (i) knowingly and fraudulently induces a state officer or employee
18 entrusted with managing and investing funds belonging to the state or
19 any of its political subdivisions to either invest or to fail to withdraw its
20 investment in a specific holding due to the intentional misstatement or
21 intentional omission of a material fact affecting either the immediate or
22 future value of the specific holding.

23 (1) As used in this section, a person acts knowingly with respect to
24 information if such person:

25 (a) Has knowledge of the information;

26 (b) acts in deliberate ignorance of whether the information is true or
27 false; or

28 (c) acts in reckless disregard of the truth or falsity of the information.

29 New Sec. 6. In a civil action filed pursuant to the Kansas false claims
30 act, the court may enter judgment for not less than twice or more than
31 three times the amount of damages sustained, except that the court may
32 impose no civil penalty, if it finds that:

33 (a) The person against whom the judgment is entered:

34 (1) Furnished all information known to such person concerning the
35 act, within 30 days after becoming aware of the information, to the at-
36 torney general; and

37 (2) fully cooperated with any investigation of the act by the state or
38 political subdivision.

39 (b) At the time the information was furnished, no criminal prosecu-
40 tion or civil or administrative proceeding had commenced with respect
41 to the act and the person had no knowledge of the existence of any in-
42 vestigation with respect to the act.

43 New Sec. 7. Liability pursuant to the Kansas false claims act is joint

1 and several for an act done by two or more persons.

2 New Sec. 8. The attorney general may investigate any alleged liability
3 pursuant to the Kansas false claims act and may bring a civil action pur-
4 suant to this act against the person liable.

5 New Sec. 9. (a) Except as otherwise provided in this section and
6 sections 10 and 11, and amendments thereto, a private plaintiff may main-
7 tain an action pursuant to this act on such plaintiff's own account and that
8 of the state if money, property or services provided by the state are in-
9 volved, or on such plaintiff's own account and that of a political subdivi-
10 sion if money, property or services provided by the political subdivision
11 are involved, or on such plaintiff's own account and that of both the state
12 and a political subdivision if both are involved. After such an action is
13 commenced, it may be dismissed only with leave of the court, taking into
14 account the public purposes of this act and the best interest of the parties.

15 (b) If a private plaintiff brings an action pursuant to this act, no other
16 person may bring another action pursuant to the Kansas false claims act
17 based on the same facts.

18 (c) An action may not be maintained by a private plaintiff pursuant
19 to the Kansas false claims act:

20 (1) Against a member of the legislature or the judiciary, an elected
21 officer of the executive department of the state government, or a member
22 of the governing body of a political subdivision, if the action is based upon
23 evidence or information known to the state or political subdivision at the
24 time the action was brought.

25 (2) If the action is based upon allegations or transactions that are the
26 subject of a civil action or an administrative proceeding for a monetary
27 penalty to which the state or political subdivision is already a party.

28 (d) A complaint filed pursuant to this section shall be placed under
29 seal and shall remain until the attorney general has elected whether to
30 intervene. No service may be made upon the defendant until the com-
31 plaint is unsealed.

32 (e) On the date the private plaintiff files a complaint, such private
33 plaintiff shall send a copy of the complaint to the attorney general by mail
34 with return receipt requested. Such private plaintiff shall send with each
35 copy of the complaint a written disclosure of substantially all material
36 evidence and information such plaintiff possesses.

37 (f) The state is not liable for expenses which a person incurs in bring-
38 ing an action under this section.

39 New Sec. 10. No action may be maintained pursuant to section 9,
40 and amendments thereto, that is based upon information discovered by
41 a present or former employee of the state or a political subdivision during
42 such employee's employment, unless such employee first in good faith
43 exhausted internal procedures for reporting and seeking recovery of the

1 proceeds of the fraudulent activity through official channels and the state
2 or political subdivision failed to act on the information provided for not
3 less than six months.

4 New Sec. 11. (a) No action may be maintained pursuant to this act
5 that is based upon the public disclosure of allegations or transactions in
6 a criminal, civil or administrative hearing, in an investigation, report, hear-
7 ing or audit conducted by or at the request of a house of the legislature,
8 an auditor or the governing body of a political subdivision, or from the
9 news media, unless the action is brought by the attorney general or an
10 original source of the information.

