

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

HB22-1119 be amended as follows:

- 1 Amend printed bill, page 4, line 25, strike "FIVE" and substitute "TEN".
- 2 Page 5, line 7, after "THE" insert "FALSITY OF THE".
- 3 Page 5, line 13, after the period, insert "A PERSON WHO ACTS MERELY
- 4 NEGLIGENCELY WITH RESPECT TO INFORMATION IS NOT DEEMED TO HAVE
- 5 ACTED KNOWINGLY, UNLESS THE PERSON ACTS WITH RECKLESS DISREGARD
- 6 OF THE TRUTH OR FALSITY OF THE INFORMATION."
- 7 Page 6, strike lines 11 through 18.
- 8 Page 6, lines 23 through 25, strike "IN AMOUNTS ESTABLISHED IN THE
- 9 FEDERAL "FALSE CLAIMS ACT", 31 U.S.C. SEC. 3729 ET SEQ., AS
- 10 AMENDED, AS ADJUSTED FOR INFLATION PURSUANT TO 31 U.S.C. SEC.
- 11 3729," and substitute "OF NOT LESS THAN ELEVEN THOUSAND EIGHT
- 12 HUNDRED DOLLARS AND NOT MORE THAN TWENTY-THREE THOUSAND SIX
- 13 HUNDRED DOLLARS PER VIOLATION,".
- 14 Page 7, line 24, strike the second "OR".
- 15 Page 7, after line 24 insert:
- 16 "(g) KNOWINGLY MAKES, USES, OR CAUSES TO BE MADE OR USED,
- 17 A FALSE RECORD OR STATEMENT MATERIAL TO A CLAIM TO
- 18 UNEMPLOYMENT INSURANCE BENEFITS WHEN THE PERSON HAS
- 19 WRONGFULLY RECOVERED UNEMPLOYMENT INSURANCE BENEFITS FROM
- 20 THE STATE OF MORE THAN FIFTEEN THOUSAND DOLLARS IN A CALENDAR
- 21 YEAR; OR".
- 22 Reletter succeeding paragraph accordingly.
- 23 Page 7, strike lines 26 and 27 and substitute "(1)(g) OF THIS SECTION."
- 24 Page 8, strike lines 1 through 20 and substitute:
- 25 "(2) (a) NOTWITHSTANDING THE AMOUNT OF DAMAGES
- 26 AUTHORIZED IN SUBSECTION (1) OF THIS SECTION, FOR A PERSON WHO
- 27 VIOLATES SUBSECTION (1) OF THIS SECTION, THE COURT MAY ASSESS
- 28 REDUCED DAMAGES AND PENALTIES AS DESCRIBED IN SUBSECTION (2)(b)
- 29 OR (2)(c) OF THIS SECTION IF THE COURT FINDS THAT:
- 30 (I) THE PERSON WHO COMMITTED THE VIOLATION FURNISHED TO
- 31 THE OFFICIALS OF THE STATE OR POLITICAL SUBDIVISION RESPONSIBLE FOR
- 32 INVESTIGATING FALSE CLAIMS VIOLATIONS ALL INFORMATION ABOUT THE

1 VIOLATION KNOWN TO THE PERSON AND FURNISHED SAID INFORMATION
2 WITHIN THIRTY DAYS AFTER THE DATE ON WHICH THE PERSON FIRST
3 LEARNED OF A POTENTIAL VIOLATION;

4 (II) AT THE TIME THE PERSON FURNISHED THE INFORMATION
5 ABOUT THE VIOLATION TO THE OFFICIALS OF THE STATE OR POLITICAL
6 SUBDIVISION, THE PERSON DID NOT HAVE ACTUAL OR CONSTRUCTIVE
7 KNOWLEDGE OF THE EXISTENCE OF AN INVESTIGATION INTO THE
8 VIOLATION; AND

9 (III) THE PERSON FULLY COOPERATED WITH ANY INVESTIGATION
10 OF THE VIOLATION BY THE STATE OR POLITICAL SUBDIVISION.

