

**UTAH FALSE CLAIMS ACT AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Benjamin M. McAdams**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill recodifies and amends the Utah False Claims Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ recodifies the Utah False Claims Act;
- ▶ amends criminal and civil provisions regarding conduct prohibited by the Utah

False Claims Act;

- ▶ amends provisions relating to civil and criminal penalties for violation of the Utah

False Claims Act;

- ▶ amends procedural matters relating to the Utah False Claims Act;
- ▶ modifies the statute of limitations for violations of the Utah False Claims Act,

including removing the 10-year maximum for bringing an action;

- ▶ amends provisions relating to investigation of alleged violations of the Utah False

Claims Act;

- ▶ permits a person, subject to certain exceptions, to file a civil action against a

defendant, in the name of the state, for a violation of the Utah False Claims Act;

- ▶ grants a person who files an action described in the preceding paragraph a

percentage of the proceeds of the action, unless the person is convicted of a crime

arising out of the facts upon which the action is based;



- 28           ▶ grants the attorney general the right to intervene in, and take control of, an action
- 29 filed by a person in the name of the state as provided for in this bill;
- 30           ▶ provides whistleblower protection to an individual who, under this bill:
- 31               • files or advances, or seeks to file or advance, a civil action in the name of the
- 32 state; or
- 33               • reports, stops, or seeks to report or stop a violation of the Utah False Claims
- 34 Act; and
- 35           ▶ makes technical changes.

**36 Money Appropriated in this Bill:**

37           None

**38 Other Special Clauses:**

39           This bill provides an effective date.

**40 Utah Code Sections Affected:**

41 AMENDS:

42           **26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391

43           **67-5-1**, as last amended by Laws of Utah 2007, Chapter 48

44           **76-8-1202**, as last amended by Laws of Utah 1997, Chapter 174

45           **76-10-1602 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter

46 334

47           **76-10-1602 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 276

48 and 334

49 ENACTS:

50           **26-20a-503**, Utah Code Annotated 1953

51           **26-20a-504**, Utah Code Annotated 1953

52           **26-20a-505**, Utah Code Annotated 1953

53           **26-20a-506**, Utah Code Annotated 1953

54           **26-20a-507**, Utah Code Annotated 1953

55           **26-20a-508**, Utah Code Annotated 1953

56           **26-20a-509**, Utah Code Annotated 1953

57           **26-20a-601**, Utah Code Annotated 1953

58           **26-20a-602**, Utah Code Annotated 1953

- 59           **26-20a-603**, Utah Code Annotated 1953
- 60           **26-20A-604**, Utah Code Annotated 1953
- 61           **26-20A-605**, Utah Code Annotated 1953
- 62           **26-20a-606**, Utah Code Annotated 1953
- 63           **26-20a-607**, Utah Code Annotated 1953
- 64           **26-20a-608**, Utah Code Annotated 1953
- 65           **26-20a-609**, Utah Code Annotated 1953
- 66           **26-20a-702**, Utah Code Annotated 1953

67 RENUMBERS AND AMENDS:

- 68           **26-20a-101**, (Renumbered from 26-20-1, as last amended by Laws of Utah 2007,
- 69 Chapter 48)
- 70           **26-20a-102**, (Renumbered from 26-20-2, as last amended by Laws of Utah 2007,
- 71 Chapter 48)
- 72           **26-20a-201**, (Renumbered from 26-20-3, as last amended by Laws of Utah 1986,
- 73 Chapter 46)
- 74           **26-20a-202**, (Renumbered from 26-20-4, as repealed and reenacted by Laws of Utah
- 75 2007, Chapter 48)
- 76           **26-20a-203**, (Renumbered from 26-20-5, as last amended by Laws of Utah 2007,
- 77 Chapter 48)
- 78           **26-20a-204**, (Renumbered from 26-20-7, as last amended by Laws of Utah 2007,
- 79 Chapter 48)
- 80           **26-20a-301**, (Renumbered from 26-20-9, as last amended by Laws of Utah 2007,
- 81 Chapter 48)
- 82           **26-20a-302**, (Renumbered from 26-20-9.5, as last amended by Laws of Utah 2007,
- 83 Chapter 48)
- 84           **26-20a-303**, (Renumbered from 26-20-12, as repealed and reenacted by Laws of Utah
- 85 2007, Chapter 48)
- 86           **26-20a-401**, (Renumbered from 26-20-8, as enacted by Laws of Utah 1981, Chapter
- 87 126)
- 88           **26-20a-402**, (Renumbered from 26-20-11, as enacted by Laws of Utah 1986, Chapter
- 89 46)