11 New Sec. 12. (a) On or before 60 days after receiving a complaint
12 and disclosure, the attorney general may intervene and proceed with the
13 action or the attorney general may, for good cause shown, move the court
14 to extend the time for the attorney general's election whether to proceed.
15 The motion may be supported by affidavits or other submissions in
16 chambers.

17 (b) If the attorney general elects to intervene, the complaint shall be
18 unsealed. If the attorney general elects not to intervene, the private plain-
19 tiff may proceed and the complaint shall be unsealed.

20 New Sec. 13. (a) If the attorney general intervenes, the private plain-
21 tiff remains a party to an action pursuant to section 9, and amendments
22 thereto.

23 (b) The attorney general may move to dismiss the action for good
24 cause. The private plaintiff shall be notified of the filing of the motion
25 and is entitled to oppose it and present evidence at the hearing.

26 (c) Except as otherwise provided in this subsection, the attorney gen-
27 eral may settle the action. If the attorney general intends to settle the
28 action, the attorney general shall notify the private plaintiff of such in-
29 tention. Upon the request of the private plaintiff, the court shall deter-
30 mine whether settlement of the action is consistent with the public pur-
31 poses of this act and shall not approve the settlement of the action unless
32 it determines that such settlement is consistent with the public purposes
33 of the Kansas false claims act.

34 New Sec. 14. (a) If the attorney general elects not to intervene in an
35 action pursuant to section 9, and amendments thereto, the private plain-
36 tiff shall have the same rights in conducting the action as the attorney
37 general would have had. A copy of each pleading or other paper filed in
38 the action, and a copy of the transcript of each deposition taken, shall be
39 mailed to the attorney general if the attorney general requests a copy and
40 pays the cost thereof.

41 (b) Upon timely application, the attorney general may intervene in
42 an action in which the attorney general has previously declined to inter-
43 vene, if the interest of the state or a political subdivision in recovery of

1 the money or property involved is not being adequately represented by
2 the private plaintiff.

3 (c) If the attorney general intervenes, after previously declining to
4 intervene, the private plaintiff shall retain primary responsibility for con-
5 ducting the action and any recovery shall be apportioned as if the attorney
6 general had not intervened.

7 New Sec. 15. The defendant is entitled to 30 days in which to re-
8 spond after a complaint filed pursuant to section 9, and amendments
9 thereto, is unsealed and served upon such defendant.

10 New Sec. 16. (a) The court may stay discovery by a private plaintiff
11 for not more than 60 days if the attorney general shows that the proposed
12 discovery would interfere with the investigation or prosecution of a civil
13 or criminal matter arising out of the same facts, whether or not the at-
14 torney general participates in the action.

15 (b) The court may extend the stay upon a further showing that the
16 attorney general has pursued the civil or criminal investigation or pro-
17 ceeding with reasonable diligence and the proposed discovery would in-
18 terfere with its continuation. Discovery may not be stayed for a total of
19 more than six months over the objection of the private plaintiff, except
20 for good cause shown by the attorney general.

21 (c) A showing made pursuant to this section shall be made in
22 chambers.

23 New Sec. 17. Upon a showing by the attorney general that unres-
24 tricted participation by a private plaintiff would interfere with or unduly
25 delay the conduct of an action, or would be repetitious, irrelevant or solely
26 for harassment, the court may restrict such plaintiff's participation in-
27 cluding, but not limited to, restricting:

- 28 (a) The number of witnesses such plaintiff may call;
- 29 (b) the length of the testimony of the witnesses; or
- 30 (c) such plaintiff's cross-examination of witnesses.

31 New Sec. 18. Pursuant to this act:

32 (a) An action shall not be commenced on or after six years after the
33 date that the fraudulent activity occurred, subject to the discovery rule.