11 (b) IF A PERSON DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION
12 FURNISHED INFORMATION ABOUT THE VIOLATION TO THE OFFICIALS OF THE
13 STATE OR POLITICAL SUBDIVISION BEFORE A CRIMINAL PROSECUTION, CIVIL
14 ACTION, OR ADMINISTRATIVE ACTION WAS COMMENCED WITH RESPECT TO
15 THE VIOLATION, THE COURT SHALL ASSESS ONE AND ONE-HALF THE
16 AMOUNT OF ACTUAL DAMAGES RESULTING FROM THE FALSE CLAIM,
17 INCLUDING INTEREST FROM THE DATE OF THE FRAUD TO THE DATE OF FULL
18 REPAYMENT OF ALL DAMAGES, THAT THE STATE OR POLITICAL
19 SUBDIVISION SUSTAINS BECAUSE OF THE VIOLATION AND A CIVIL PENALTY
20 OF NOT LESS THAN FIVE THOUSAND NINE HUNDRED DOLLARS AND NOT
21 MORE THAN ELEVEN THOUSAND EIGHT HUNDRED DOLLARS PER VIOLATION.

22 (c) IF A PERSON DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION
23 FURNISHED INFORMATION ABOUT THE VIOLATION TO THE OFFICIALS OF THE
24 STATE OR POLITICAL SUBDIVISION WHILE A CRIMINAL PROSECUTION, CIVIL
25 ACTION, OR ADMINISTRATIVE ACTION CONCERNING THE VIOLATION WAS
26 UNDER SEAL PURSUANT TO SECTION 24-31-1204 (4)(b), THE COURT SHALL
27 ASSESS DOUBLE THE AMOUNT OF ACTUAL DAMAGES RESULTING FROM THE
28 FALSE CLAIM, INCLUDING INTEREST FROM THE DATE OF THE FRAUD TO THE
29 DATE OF FULL REPAYMENT OF ALL DAMAGES, THAT THE STATE OR
30 POLITICAL SUBDIVISION SUSTAINS BECAUSE OF THE VIOLATION AND A CIVIL
31 PENALTY OF NOT LESS THAN SEVEN THOUSAND EIGHT HUNDRED DOLLARS
32 AND NOT MORE THAN FIFTEEN THOUSAND SEVEN HUNDRED DOLLARS PER
33 VIOLATION.

34 (d) THE ATTORNEY GENERAL MAY DETERMINE WHETHER A PERSON
35 MEETS THE CRITERIA DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION
36 AND SUBMIT THE DETERMINATION AND REASONING TO THE COURT, WHICH
37 THE COURT MAY CONSIDER WHEN MAKING A FINDING AS TO WHETHER THE
38 BUSINESS SATISFIES THE CRITERIA DESCRIBED IN SUBSECTION (2)(a) OF
39 THIS SECTION."

40 Page 9, after line 2 insert:

41 "(6) (a) THE MAXIMUM AND MINIMUM AMOUNTS FOR THE CIVIL
42 PENALTIES DESCRIBED IN THIS SECTION MUST BE ADJUSTED FOR INFLATION

1 ON JULY 1, 2023, AND EACH JULY 1 THEREAFTER. THE ADJUSTMENT MADE
2 PURSUANT TO THIS SUBSECTION (6) MUST BE ROUNDED UPWARD OR
3 DOWNWARD TO THE NEAREST TEN-DOLLAR INCREMENT. THE SECRETARY
4 OF STATE SHALL CERTIFY THE ADJUSTED MAXIMUM AND MINIMUM
5 AMOUNTS FOR CIVIL PENALTIES WITHIN FOURTEEN DAYS AFTER THE
6 APPROPRIATE INFORMATION IS AVAILABLE.

7 (b) FOR EACH ACTION BROUGHT PURSUANT TO THIS PART 12, THE
8 APPLICABLE MINIMUM AND MAXIMUM AMOUNTS FOR A CIVIL PENALTY ARE
9 THE AMOUNTS IN EFFECT ON THE DATE THE CAUSE OF ACTION ACCRUES.

10 (c) AS USED IN THIS SECTION, "INFLATION" MEANS THE ANNUAL
11 PERCENTAGE CHANGE IN THE DENVER-AURORA-LAKEWOOD CONSUMER
12 PRICE INDEX, OR ITS APPLICABLE SUCCESSOR INDEX, PUBLISHED BY THE
13 UNITED STATES DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS.