90 **26-20a-403**, (Renumbered from 26-20-15, as enacted by Laws of Utah 2007, Chapter  
91 48)

92 **26-20a-501**, (Renumbered from 26-20-13, as last amended by Laws of Utah 2007,  
93 Chapter 48)

94 **26-20a-502**, (Renumbered from 26-20-14, as enacted by Laws of Utah 2007, Chapter  
95 48)

96 **26-20a-701**, (Renumbered from 26-20-10, as last amended by Laws of Utah 1998,  
97 Chapter 192)

98 REPEALS:

99 **26-20-6**, as last amended by Laws of Utah 1986, Chapter 46



101 *Be it enacted by the Legislature of the state of Utah:*

102 Section 1. Section **26-18-3** is amended to read:

103 **26-18-3. Administration of Medicaid program by department -- Reporting to the**  
104 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**  
105 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

106 (1) The department shall be the single state agency responsible for the administration  
107 of the Medicaid program in connection with the United States Department of Health and  
108 Human Services pursuant to Title XIX of the Social Security Act.

109 (2) (a) The department shall implement the Medicaid program through administrative  
110 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking  
111 Act, the requirements of Title XIX, and applicable federal regulations.

112 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules  
113 necessary to implement the program:

114 (i) the standards used by the department for determining eligibility for Medicaid  
115 services;

116 (ii) the services and benefits to be covered by the Medicaid program; and

117 (iii) reimbursement methodologies for providers under the Medicaid program.

118 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health  
119 and Human Services Appropriations Subcommittee when the department:

120 (i) implements a change in the Medicaid State Plan;

- 121 (ii) initiates a new Medicaid waiver;
- 122 (iii) initiates an amendment to an existing Medicaid waiver;
- 123 (iv) applies for an extension of an application for a waiver or an existing Medicaid  
124 waiver; or
- 125 (v) initiates a rate change that requires public notice under state or federal law.
- 126 (b) The report required by Subsection (3)(a) shall:
  - 127 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior  
128 to the department implementing the proposed change; and
  - 129 (ii) include:
    - 130 (A) a description of the department's current practice or policy that the department is  
131 proposing to change;
    - 132 (B) an explanation of why the department is proposing the change;
    - 133 (C) the proposed change in services or reimbursement, including a description of the  
134 effect of the change;
    - 135 (D) the effect of an increase or decrease in services or benefits on individuals and  
136 families;
    - 137 (E) the degree to which any proposed cut may result in cost-shifting to more expensive  
138 services in health or human service programs; and
    - 139 (F) the fiscal impact of the proposed change, including:
      - 140 (I) the effect of the proposed change on current or future appropriations from the  
141 Legislature to the department;
      - 142 (II) the effect the proposed change may have on federal matching dollars received by  
143 the state Medicaid program;
      - 144 (III) any cost shifting or cost savings within the department's budget that may result  
145 from the proposed change; and
      - 146 (IV) identification of the funds that will be used for the proposed change, including any  
147 transfer of funds within the department's budget.
  - 148 (4) (a) The Department of Human Services shall report to the Legislative Health and  
149 Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance  
150 with Subsection (4)(b).
  - 151 (b) The report required by Subsection (4)(a) shall include:

152 (i) changes made by the division or the department beginning July 1, 2010 that effect  
153 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid  
154 services or funding, that relate to care for children and youth in the custody of the Division of  
155 Child and Family Services or the Division of Juvenile Justice Services;

156 (ii) the history and impact of the changes under Subsection (4)(b)(i);

157 (iii) the Department of Human Service's plans for addressing the impact of the changes  
158 under Subsection (4)(b)(i); and

159 (iv) ways to consolidate administrative functions within the Department of Human  
160 Services, the Department of Health, the Division of Child and Family Services, and the  
161 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth  
162 with mental health and substance disorder treatment needs.