34 (b) Where a government seal has been placed upon a case filed in a
35 separate state or federal jurisdiction, and the case affects Kansas or one
36 of its political subdivisions, the discovery rule shall dictate that the statute
37 of limitations shall begin to toll only from the time the seal is lifted by
38 the court of original jurisdiction, and, in such cases, a relator or the at-
39 torney general may commence an action pursuant to this act on or before
40 six years after the date the seal is lifted by the court of original jurisdiction,
41 but in no event may an action commence on or after 10 years after the
42 date on which the violation alleged was committed.

43 (c) The state of Kansas, its political subdivisions, and the qui tam

1 relator shall have the right to join, on behalf of the state or its political
2 subdivisions, any case already filed in a separate jurisdiction, which has
3 not yet reached trial or final settlement negotiations, if the state of Kansas
4 or its political subdivision or subdivisions demonstrate prior to entering
5 the case that it has legal standing to be a party to the action.

6 (d) In an action pursuant to this act, the standard of proof shall be a
7 preponderance of the evidence. A finding of guilt in a criminal proceeding
8 charging false statement or fraud, whether upon a verdict of guilty or a
9 plea of guilty or nolo contendere, estops the person found guilty from
10 denying an essential element of that offense in an action pursuant to this
11 act based upon the same transaction as the criminal proceeding.

12 (e) An ex post facto bar shall apply to cases already filed in other
13 jurisdictions, which affect Kansas or any of its political subdivisions, which
14 have begun trial or final settlement negotiations, or which have already
15 reached a final judgment, and to any violations occurring, prior to enact-
16 ment of this act, if:

17 (1) Within 60 days after either:

18 (i) A complaint is filed; or

19 (ii) the defendant is made aware of the complaint, whichever occurs
20 last.

21 (2) The defendant:

22 (i) Acknowledges the fraud;

23 (ii) is shown to have ceased the fraud; and

24 (iii) agrees to fully reimburse the state or political subdivision for any
25 and all losses incurred as a result of the fraudulent activity, including
26 reasonable attorney's fees and expenses associated with recovering the
27 state's or political subdivision's loss.

28 (f) If the defendant denies the existence of fraud and the state or
29 political subdivision can prove beyond a preponderance of the evidence
30 that the fraud had in fact existed and that the defendant knew of its
31 existence, the defendant's response shall constitute a new and continuing
32 fraud under subsection (g) of section 5, and amendments thereto, of this
33 act by having now knowingly made or used, or caused to be made or used,
34 a false record or statement to conceal, avoid or decrease an obligation to
35 pay or transmit money or property to the state or political subdivision.
36 No ex post facto bar shall then apply due to the commission of a new and
37 continuing fraud post-dating enactment of this act, attaching all previous
38 fraud committed to the parameters of this section, and all fraud originally
39 alleged shall then be subject to this act, its statute of limitations, and its
40 treble damages and civil penalties provisions, as well as the employer
41 liability provisions contained in sections 25 and 26 of this act, and amend-
42 ments thereto.

43 (g) The ex post facto bar of subsection (e) of this section shall not

1 apply to the employer liability provisions contained in sections 25 and 26
2 of this act, and amendments thereto; and the statute of limitations and
3 employer liability for acts of retaliation or coercion against an employee,
4 as contained in this act, shall apply to sections 25 and 26 as though the
5 act has been in force at the time of the violation.

6 New Sec. 19. (a) If the attorney general, county attorney or a private
7 plaintiff prevails in or settles an action pursuant to section 9, and amend-
8 ments thereto:

9 (1) The private plaintiff shall be entitled to a reasonable amount for
10 expenses that the court finds were necessarily incurred, including reason-
11 able costs, attorney's fees and the fees of expert consultants and expert
12 witnesses. Such expenses shall be awarded against the defendant, and
13 may not be allowed against the state or a political subdivision; and

14 (2) the office of the attorney general or county attorney prosecuting
15 the case shall be entitled to a reasonable amount for expenses that the
16 court finds were necessarily incurred, including reasonable costs and fees
17 of expert consultants and expert witnesses. Such expenses shall also be
18 awarded against the defendant, and may not be allowed against the state
19 or a political subdivision.