14 (7) FOR ACCOUNTING PURPOSES, A FINE OR PENALTY RECEIVED BY
15 THE STATE PURSUANT TO THIS PART 12 IS A DAMAGE AWARD."

16 Page 9, after line 24 insert:

17 "(d) IN ANY ACTION BROUGHT PURSUANT TO THIS PART 12 IN
18 WHICH THE ATTORNEY GENERAL IS A PARTY, EITHER AS THE PLAINTIFF OR
19 AS AN INTERVENOR, THE COURT MAY DISMISS THE ACTION UPON MOTION
20 OF THE ATTORNEY GENERAL FOLLOWING THE NOTICE AND OPPORTUNITY
21 FOR A HEARING PURSUANT TO SUBSECTION (5)(b)(I) OF THIS SECTION. IN
22 DETERMINING WHETHER TO FILE A MOTION TO DISMISS, THE ATTORNEY
23 GENERAL SHALL CONSIDER THE SEVERITY OF THE FALSE CLAIM, PROGRAM
24 OR POPULATION IMPACTED BY THE FALSE CLAIM, DURATION OF THE FRAUD,
25 WEIGHT AND MATERIALITY OF THE EVIDENCE, OTHER MEANS TO MAKE THE
26 PROGRAM WHOLE, AND OTHER FACTORS THE ATTORNEY GENERAL DEEMS
27 RELEVANT. THE ATTORNEY GENERAL'S DECISION-MAKING PROCESS
28 CONCERNING A MOTION TO DISMISS AND ANY RECORDS RELATED TO THE
29 DECISION-MAKING PROCESS ARE NOT DISCOVERABLE IN ANY ACTION."

30 Page 10, after line 27 insert:

31 "(e) THE LIMITATIONS AND REQUIREMENTS DESCRIBED IN SECTION
32 13-17-304 APPLY TO A CONTINGENT FEE CONTRACT BETWEEN A POLITICAL
33 SUBDIVISION AND A PRIVATE ATTORNEY ENTERED INTO FOR THE PURPOSE
34 OF BRINGING OR INTERVENING IN AN ACTION PURSUANT TO THIS PART 12."

35 Page 11, line 18 and 19, strike "A RELATOR MAY NOT DISMISS AN ACTION
36 UNLESS THE COURT AND" and substitute "THE COURT SHALL NOT DISMISS
37 AN ACTION UPON MOTION OF THE PRIVATE PERSON WHO BROUGHT THE
38 ACTION UNLESS".

39 Page 11, line 22, strike "THE RELATOR" and substitute "(I) A PERSON

1 WHO BRINGS AN ACTION".

2 Page 11, line 26, strike "RELATOR POSSESSES." and substitute "PERSON
3 POSSESSES; EXCEPT THAT THE PERSON SHALL NOT DISCLOSE ANY
4 EVIDENCE OR INFORMATION THAT THE PERSON REASONABLY BELIEVES IS
5 PROTECTED BY THE DEFENDANT'S ATTORNEY-CLIENT PRIVILEGE UNLESS
6 THE PRIVILEGE WAS WAIVED, INADVERTENTLY OR OTHERWISE, BY THE
7 PERSON WHO HOLDS THE PRIVILEGE; AN EXCEPTION TO THE PRIVILEGE
8 APPLIES; OR DISCLOSURE OF THE INFORMATION IS PERMITTED BY AN
9 ATTORNEY PURSUANT TO 17 CFR 205.3 (d)(2), THE APPLICABLE
10 COLORADO RULES OF PROFESSIONAL CONDUCT, OR OTHERWISE.".

11 Page 12, after line 7 insert:
12 "(II) IN DETERMINING WHETHER TO INTERVENE AND PROCEED WITH
13 AN ACTION PURSUANT TO THIS SUBSECTION (4)(b), THE ATTORNEY
14 GENERAL SHALL CONSIDER THE FACTORS DESCRIBED IN SUBSECTION (1)(d)
15 OF THIS SECTION. THE ATTORNEY GENERAL'S DECISION-MAKING PROCESS
16 CONCERNING WHETHER TO INTERVENE AND ANY RECORDS RELATED TO
17 THE DECISION-MAKING PROCESS ARE NOT DISCOVERABLE IN ANY ACTION.".