163 (5) Any rules adopted by the department under Subsection (2) are subject to review and  
164 reauthorization by the Legislature in accordance with Section 63G-3-502.

165 (6) The department may, in its discretion, contract with the Department of Human  
166 Services or other qualified agencies for services in connection with the administration of the  
167 Medicaid program, including:

168 (a) the determination of the eligibility of individuals for the program;

169 (b) recovery of overpayments; and

170 (c) consistent with Section [~~26-20-13~~] 26-20a-501, and to the extent permitted by law  
171 and quality control services, enforcement of fraud and abuse laws.

172 (7) The department shall provide, by rule, disciplinary measures and sanctions for  
173 Medicaid providers who fail to comply with the rules and procedures of the program, provided  
174 that sanctions imposed administratively may not extend beyond:

175 (a) termination from the program;

176 (b) recovery of claim reimbursements incorrectly paid; and

177 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

178 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX  
179 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to  
180 be used by the division in accordance with the requirements of Section 1919 of Title XIX of  
181 the federal Social Security Act.

182 (9) (a) In determining whether an applicant or recipient is eligible for a service or

183 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department  
184 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle  
185 designated by the applicant or recipient.

186 (b) Before Subsection (9)(a) may be applied:

187 (i) the federal government must:

188 (A) determine that Subsection (9)(a) may be implemented within the state's existing  
189 public assistance-related waivers as of January 1, 1999;

190 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

191 (C) determine that the state's waivers that permit dual eligibility determinations for  
192 cash assistance and Medicaid are no longer valid; and

193 (ii) the department must determine that Subsection (9)(a) can be implemented within  
194 existing funding.

195 (10) (a) For purposes of this Subsection (10):

196 (i) "aged, blind, or disabled" shall be defined by administrative rule; and

197 (ii) "spend down" means an amount of income in excess of the allowable income  
198 standard that must be paid in cash to the department or incurred through the medical services  
199 not paid by Medicaid.

200 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is  
201 eligible for a service or benefit under this chapter, the department shall use 100% of the federal  
202 poverty level as:

203 (i) the allowable income standard for eligibility for services or benefits; and

204 (ii) the allowable income standard for eligibility as a result of spend down.

205 (11) The department shall conduct internal audits of the Medicaid program, in  
206 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

207 (12) In order to determine the feasibility of contracting for direct Medicaid providers  
208 for primary care services, the department shall:

209 (a) issue a request for information for direct contracting for primary services that shall  
210 provide that a provider shall exclusively serve all Medicaid clients:

211 (i) in a geographic area;

212 (ii) for a defined range of primary care services; and

213 (iii) for a predetermined total contracted amount; and

214 (b) by February 1, 2011, report to the Health and Human Services Appropriations  
215 Subcommittee on the response to the request for information under Subsection (12)(a).

216 (13) (a) By December 31, 2010, the department shall:

217 (i) determine the feasibility of implementing a three year patient-centered medical  
218 home demonstration project in an area of the state using existing budget funds; and

219 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)  
220 to the Health and Human Services Appropriations Subcommittee.

221 (b) If the department determines that the medical home demonstration project  
222 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations  
223 Subcommittee recommends that the demonstration project be implemented, the department  
224 shall:

225 (i) implement the demonstration project; and

226 (ii) by December 1, 2012, make recommendations to the Health and Human Services  
227 Appropriations Subcommittee regarding the:

228 (A) continuation of the demonstration project;

229 (B) expansion of the demonstration project to other areas of the state; and

230 (C) cost savings incurred by the implementation of the demonstration project.

231 (14) (a) The department may apply for and, if approved, implement a demonstration  
232 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

233 (b) A health opportunity account established under Subsection (14)(a) shall be an  
234 alternative to the existing benefits received by an individual eligible to receive Medicaid under  
235 this chapter.

