

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1595 False Claims
SPONSOR(S): Ford
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u>6 Y, 0 N</u>	<u>Blalock</u>	<u>Bond</u>
2) <u>Safety & Security Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Blalock</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Florida False Claims Act authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency.

This bill makes the following changes to the Florida False Claims Act:

- Increases the statute of limitation for bringing actions against people who violate the Florida False Claims Act;
- Increases the civil penalty for violating the Florida False Claims Act from between \$5,000 and \$10,000 to between \$5,500 and \$11,000; and
- Specifically provides that the Florida False Claims Act pertains to false claims submitted electronically.

This bill appears to have the potential to increase state government revenues. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes personal responsibility -- This bill increases the civil penalty for violating the Florida False Claims Act.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida False Claims Act (FFCA)¹ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. The FFCA is modeled after the Federal False Claim Act that was enacted during the Civil War in response to widespread fraud among defense contractors.²

In Florida, the FFCA has often been used to combat health care, nursing home, Medicaid, and Medicare fraud. An action under the FFCA can be brought either by the state itself, or by a private individual on behalf of the state. The Department of Legal Affairs and then Department of Financial Services are responsible for investigating and litigating actions brought under the FFCA. Action brought by private entities on behalf of the state are called "qui tam" actions.³

Section 68.083(3), F.S., provides that when a qui tam action is filed in the circuit court, a copy of the complaint and disclosure of all material evidence must be served on the Attorney General, as head of the Department of Legal Affairs, and the Chief financial Officer, as head of the Department of Financial Services.

Section 68.083(3), F.S., also provides that when a private individual brings a potential claim to the attention of the Department of Legal Affairs or the Department of Financial Services, these departments have 90 days to decide whether they are going to intervene, and take over litigating the FFCA action from the private individual.

Section 68.084, F.S., provides that when the Department of Legal Affairs shows that certain actions of discovery by the private individual initiating the FFCA action would interfere with an investigation by the state or the prosecuting of another matter arising out of the same facts, then the court can stay the discovery for no more than 90 days. Under certain circumstances, the court can extend the 90-day period an additional 90 days, if the department shows that they have pursued their investigation with reasonable diligence.

¹ Sections 68.081- 68.09, F.S.

² *False Claims Amendments Act of 1986*, S. Rep. No. 99-345, at 8 (1986), reprinted in 1986 U.S.C.C.A.N 5266, 5273 ("The False Claims Act was adopted in 1863 and signed into law by President Abraham Lincoln in order to combat rampant fraud in Civil War defense contracts."); see also *Rainwater v. United States*, 356 U.S. 590, 592 (1958) ("The Act was originally passed in 1863 after disclosure of widespread fraud against the Government during the War Between the States.").

³ "Qui tam" cases usually arise from an employee of an institution such as a health care provider who discovers that violations of the FFCA are occurring. This is a type of whistleblower action. In a qui tam action under the FFCA, the employee will sue on behalf of the state to collect money that was illegally defrauded from the state. A private entity that brings a successful FFCA action on behalf of the state will receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount must not be less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment.

Actions that violate the FFCA include:

- Submitting a false claim for payment;
- Making or using a false record to get a false claim paid;
- Conspiring to make a false claim or get one paid; or
- Making or using a false record to avoid payments owed to the state government.

The penalty for violating the FFCA is \$5,000 to \$10,000 per claim, plus three times the amount of damages to the state government for FFCA violations. For example, if a person were found guilty of making a false claim where he or she defrauded \$100,000 from the state, then that person would have to pay the state \$300,000 plus the \$5,000 to \$10,000 penalty per claim.

Section 68.089, F.S., provides a statute of limitation where a civil action under the FFCA cannot be brought:

- 5 years after the date on which the false claim against the state is committed; or
- 2 years after the date when the facts are known or reasonably should have been known by the state, but in no event more than 7 years after the date on which the violation is committed.

Effect of the Bill

This bill amends s. 68.082, F.S., to provide that the definition of "claim" include all written or electronically submitted requests or demands.

This bill amends several sections of the Florida False Claims Act (FFCA) to specifically provide that the act will apply to all claims that are false or fraudulent.

This bill amends s. 68.082, F.S., to increase the level of civil penalties that the state is authorized to charge against a person that is found to have violated the FFCA from between \$5,000 - \$10,000 to between \$5,500 - \$11,000, while still allowing for treble damages.

This bill amends s. 68.083, F.S., to reduce from 90 to 60 days the time the Department of Legal Affairs or the Department of Financial Services have to decide whether they are going to intervene, and take over litigating an FFCA action from a private individual that has filed suit under the act in circuit court.

This bill amends s. 68.084, F.S., to reduce from 90 to 60 days the time that the court can stay actions of discovery by a private individual initiating an FFCA action where the Department of Legal Affairs shows that the discovery would interfere with an investigation by the state or the prosecuting of another matter arising out of the same facts. This bill also reduces from 90 to 60 days the time that a court can extend the stay if the department shows that they have pursued their investigation with reasonable diligence.

This bill amends s. 68.089, F.S., to increase the statute of limitations to 6 years after the date on which the false claim against the state is committed, or 3 years after the date when the facts are known by the state, but in no event more than 10 years after the date on which the violation is committed.

C. SECTION DIRECTORY:

Section 1 amends s. 68.081, F.S., relating to the Florida False Claims Act.

Section 2 amends s. 68.082, F.S., relating to false claims against the state.

Section 3 amends s. 68.083, F.S., relating to civil action for false claims.

Section 4 amends s. 68.084, F.S., relating to the rights of the parties in civil actions.

Section 5 amends s. 68.085, F.S., relating to awards to plaintiffs bringing action.

Section 6 amends s. 68.089, F.S., relating to limitations of actions.

Section 7 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have a positive impact on state government revenues due to the increased civil penalty that the state could collect under this bill.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and businesses that are found to be in violation of the Florida False Claims Act could be required to pay between \$500 and \$1,000 more in penalties per false claim under this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The passage of House Bill 1595 will strengthen Florida's False Claims Act and will allow Florida to fight those who defraud our Medicaid program. By including language to include electronically filed claims, increasing the range of civil penalties the state can seek as well as increase the time the State has to bring forth these claims, this bill will provide the state with more tools to combat Medicaid fraud.

House Bill 1595 will also bring Florida's False Claims Act in line with the federal False Claims Act and will bring a positive fiscal impact to the budget. By making the Florida False Claims Act mirror the federal False Claims Act, the amount that Florida will recover from on these forms of civil actions will increase by 10%.

Thank you for the opportunity and I ask for your support of House Bill 1595.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 21, 2007, the Committee on Courts adopted one amendment to this bill, which removed the requirement in the bill that complaints filed under the Florida False Claims Act become automatically sealed. The bill was then reported favorably with an amendment.

On April 11, 2007, the Safety & Security Council reported the bill favorably with a council substitute. This analysis is drafted to the council substitute.