18 Page 13, after line 3 insert:
19 "(f) ANY INFORMATION PROVIDED BY A PERSON TO THE STATE OR
20 POLITICAL SUBDIVISION PURSUANT TO THIS SUBSECTION (4) IS EXEMPT
21 FROM DISCLOSURE PURSUANT TO THE "COLORADO OPEN RECORDS ACT",
22 PART 2 OF ARTICLE 72 OF THIS TITLE 24.".

23 Page 13, line 8, strike "RELATOR. THE RELATOR" and substitute "PERSON
24 WHO BROUGHT THE ACTION. THE PERSON".

25 Page 13, line 11, strike "MAY" and substitute "MAY, AT ANY TIME,".

26 Page 13, line 12, strike "ACTION" and substitute "ACTION, IN WHOLE OR IN
27 PART,".

28 Page 14, line 1, strike "RELATOR'S" and substitute "PERSON'S".

29 Page 14, line 6, strike "RELATOR'S" and substitute "PERSON'S".

30 Page 14, strike lines 16 through 19.

31 Page 14, line 20, strike "THE ACTION." and substitute "(c)".

32 Page 14, line 21, strike "THE" and substitute "AN".

- 1 Page 14, line 24, strike "ACTION." and substitute "ACTION, BUT IF THE
2 ATTORNEY GENERAL SUBMITS TO THE COURT THE ATTORNEY GENERAL'S
3 REASONS FOR NOT PROCEEDING WITH THE ACTION, THE COURT MAY
4 CONSIDER THE REASONS WHEN DECIDING A MOTION OR WHETHER THE
5 COURT HAS JURISDICTION.".
- 6 Page 15, line 1, strike "A RELATOR" and substitute "THE PERSON".
- 7 Page 15, lines 22 and 23, strike "SUBDIVISION, INCLUDING ANY
8 ADMINISTRATIVE PROCEEDING TO DETERMINE A CIVIL MONEY PENALTY."
9 and substitute "SUBDIVISION.".
- 10 Page 16, line 7, strike "**relators.**" and substitute "**a person who brings**
11 **an action.**".
- 12 Page 17, line 8, strike "RELATOR'S" and substitute "PERSON'S".
- 13 Page 17, line 10, strike "RELATOR'S" and substitute "PERSON'S".
- 14 Page 18, line 26, after "JUDICIARY," insert "AN EXECUTIVE DIRECTOR OF
15 A STATE AGENCY,".
- 16 Page 19, line 1, strike "MEMBER'S" and substitute "MEMBER'S, EXECUTIVE
17 DIRECTOR'S,".
- 18 Page 20, line 11, before "THIS" insert "SUBSECTION (4) OF".
- 19 Page 20, line 19, strike "RELATOR" and substitute "PERSON WHO BROUGHT
20 THE ACTION PURSUANT TO SUBSECTION (4) OF THIS SECTION".
- 21 Page 20, line 20, after the period insert "CONFIDENTIAL INFORMATION
22 DOES NOT INCLUDE INFORMATION THAT IS PROTECTED BY THE
23 DEFENDANT'S ATTORNEY-CLIENT PRIVILEGE UNLESS THE PRIVILEGE WAS
24 WAIVED, INADVERTENTLY OR OTHERWISE, BY THE PERSON WHO HOLDS THE
25 PRIVILEGE; AN EXCEPTION TO THE PRIVILEGE APPLIES; OR DISCLOSURE OF
26 THE INFORMATION IS PERMITTED BY AN ATTORNEY PURSUANT TO 17 CFR
27 205.3 (d)(2), THE APPLICABLE COLORADO RULES OF PROFESSIONAL
28 CONDUCT, OR OTHERWISE.".
- 29 Page 23, line 19, strike "PRIMARILY".
- 30 Page 24, line 14, strike "RELATOR'S EMPLOYER," and substitute
31 "EMPLOYER OF THE PERSON WHO BROUGHT THE ACTION PURSUANT TO