20 (b) If the defendant prevails in the action, the court may award rea-
21 sonable expenses and attorney's fees and all compensatory damages nec-
22 essary to make the defendant whole, where appropriate, against the party
23 or parties who brought the action, if the court finds that the action was
24 clearly vexatious, without merit and brought solely for harassment. Fur-
25 ther, if the court finds that the action was clearly vexatious or brought
26 solely for harassment, the court may impose a fine of up to \$7,500 against
27 the parties, jointly and severally, who brought such action, to be paid into
28 the state's false claims litigation revolving fund created and referred to in
29 section 18 herein.

30 New Sec. 20. As used in section 20 to section 24, inclusive, and
31 amendments thereto, "recovery" includes civil penalties and shall not in-
32 clude any allowance of expenses or attorney's fees.

33 New Sec. 21. Subject to any relevant provisions of the federal de-
34 partment of health and human services office of inspector general re-
35 garding the payment of fees, if the attorney general initiates or joins an
36 action pursuant to this act, an amount not less than 12% of the total
37 recovery plus all moneys recovered by the attorney general for expenses
38 incurred in the enforcement of this act, including, but not limited to, the
39 costs of the investigation, litigation and attorney fees shall be remitted to
40 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
41 and amendments thereto. Upon receipt of each such remittance, the state
42 treasurer shall deposit this entire amount in the state treasury to the credit
43 of the false claims litigation revolving fund, which is hereby established

1 in the state treasury. Moneys in the false claims litigation revolving fund,
2 may be appropriated to the attorney general, and may be used, or shared
3 with the Kansas medicaid fraud control unit in the U.S. attorneys office
4 or with county attorneys, at the discretion of the attorney general, in order
5 to defray the costs of investigating and litigating false claims.

6 New Sec. 22. (a) If the attorney general intervenes at the outset in
7 an action pursuant to section 9, and amendments thereto, the private
8 plaintiff is entitled, except as otherwise provided in section 23, and
9 amendments thereto, to receive an amount not less than 15% or more
10 than 25% of any recovery, according to the extent of the private plaintiff's
11 contribution to the conduct of the action.

12 (b) If the attorney general does not intervene in the action at the
13 outset, the private plaintiff is entitled, except as otherwise provided in
14 section 23, and amendments thereto, to receive an amount not less than
15 25% or more than 30% of any recovery, as the court determines to be
16 reasonable.

17 New Sec. 23. (a) If the action is one described in section 10, and
18 amendments thereto, the present or former employee of the state or
19 political subdivision shall be entitled to an amount not less than 15% of
20 any recovery, and the court may award such employee an amount no more
21 than 25% of the recovery if the attorney general intervenes in the action
22 at the outset, or nor more than 30% if the attorney general does not
23 intervene, according to the significance of such employee's information,
24 the extent of such employee's contribution to the conduct of the action
25 and the response to such employee's efforts to report the false claim and
26 gain recovery through other official channels.

27 (b) If the private plaintiff is a present or former employee of the state
28 or a political subdivision and benefitted financially more than simply
29 maintaining employment or receiving standard or reasonable bonus or
30 bonuses from the fraudulent activity, such plaintiff shall not be entitled
31 to any minimum percentage of any recovery, but the court may award
32 such plaintiff an amount not more than 10% of the recovery if the attorney
33 general intervenes in the action at the outset, or an amount not more
34 than 20% if the attorney general does not intervene, according to the
35 significance of such private plaintiff's information, the extent of such
36 plaintiff's contribution to the conduct of the action, the extent of such
37 plaintiff's involvement in the fraudulent activity, such plaintiff's attempts
38 to avoid or resist the activity and the other circumstances of the activity.

39 New Sec. 24. The portion of any recovery not apportioned pursuant
40 to sections 21 through 23, inclusive, and amendments thereto, shall be
41 credited to the state general fund with the compensatory portion of dam-
42 ages recovered applied toward the specific state agency budget or budgets
43 shown to have been defrauded and which were the basis of the litigation

1 which brought about the recovery, if the money, property or services were
2 provided only by the state, or into the general fund of the political sub-
3 division if they were provided only by a political subdivision. If the action
4 involved both state and federal funds, or if the action involved both the
5 state and a political subdivision, the court shall apportion the remaining
6 portion of any recovery between them according to the respective values
7 of the money, property or services provided by each, and with the com-
8 pensatory portion of damages recovered being distributed to the respec-
9 tive budget or budgets which were shown through the litigation to have
10 been defrauded.

