

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 44

As Amended by House Committee on
Judiciary

Brief*

SB 44 would create a civil cause of action for perpetrating a specified fraudulent claim on the state government or affected political subdivision under the newly created Kansas False Claims Act. The following actions, if intentional, would be defined as fraudulent claims under the Act:

- Making a false claim for payment or approval;
- Using false records or submitting a false statement for payment;
- Using false records or submitting a false statement to conceal, avoid, or decrease an obligation to pay;
- Delivering less property or money than commissioned;
- Falsely certifying the receipt of property;
- Buying or accepting an obligation for public property from a person not authorized to sell or pledge the property;
- Benefitting from a fraudulent claim and failing to disclose the false claim; or
- Conspiring to commit any of the above violations.

Any person who makes a fraudulent claim to the state government or affected political subdivision would be liable for three times the amount of actual damages, a civil penalty between \$1,000 to \$11,000 for each violation, and reasonable costs and attorney fees associated with the civil litigation. The bill would allow a court to assess not more than two times the amount of actual damages and no civil penalty if the court finds the person committing the violation furnishes all known information within 30 days of the violation, fully cooperates with the investigation, and no legal action has commenced.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill excludes claims, records, or statements made under the State Revenue and Taxation Code.

The Attorney General would investigate and pursue civil action for violations of this Act. The Attorney General could utilize city attorneys, county attorneys, and private attorneys for violations at the local level when needed. A civil action could be pursued up to six years after the violation. Also, civil action could be sought for activities committed prior to the effective date of this Act, if the limitation period has not lapsed.

Any employee who is retaliated against, in the terms and conditions of employment, by an employer because of participating in a civil action under this Act would be entitled to all relief necessary to make the employee “whole.”

Of the monies recovered, amounts representing the fraudulent payment and any associated federal penalties would be remitted to the affected state agency or local government. Recoveries beyond these amounts would be deposited into the newly created False Claims Litigation Revolving Fund. The Fund would finance the Attorney General’s litigation costs. The Attorney General also could use the funds to finance any expenditures incurred outside its operations that assist with administering the Act.

The statute of limitations which originally would have begun after the date the violation was committed was changed to begin when the violation was “discovered.”

The bill would allow an innocent mistake to be a defense under the Act. Various technical amendments were made to the bill.

The bill would take effect upon its publication in the *Kansas Register*.

Background

The proponents of the bill who testified at the Senate Committee were Randy Hearrell, Executive Director, Kansas Judicial Council; Patrick Hurley, Kansas Judicial Council, False Claims Advisory Committee; Loren Snell, Kansas Deputy Attorney General; and Jerry Slaughter, Executive Director, Kansas Medical Society.

There was no testimony in opposition to the bill.

Conferees presenting neutral testimony to the bill at the Senate Committee were Mark Dessetti, Kansas National Education Association; and Chad Austin, Vice President, Kansas Hospital Association.

The House Judiciary Committee inserted the provision to change the word “committed” to “discovered,” modified the bill regarding an innocent mistake, and made technical amendments.

The fiscal note from the Division of Budget states, according to the Office of Attorney General, SB 44 would allow civil prosecutions based in the Medicaid Fraud Division to be funded by the Medicaid Fraud Prosecution Revolving Fund, and not with any State General Fund dollars. In addition, civil prosecutions originating from the Civil Litigation Division of the Attorney General’s Office would be far less frequent and would ultimately be paid for from the False Claims Litigation Revolving Fund created by SB 44, not from the State General Fund. The agency also indicates that substantial amounts of taxpayer money are expected to be recovered with the passage of SB 44, based on similar legislation enacted in other states.

SB 44 has the potential to increase the amount of money recovered for fraudulent claims for state agencies and local governments. This bill also would give the state additional monies to pursue fraudulent claims, because it could recover three times the amount of the damages, civil penalties, and attorney fees. However, there are no data on which to make an

accurate estimate. Therefore, a fiscal effect cannot be determined.

SB 44 has the potential for increasing litigation in the courts because of the new violation created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. Any fiscal effect associated with SB 44 is not reflected in *The FY 2010 Governor's Budget Report*.