

2SSB 5458 - S AMD 416
By Senator Hargrove

NOT CONSIDERED 05/25/2011

1 Beginning on page 16, line 29, strike all of section 14 and insert
2 the following:

3 "NEW SECTION. **Sec. 14.** (1)(a) Subject to (b) of this subsection,
4 if the attorney general proceeds with a qui tam action, the relator
5 must receive at least fifteen percent but not more than twenty-five
6 percent of the proceeds of the action or settlement of the claim,
7 depending upon the extent to which the relator substantially
8 contributed to the prosecution of the action.

9 (b) Where the action is one which the court finds to be based
10 primarily on disclosures of specific information, other than
11 information provided by the relator, relating to allegations or
12 transactions in a criminal, civil, or administrative hearing, in a
13 congressional, administrative, or general accounting office report,
14 hearing, audit, or investigation, or from the news media, the court may
15 award an amount it considers appropriate, but in no case more than ten
16 percent of the proceeds, taking into account the significance of the
17 information and the role of the relator in advancing the case to
18 litigation.

19 (c) Any payment to a relator under (a) or (b) of this subsection
20 must be made from the proceeds. The relator must also receive an
21 amount for reasonable expenses which the court finds to have been
22 necessarily incurred, plus reasonable attorneys' fees and costs.
23 Additionally, the attorney general must receive reasonable attorneys'
24 fees and costs. All expenses, fees, and costs must be awarded against
25 the defendant.

26 (2) If the attorney general does not proceed with a qui tam action,
27 the relator shall receive an amount which the court decides is
28 reasonable for collecting the civil penalty and damages. The amount
29 may not be less than twenty-five percent and not more than thirty
30 percent of the proceeds of the action or settlement and must be paid

1 out of the proceeds. The relator must also receive an amount for
2 reasonable expenses, which the court finds to have been necessarily
3 incurred, plus reasonable attorneys' fees and costs. All expenses,
4 fees, and costs must be awarded against the defendant.

5 (3) Whether or not the attorney general proceeds with the qui tam
6 action, if the court finds that the action was brought by a person who
7 planned and initiated the violation of section 9 of this act upon which
8 the action was brought, then the court may, to the extent the court
9 considers appropriate, reduce the share of the proceeds of the action
10 which the person would otherwise receive under subsection (1) or (2) of
11 this section, taking into account the role of that person in advancing
12 the case to litigation and any relevant circumstances pertaining to the
13 violation. If the person bringing the action is convicted of criminal
14 conduct arising from his or her role in the violation of section 9 of
15 this act, that person must be dismissed from the civil action and may
16 not receive any share of the proceeds of the action. The dismissal may
17 not prejudice the right of the United States to continue the action,
18 represented by the department of justice.

19 (4) If the attorney general does not proceed with the qui tam
20 action and the relator conducts the action, the court may award to the
21 defendant reasonable attorneys' fees, costs, and expenses if the
22 defendant prevails in the action. Any fees, costs, and expenses
23 awarded by the court under this subsection must be awarded against the
24 relator.

25 (5) The attorney general and a government entity are not liable for
26 expenses which a relator incurs in bringing an action under this
27 chapter.

28 (6) Any funds recovered that remain after calculation and
29 distribution under subsections (1) through (3) of this section must be
30 distributed and deposited as follows: Actual damages must be returned
31 to the government entity to which the false claim or claims were
32 submitted and the remainder to the medicaid fraud penalty account
33 established in section 3 of this act."

EFFECT: Provides that a relator who conducts an action without

participation of the attorney general may be responsible for the defendant's reasonable attorneys' fees, costs, and expenses if the defendant prevails.

--- END ---