



# WISCONSIN CIVIL JUSTICE COUNCIL, INC.

*Promoting Fairness and Equity in Wisconsin’s Civil Justice System*

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## Wisconsin Civil Justice Council Opposes Wisconsin’s False Claims Act

### Senate Bill 447 – Assembly Bill 792

The Wisconsin Justice Council (WCJC) was formed in early 2009 to represent Wisconsin business interests on emerging civil litigation challenges before the Legislature. Our primary goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin’s image as a place to live and work.

WCJC opposes SB 447/AB 792 because it encourages abusive litigation by providing incentives for private parties to bring lawsuits on behalf of the state. Moreover, because existing laws provide meaningful avenues for the state to prosecute those who file false claims, SB 447/AB 792 will do little to curtail government fraud.

### What Are “False Claims” or *Qui Tam* Laws?

Spurred by financial incentives in the federal Deficit Reduction Act of 2005, states have considered adopting “false claims” or *qui tam* laws targeting Medicaid fraud.

These laws generally authorize private civil actions alleging a person knowingly presented a false claim and deceived the state for the purpose of a getting a claim paid. A “claim” includes any request for money, property, or services made to any officer, employee, or agent of the state, or any contractor who is reimbursed by the state.

A person bringing a *qui tam* action behalf of the government can typically receive a significant percentage of the amount recovered for the state (up to 25 percent under most laws).

False claims laws are a favorite tool of plaintiffs’ lawyers to sue companies that allegedly commit fraud against federal and state health care programs through their marketing practices. These laws essentially turn private individuals into bounty hunters for the state, often with multi-million dollar rewards.

### Current Wisconsin Law

As part of the 2007-09 Budget, the Wisconsin Legislature adopted a false claims law applicable only to fraud involving medical assistance. (Wis. Stat. § 20.931)

### SB 447/AB 792 Extends Wisconsin’s False Claims Act and Rewards Trial Attorneys

The bill would significantly extend Wisconsin’s current false claims law to *any* alleged fraudulent request for money or services made to any officer or agent of the state, or to *any* contractor providing services to the state. Under SB 447/AB 792, a person would violate the Act if he/she “knowingly makes, uses, or causes to be made or used a false record or statement to obtain approval or payment of a false claim.”

SB 447/AB 792 allows private person (called a “relator”) to bring a civil action on behalf the government. The person bringing the claim must serve the attorney general a copy of the complaint and disclose all material evidence and in formation the person possesses.

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If the attorney general proceeds with the case and the defendant is found to have submitted a false claim, the civil penalties are significant:

- Treble damages – three times the amount of damages sustained by the state.
- Penalties -- \$5,000 to \$10,000 for each violation.
- The private party who filed the lawsuit is entitled to significant compensation:
  - 15 percent to 25 percent of the proceeds of the action or settlement of the claim.
  - Plus reasonable attorneys' fees and costs.

#### **Allows Lawsuits Based on “Publicly Available Information”**

- SB 447/AB 792 differs significantly from federal law in that it allows private parties to bring lawsuits based on publicly available information.
- Thus, a private party can bring a lawsuit based on the public disclosure of allegations or transactions in government reports or hearings, or through simply through the media. Most *qui tam* laws preclude such lawsuits unless the private party bringing the lawsuit is the “original source” of the information.
- The absence of this prohibition in SB 447 will encourage opportunistic lawsuits by plaintiffs' attorneys.

#### **Allows Plaintiffs to Sue Up to 10 Years After the Alleged Fraud Occurred**

- SB 447/AB 792 provides a 10-year statute of limitations, which is extremely too long. (By contrast, the statute of limitations under the federal False Claims Act is six years.)

#### **Retaliation Claims**

- SB 447/AB 792 provides that an employee who is retaliated against as a result of filing a *qui tam* claim can bring an action against his/her employer for reinstatement, two-times back pay with interest, and special damages, including attorneys' fees and costs.

#### **WCJC Opposes SB 447/AB 792 Because it Encourages More Lawsuits but Does Nothing to Help Prevent Fraud**

The proposed false claims bill will encourage more abusive litigation by trial attorneys. This is especially the case given that SB 447/AB 792 fails to prohibit private lawsuits based on publicly available information rather than only allowing the “original source” to file the lawsuit.

Wisconsin currently can protect against false claims through contract law and prosecution of contractors. Therefore, the *qui tam* provision in SB 447/AB 792 is completely unnecessary.

Based on the foregoing, WCJC respectfully requests that the Legislature remove the false claims provision from SB 447/AB 792.