11 New Sec. 25. (a) An employer shall not adopt or enforce any rule or
12 policy forbidding an employee to disclose information to the state, a po-
13 litical subdivision or a law enforcement agency or to act in furtherance of
14 an action pursuant to this act, including investigation for, bringing or
15 testifying in such an action.

16 (b) An employer shall not discharge, demote, suspend, threaten, ha-
17 rass, deny promotion to or otherwise discriminate or retaliate against an
18 employee in the terms or conditions of such employee's employment
19 because of lawful acts done by such employee on such employee's own
20 behalf or on behalf of others in disclosing information to the state, a
21 political subdivision or a law enforcement agency in furtherance of an
22 action pursuant to this act, including investigation for, bringing or testi-
23 fying in such an action.

24 (c) Any provision within an employment severance agreement, or dis-
25 charge communication of any kind, which seeks to limit in any way the
26 employee's right or obligation to file a qui tam action under this statute,
27 shall be invalid and nonbinding upon the employee.

28 New Sec. 26. (a) An employer who violates subsection (b) of section
29 25, and amendments thereto, is liable to the affected employee in a civil
30 action for all relief necessary to make such employee whole, including,
31 without limitation, reinstatement with the same seniority as if the dis-
32 crimination had not occurred or damages in lieu of reinstatement if ap-
33 propriate, twice the amount of lost compensation and salary, interest on
34 the lost compensation and salary, any special damages sustained as a result
35 of the discrimination, and punitive damages if appropriate. The employer
36 is also liable for expenses recoverable pursuant to section 19, and amend-
37 ments thereto, costs and attorney's fees.

38 (b) An employee is entitled to the remedies provided in subsection
39 (a) only if:

40 (1) Such employee took reasonable measures to report or stop the
41 fraud within the company; voluntarily disclosed information to law en-
42 forcement, the state or affected political subdivision; or voluntarily acted
43 in furtherance of an action pursuant to this act; and

1 (2) such employee suffered termination, demotion, retaliation, ha-
2 rassment, hostility or markedly worsened working conditions, threat of
3 termination or demotion, or was otherwise punished for reporting, or
4 coerced by such employee's employer into any participation in, or con-
5 cealing of, fraudulent activity.

6 New Sec. 27. On and after January 1, 2007, any entity or contractor
7 receiving annual payments from Medicaid or the state of Kansas or any
8 of its political subdivisions of at least \$1 million, as a condition of receiving
9 such payments, shall have:

10 (1) Established written policies, procedures, and protocols for the
11 training of all employees of the entity, and of any contractor or agent of
12 the entity, which includes a detailed discussion of: (a) the state and
13 federal false claims acts;

14 (b) federal administrative remedies for false claims and statements;

15 (c) state laws pertaining to civil or criminal penalties for false claims
16 and statements; and

17 (d) whistleblower protections under state and federal false claims
18 laws, with respect to the role of such laws in preventing and detecting
19 waste, fraud and abuse against government-funded programs.

20 (2) Included in such written materials detailed provisions and training
21 regarding the entity's policies and procedures for detecting and prevent-
22 ing waste, fraud and abuse.

23 (3) Included in any employee handbook for the entity a specific dis-
24 cussion of such laws, the rights of employees to be protected as whistle-
25 blowers, and the entity's policies and procedures for detecting and pre-
26 venting waste, fraud and abuse.

27 (4) Begun requiring mandatory training for all employees of the en-
28 tity and of any contractor or agent of the entity, at the time of hiring, with
29 respect to such laws and the entity's policies and procedures for detecting
30 waste, fraud and abuse.

31 New Sec. 28. (a) Entities and contractors subject to the provisions
32 of section 27 of this act, and amendments thereto, shall receive guidance
33 as necessary from the office of the Kansas attorney general or the office
34 of inspector general in creating their written policies, procedures and
35 training.