236 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

237 Section 2. Section **26-20a-101**, which is renumbered from Section 26-20-1 is  
238 renumbered and amended to read:

239 **CHAPTER 20a. UTAH FALSE CLAIMS ACT**

240 **Part 1. General Provisions**

241 **[26-20-1]. 26-20a-101. Title.**

242 This chapter is known as the "Utah False Claims Act."

243 Section 3. Section **26-20a-102**, which is renumbered from Section 26-20-2 is  
244 renumbered and amended to read:



245 ~~[26-20-2].~~ **26-20a-102. Definitions.**

246 As used in this chapter:

247 (1) "Adverse action" includes actual or threatened:

248 (a) discharge;

249 (b) demotion;

250 (c) suspension;

251 (d) disciplinary action;

252 (e) reduction in compensation, benefits, seniority, or authority;

253 (f) discrimination;

254 (g) harassment; or

255 (h) violence.

256 ~~[(1)]~~ (2) "Benefit" means the receipt of money, goods, or any other thing of pecuniary  
257 value.

258 ~~[(2)]~~ (3) "Claim" means any request or demand for money or property~~[:(a) made to~~  
259 ~~any: (i) employee, officer, or agent of the state; (ii) contractor with the state; or (iii) grantee or~~  
260 ~~other recipient, whether or not under contract with the state; and (b) if:]~~ made to a state agent  
261 or a state recipient, if:

262 ~~[(i)]~~ (a) any portion of the money or property requested or demanded was issued from  
263 or provided by the state; or

264 ~~[(ii)]~~ (b) the state will reimburse the ~~[contractor, grantee, or other]~~ state recipient for  
265 any portion of the money or property.

266 ~~[(3)]~~ (4) "False statement" or "false representation" means a wholly or partially untrue  
267 statement or representation ~~[which is]~~ that:

268 (a) is knowingly made; and

269 (b) relates to a material fact with respect to the claim.

270 ~~[(4) "Knowing" and "knowingly":]~~

271 ~~[(a) for purposes of criminal prosecutions for violations of this chapter, is one of the~~  
272 ~~culpable mental states described in Subsection 26-20-9(1); and]~~

273 ~~[(b) for purposes of civil prosecutions for violations of this chapter, is the required~~  
274 ~~culpable mental state as defined in Subsection 26-20-9.5(1).]~~

275 (5) "Intentionally," as it relates to a criminal violation of this chapter, is as defined in

276 Section 76-2-103.

277 (6) (a) "Knowingly," as it relates to a criminal violation of this chapter, is as  
278 defined in Section 76-2-103.

279 (b) "Knowingly," as it relates to a civil violation of this chapter:

280 (i) means that a person, with respect to information:

281 (A) has actual knowledge of the information;

282 (B) acts in deliberate ignorance of the truth or falsity of the information; or

283 (C) acts in reckless disregard of the truth or falsity of the information; and

284 (ii) does not require a specific intent to defraud.

285 (7) "Material" means having a tendency to influence, or be capable of influencing, the  
286 payment or receipt of money or property.

287 ~~[(5)]~~ (8) "Medical benefit" means a benefit paid or payable to a recipient or a provider  
288 under a program administered by the state under:

289 (a) Titles V and XIX of the federal Social Security Act;

290 (b) Title X of the federal Public Health Services Act;

291 (c) the federal Child Nutrition Act of 1966 as amended by P.L. 94-105; and

292 (d) any programs for medical assistance of the state.

293 ~~[(6) "Person" means an individual, corporation, unincorporated association,~~  
294 ~~professional corporation, partnership, or other form of business association.]~~

295 (9) "Original source" means an individual who:

296 (a) before a public disclosure described in Subsection 26-20a-602(4), voluntarily  
297 discloses to the government the information upon which the allegations or transactions in a  
298 claim are based; or

299 (b) (i) has knowledge that is independent of, and materially adds to, the allegations or  
300 transactions that were publicly disclosed as described in Subsection 26-20a-602(4); and

301 (ii) has voluntarily provided the information to the government before filing an action  
302 under this section.

303 (10) "Recklessly," as it relates to a criminal violation of this chapter, is as defined in  
304 Section 76-2-103.