- 1 SUBSECTION (4) OF THIS SECTION,".
- 2 Page 24, line 19, strike "RELATOR" and substitute "PERSON WHO BRINGS
3 AN ACTION PURSUANT TO SUBSECTION (4) OF THIS SECTION".
- 4 Page 24, line 21, after "SECTION," insert "REFERRED TO IN THIS
5 SUBSECTION (10) AS AN "OTHER ACTION,".
- 6 Page 25, line 10, strike "AN ACTION OTHER THAN AN ACTION" and
7 substitute "ANY OTHER ACTION, A PERSON WHO BROUGHT THE ACTION
8 PURSUANT TO SUBSECTION (4) OF THIS SECTION,".
- 9 Page 25, strike line 11.
- 10 Page 25, line 16, strike "RELATOR" and substitute "PERSON WHO BROUGHT
11 THE ACTION PURSUANT TO SUBSECTION (4) OF THIS SECTION".
- 12 Page 25, after line 22 insert:
13 "(c) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (10)
14 TO THE CONTRARY, INFORMATION ABOUT AN ACTION FILED PURSUANT TO
15 SUBSECTION (4) OF THIS SECTION THAT IS PROTECTED BY THE
16 DEFENDANT'S ATTORNEY-CLIENT PRIVILEGE IS NOT DISCOVERABLE IN ANY
17 OTHER ACTION UNLESS THE PRIVILEGE WAS WAIVED, INADVERTENTLY OR
18 OTHERWISE, BY THE PERSON WHO HOLDS THE PRIVILEGE; AN EXCEPTION
19 TO THE PRIVILEGE APPLIES; OR DISCLOSURE OF THE INFORMATION IS
20 PERMITTED BY AN ATTORNEY PURSUANT TO 17 CFR 205.3 (d)(2), THE
21 APPLICABLE COLORADO RULES OF PROFESSIONAL CONDUCT, OR
22 OTHERWISE.".
- 23 Page 26, line 12, strike "RELATOR'S" and substitute "ORIGINAL".
- 24 Page 26, line 21, strike "RELATOR'S COMPLAINT," and substitute
25 "ORIGINAL COMPLAINT FILED BY A PERSON PURSUANT TO SECTION
26 24-31-1204 (4)".
- 27 Page 26, line 24, strike "COMPLAINT OF THE RELATOR." and substitute
28 "COMPLAINT.".
- 29 Page 26, line 26, strike "RELATOR" and substitute "PERSON WHO BROUGHT
30 THE ACTION PURSUANT TO SECTION 24-31-1204 (4)".
- 31 Page 27, line 15, after the period insert "A PERSON BRINGING AN ACTION
32 PURSUANT TO THIS PART 12 SHALL FILE THE COMPLAINT IN A DISTRICT