36 (b) Both the written policies and the training of employees in relation
37 to the requirements of section 27 of this act, and amendments thereto,
38 shall be made available for review or oversight from time to time by the
39 office of the Kansas attorney general or the office of inspector general as
40 needed.

41 New Sec. 29. (a) In addition to the many forms of fraud that are
42 subject to this act, it shall also be expressly a violation of this act to resell
43 to any government healthcare plan, any dose of medicine that is adulter-

1 ated or any dose of medicine that has already been paid for by the same
2 or any other government healthcare plan, which dose went unused or
3 returned and was restocked without correctly reimbursing the first
4 purchaser.

5 (b) Expressly identifying this fraud in section (a) as being subject to
6 this act is in keeping with requirements of federal legislation and shall in
7 no way be interpreted to limit the vast array of forms or methods of fraud
8 that shall be subject to this act.

9 New Sec. 30. (a) The provisions of this act are not exclusive, and the
10 remedies provided for in this act shall be in addition to any other remedies
11 provided for in any other law or available under common law.

12 (b) If any section, subsection, paragraph or provision of this act shall
13 be held to be invalid by any court for any reason, or the application thereof
14 to any person or circumstance is held to be unconstitutional or invalid, it
15 shall be presumed that this act would have been passed by the legislature
16 without such invalid section, subsection, paragraph, provision or appli-
17 cation, and such finding or construction shall not in any way affect the
18 remainder of this act; and the application of the provision to other persons
19 or circumstances shall also not be affected thereby.

20 (c) This act shall be liberally construed and applied to promote the
21 public interest.

22 Sec. 31. K.S.A. 21-3910 is hereby amended to read as follows: 21-
23 3910. (a) Misuse of public funds is *knowingly*:

24 (1) Using, lending or permitting another to use, public money in a
25 manner not authorized by law, by a custodian or other person having
26 control of public money by virtue of such person's official position;

27 (2) *attempting to obtain, authorizing, attempting to authorize or al-*
28 *lowing any payment for medicaid services that exceeds the limitations of*
29 *federal laws, rules and regulations, Kansas laws, rules and regulations, or*
30 *the terms of the Kansas medicaid plan or the provider manual; or*

31 (3) *by-passing or overriding an edit, attempting to by-pass or over-*
32 *ride an edit or allowing an edit to be by-passed or overridden, including,*
33 *but not limited to, deactivation of any edit, in any claims submission or*
34 *processing system used by the Kansas medicaid program or any of its*
35 *contractors, unless such conduct is consistent with existing written excep-*
36 *tions established by, or with the express written approval of, an official*
37 *of the Kansas single state medicaid agency who is authorized to make*
38 *such exceptions.*

39 (b) As used in this section, "public money," means any money or
40 negotiable instrument which belongs to the state of Kansas or any political
41 subdivision thereof, *including money provided to the state of Kansas by*
42 *the federal government.*

43 (c) ~~Misuse of public funds is a severity level 8, nonperson felony.~~

- 1 (1) *Misuse of public funds where the aggregate amount of money paid or*
2 *claimed in violation of this section is \$100,000 or more is a severity level*
3 *5, nonperson felony.*
- 4 (2) *Misuse of public funds where the aggregate amount of money paid*
5 *or claimed in violation of this section is at least \$25,000 but less than*
6 *\$100,000 is a severity level 7, nonperson felony.*
- 7 (3) *Misuse of public funds where the aggregate amount of money paid*
8 *or claimed in violation of this section is at least \$1,000 but less than*
9 *\$25,000 is a severity level 9, nonperson felony.*
- 10 (4) *Misuse of public funds where the aggregate amount of money paid*
11 *or claimed in violation of this section is less than \$1,000 is a class A*
12 *nonperson misdemeanor. Upon conviction of misuse of public funds, the*
13 *convicted person shall forfeit the person's official position, and shall*
14 *thereafter be prohibited from holding any official, employee or contract*
15 *position with the state of Kansas or any political or taxing subdivision,*
16 *when such convicted person would have control of public money by virtue*
17 *of such person's official position.*
- 18 Sec. 32. K.S.A. 21-3910 is hereby repealed.
- 19 Sec. 33. This act shall take effect and be in force from and after its
20 publication in the statute book.