305 (11) "Relator" means a private person who files a lawsuit in state court, in the name of  
306 the state, against a person for violating a provision of Part 2, Prohibited Conduct.

307 (12) "State agent" means an employee, officer, or agent of the state.

308 (13) "State recipient" means a person who is:

309 (a) a contractor with the state; or

310 (b) a grantee or other recipient of state funds or state-administered federal funds,

311 whether or not under contract with the state.

312 Section 4. Section **26-20a-201**, which is renumbered from Section 26-20-3 is

313 renumbered and amended to read:

314 **Part 2. Prohibited Conduct**

315 **[26-20-3]. 26-20a-201. False statement, representation, or claim relating to a**  
 316 **medical benefit.**

317 (1) A person ~~[shall]~~ may not:

318 (a) present, or cause to be presented, a false or fraudulent claim for payment, or

319 approval for payment, for a medical benefit;

320 (b) make, use, or cause to be made or used a false statement [or], a false representation

321 of a material fact, or a false record:

322 (i) in an application for medical benefits[-];

323 (ii) to otherwise obtain payment, or approval for payment, for a medical benefit; or

324 (iii) to avoid making a full payment or reimbursement, relating to a medical benefit,

325 owed to the federal government or to the state;

326 ~~[(2)] (c) [A person shall not]~~ make, use, or cause to be made or used a false statement

327 or false representation of a material fact [for use] in determining rights to a medical benefit[-];

328 or

329 (d) conspire to cause a false or fraudulent claim for a medical benefit to be allowed or

330 paid.

331 ~~[(3)] (2)~~ A person[-] who, having knowledge of the occurrence of an event affecting

332 [his] the person's initial or continued right to receive a medical benefit or the initial or

333 continued right of any other person on whose behalf [he] the person has applied for or is

334 receiving a medical benefit, [shall] may not conceal or fail to disclose that event with intent to

335 obtain a medical benefit:

336 (a) to which the person or any other person is not entitled; or

337 (b) in an amount greater than that to which the person or any other person is entitled.

338 Section 5. Section **26-20a-202**, which is renumbered from Section 26-20-4 is  
339 renumbered and amended to read:

340 **[26-20-4]. 26-20a-202. Kickbacks or bribes prohibited.**

341 (1) For purposes of this section, a kickback or bribe:

342 (a) includes rebates, compensation, or any other form of remuneration [~~which~~] that is:

343 (i) direct or indirect;

344 (ii) overt or covert; or

345 (iii) in cash or in kind; and

346 (b) does not include a rebate paid to the state under 42 U.S.C. Sec. 1396r-8 or any state  
347 supplemental rebates.

348 (2) A person may not solicit, offer, pay, or receive a kickback or bribe in return for or  
349 to induce:

350 (a) the purchasing, leasing, or ordering of any goods or services for which payment is  
351 or may be made in whole or in part pursuant to a medical benefit program; or

352 (b) the referral of an individual to another person for the furnishing of any goods or  
353 services for which payment is or may be made in whole or in part pursuant to a medical benefit  
354 program.

355 Section 6. Section **26-20a-203**, which is renumbered from Section 26-20-5 is  
356 renumbered and amended to read:

357 **[26-20-5]. 26-20a-203. False statement or false representation relating to**  
358 **qualification of health institution or facility prohibited -- Felony.**

359 (1) A person may not knowingly, intentionally, or recklessly make, or induce[;] or seek  
360 to induce[;] the making of, a false statement or false representation of a material fact with  
361 respect to the conditions or operation of an institution or facility in order that the institution or  
362 facility may qualify, upon initial certification or upon recertification, as a hospital, skilled  
363 nursing facility, intermediate care facility, or home health agency.

364 (2) A person who violates this section is guilty of a second degree felony.