- 1 COURT OR A FEDERAL COURT WITH JURISDICTION OVER THE ACTION AND
2 SHALL NOT FILE THE COMPLAINT IN ANY OTHER COURT."
- 3 Page 28, line 1, after "NECESSARY;" insert "EXCEPT THAT THE PERSON IS
4 NOT REQUIRED TO DISCLOSE ANY INFORMATION THAT IS PROTECTED BY
5 THE PERSON'S ATTORNEY-CLIENT PRIVILEGE UNLESS THE PRIVILEGE WAS
6 WAIVED, INADVERTENTLY OR OTHERWISE, BY THE PERSON WHO HOLDS THE
7 PRIVILEGE; AN EXCEPTION TO THE PRIVILEGE APPLIES; OR DISCLOSURE OF
8 THE INFORMATION IS PERMITTED BY AN ATTORNEY PURSUANT TO 17 CFR
9 205.3 (d)(2), THE APPLICABLE COLORADO RULES OF PROFESSIONAL
10 CONDUCT, OR OTHERWISE."
- 11 Page 28, line 4, after "THEREOF," insert "OR ANY NONPRIVILEGED".
- 12 Page 28, line 8, after "ANY" insert "NONPRIVILEGED".
- 13 Page 31, line 10, strike "CREDIT" and substitute "TRANSFER".
- 14 Page 31, line 15, strike "CREDIT" and substitute "TRANSFER".
- 15 Page 31, after line 25 insert:
16 **"24-31-1211. False claims act report. (1) ON OR BEFORE**
17 **JANUARY 15, 2024, AND ON OR BEFORE EACH JANUARY 15 THEREAFTER,**
18 **THE ATTORNEY GENERAL SHALL SUBMIT A WRITTEN REPORT TO THE HOUSE**
19 **OF REPRESENTATIVES BUSINESS AFFAIRS AND LABOR COMMITTEE, THE**
20 **HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE, THE SENATE**
21 **BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE, AND THE SENATE**
22 **JUDICIARY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, CONCERNING**
23 **CLAIMS BROUGHT PURSUANT TO THIS PART 12 DURING THE PREVIOUS**
24 **FISCAL YEAR. THE REPORT MUST INCLUDE, BUT IS NOT LIMITED TO:**
25 (a) THE NUMBER OF ACTIONS BROUGHT BY THE ATTORNEY
26 GENERAL AND THE DISPOSITION OF THE ACTIONS;
27 (b) THE AMOUNT OF PROCEEDS RECOVERED BY THE STATE
28 THROUGH SETTLEMENT OR JUDGMENT IN AN ACTION BROUGHT PURSUANT
29 TO THIS PART 12, INCLUDING:
30 (I) THE CASE NUMBER AND PARTIES FOR EACH ACTION IN WHICH
31 PROCEEDS WERE RECOVERED;
32 (II) THE AMOUNT OF PROCEEDS RECOVERED IN EACH CASE,
33 CATEGORIZED BY THE AMOUNT RECOVERED AS DAMAGES, PENALTIES, AND
34 LITIGATION COSTS; AND
35 (III) IF APPLICABLE, THE PERCENTAGE OF THE PROCEEDS
36 RECOVERED AND THE TOTAL AMOUNT AWARDED TO A PRIVATE PERSON
37 WHO BROUGHT THE ACTION.

1 (c) THE NUMBER OF ACTIONS BROUGHT BY A PERSON OTHER THAN
2 THE ATTORNEY GENERAL IN WHICH THE ATTORNEY GENERAL DID NOT
3 INTERVENE, WHETHER THE ACTIONS WERE CONTINUED BY THE OTHER
4 PERSON, AND THE DISPOSITION OF THE ACTIONS;

5 (d) THE AMOUNT OF PROCEEDS, INCLUDING ANY LITIGATION COSTS
6 AND ATTORNEY FEES, RECOVERED THROUGH SETTLEMENT OR JUDGMENT
7 IN ACTIONS BROUGHT BY A PERSON OTHER THAN THE ATTORNEY GENERAL;
8 AND

9 (e) THE AMOUNT EXPENDED BY THE STATE FOR INVESTIGATION
10 AND LITIGATION OF FALSE CLAIMS PURSUANT TO THIS PART 12 AND ALL
11 OTHER COSTS RELATED TO THIS PART 12.

12 (2) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE
13 REPORTING REQUIREMENT DESCRIBED IN THIS SECTION CONTINUES
14 INDEFINITELY."

15 Strike "RELATOR" and substitute "PERSON" on: **Page 11**, lines 14 and 15;
16 **Page 12**, line 26; **Page 13**, lines 13 and 14; **Page 14**, lines 2, 5, 8, and 14;
17 **Page 15**, line 2; **Page 16**, lines 9, 10, 13, 21, 24 two times, and 26; **Page**
18 **17**, lines 2, 12, 13, 16, and 22; **Page 18**, lines 2, 6, 7, 9, 11, 12, and 20;
19 **Page 19**, lines 2, 6, and 13; **Page 20**, line 10; **Page 24**, lines 22, 23, and
20 25; and **Page 25**, line 14.

21 Strike "RELATOR" and substitute "PERSON WHO BROUGHT THE ACTION" on:
22 **Page 12**, line 24; **Page 13**, lines 12, 18, and 24; **Page 14**, lines 11 and 17;
23 **Page 15**, line 8; **Page 16**, line 17; **Page 17**, line 7; **Page 18**, line 17; and
24 **Page 19**, line 22.

** *** ** *** **