365 Section 7. Section **26-20a-204**, which is renumbered from Section 26-20-7 is  
366 renumbered and amended to read:

367 **[26-20-7]. 26-20a-204. False claims for medical benefits prohibited.**

368 (1) A person may not make or present, or cause to be made or presented, to an

- 369 employee or officer of the state a claim for a medical benefit:
- 370 (a) [~~which~~] that is wholly or partially false, fictitious, or fraudulent;
- 371 (b) for services which were not rendered or for items or materials which were not  
372 delivered;
- 373 (c) [~~which~~] that misrepresents the type, quality, or quantity of items or services  
374 rendered;
- 375 (d) representing charges at a higher rate than those charged by the provider to the  
376 general public;
- 377 (e) for items or services [~~which~~] that the person or the provider knew were not  
378 medically necessary in accordance with professionally recognized standards;
- 379 (f) [~~which has previously~~] that has already been paid;
- 380 (g) for services also covered by one or more private sources when the person or  
381 provider [~~knew~~] knows of the private sources without disclosing those sources on the claim; or
- 382 (h) where a provider:
- 383 (i) unbundles a product, procedure, or group of procedures usually and customarily  
384 provided or performed as a single billable product or procedure into artificial components or  
385 separate procedures; and
- 386 (ii) bills for each component of the product, procedure, or group of procedures:  
387 (A) as if they had been provided or performed independently and at separate times; and  
388 (B) if the aggregate billing for the components exceeds the amount otherwise billable  
389 for the usual and customary single product or procedure.
- 390 (2) In addition to the prohibitions described in Subsection (1), a person may not:
- 391 (a) fail to credit the state for payments received from other sources;
- 392 (b) recover or attempt to recover payment in violation of the provider agreement from:  
393 (i) a recipient under a medical benefit program; or  
394 (ii) the recipient's family;
- 395 (c) falsify or alter with intent to deceive, any report or document required by state or  
396 federal law, rule, or Medicaid provider agreement;
- 397 (d) retain any unauthorized payment as a result of acts described by this section; or  
398 (e) aid or abet the commission of any act prohibited [~~by~~] in this section.
- 399 Section 8. Section **26-20a-301**, which is renumbered from Section 26-20-9 is

400 renumbered and amended to read:

401 **Part 3. Penalties**

402 ~~[26-20-9].~~ **26-20a-301. Criminal penalties.**

403 (1) (a) Except as provided in Subsection (1)(b) ~~[the culpable mental state required for~~  
 404 ~~a], a person is guilty of a criminal violation of this chapter [is] if the person knowingly,~~  
 405 ~~intentionally, or recklessly [as defined in Section 76-2-103] violates a provision of Part 2,~~  
 406 **Prohibited Conduct.**

407 ~~[(b) The culpable mental state required for a criminal violation of this chapter for~~  
 408 ~~kickbacks and bribes under Section 26-20-4 is knowingly and intentionally as defined in~~  
 409 ~~Section 76-2-103.]~~

410 **(b) A person is guilty of a criminal violation of Section 26-20a-202 if the person**  
 411 **knowingly or intentionally violates a provision of Section 26-20a-202.**

412 (2) The punishment for a criminal violation of any provision of this chapter, except as  
 413 provided under Section ~~[26-20-5,]~~ **26-20a-203** is:

414 **(a)** determined by the cumulative value of the funds or other benefits received or  
 415 claimed in the commission of all violations of a similar nature, and not by each separate  
 416 violation~~[-]; and~~

417 ~~[(3)] (b) [Punishment for criminal violation of this chapter, except as provided under~~  
 418 ~~Section 26-20-5, is] a felony of the second degree, felony of the third degree, class A~~  
 419 ~~misdemeanor, or class B misdemeanor based on the dollar amounts as prescribed by~~  
 420 ~~Subsection 76-6-412(1) for theft of property and services.~~

421 Section 9. Section **26-20a-302**, which is renumbered from Section 26-20-9.5 is  
 422 renumbered and amended to read:

423 ~~[26-20-9.5].~~ **26-20a-302. Civil penalties.**

424 ~~[(1) The culpable mental state required for a civil violation of this chapter is "knowing"~~  
 425 ~~or "knowingly" which:]~~

426 ~~[(a) means that person, with respect to information:]~~

427 ~~[(i) has actual knowledge of the information;]~~

428 ~~[(ii) acts in deliberate ignorance of the truth or falsity of the information; or]~~

429 ~~[(iii) acts in reckless disregard of the truth or falsity of the information; and]~~

430 ~~[(b) does not require a specific intent to defraud.]~~

431 (1) A person is subject to a civil penalty if the person knowingly violates a provision of  
432 Part 2, Prohibited Conduct.

433 (2) Any person who violates this chapter shall, in all cases, in addition to other  
434 penalties provided by law, be required to:

435 (a) make full and complete restitution to the state of all damages that the state sustains  
436 because of the person's violation of this chapter;

437 (b) pay to the state its costs of enforcement of this chapter in that case, including [~~but~~  
438 ~~not limited to~~] the cost of investigators, attorneys, and other public employees, as determined  
439 by the state; and

440 (c) pay to the state a civil penalty equal to:

441 (i) three times the amount of damages that the state sustains because of the person's  
442 violation of this chapter; and

443 (ii) not less than \$5,000 or more than \$10,000, as adjusted by the Federal Civil  
444 Penalties Inflation Adjustment Act of 1990, for each claim filed or act done in violation of this  
445 chapter.

446 (3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as  
447 part of its judgment in both criminal and civil actions.

448 (4) A criminal action need not be brought against a person in order for that person to be  
449 civilly liable under this section.

450 (5) For purposes of Subsection (2)(c)(i), the amount of damages sustained by the state  
451 includes both the state and federal portion of money related to a medical benefit.

452 (6) A civil penalty imposed under this chapter is in addition to, and not in place of, a  
453 criminal penalty imposed under this chapter.

454 Section 10. Section ~~26-20a-303~~, which is renumbered from Section 26-20-12 is  
455 renumbered and amended to read:

456 ~~[26-20-12].~~ **26-20a-303. Violation of other laws.**

457 ~~[(1)]~~ The provisions of this chapter are:

458 ~~[(a)]~~ (1) not exclusive, and the remedies provided for in this chapter are in addition to  
459 any other remedies provided for under:

460 ~~[(i)]~~ (a) any other applicable law; or

461 ~~[(ii)]~~ (b) common law; and

462 ~~[(b)] (2)~~ to be liberally construed and applied to:

463 ~~[(i)] (a)~~ effectuate the chapter's remedial and deterrent purposes; and

464 ~~[(ii)] (b)~~ serve the public interest.

465 ~~[(2) If any provision of this chapter or the application of this chapter to any person or~~  
 466 ~~circumstance is held unconstitutional:]~~

467 ~~[(a) the remaining provisions of this chapter shall not be affected; and]~~

468 ~~[(b) the application of this chapter to other persons or circumstances shall not be~~  
 469 ~~affected:]~~

470 Section 11. Section **26-20a-401**, which is renumbered from Section 26-20-8 is  
 471 renumbered and amended to read:

#### 472 **Part 4. Procedural Matters**

473 ~~[26-20-8].~~ **26-20a-401. Knowledge of past acts not necessary to establish fact**  
 474 **that false statement or representation knowingly made.**

475 In prosecution under this chapter, it shall not be necessary to show that the person had  
 476 knowledge of similar acts having been performed in the past on the part of persons acting on  
 477 ~~[his]~~ the person's behalf nor to show that the person had actual notice that the acts by the  
 478 persons acting on ~~[his]~~ the person's behalf occurred to establish the fact that a false statement or  
 479 representation was knowingly made.

480 Section 12. Section **26-20a-402**, which is renumbered from Section 26-20-11 is  
 481 renumbered and amended to read:

482 ~~[26-20-11].~~ **26-20a-402. Presumption based on paid state warrant -- Value of**  
 483 **medical benefits -- Repayment of benefits.**

484 (1) In any civil or criminal action brought under this chapter, a paid state warrant, made  
 485 payable to the order of a party, creates a presumption that the party received funds from the  
 486 state.

487 (2) In any civil or criminal action brought under this chapter, the value of the benefits  
 488 received shall be the ordinary or usual charge for similar benefits in the private sector.

489 (3) In any criminal action under this chapter, the repayment of funds or other benefits  
 490 obtained in violation of the provisions of this chapter does not constitute a defense to, or  
 491 grounds for, dismissal of that action.

492 Section 13. Section **26-20a-403**, which is renumbered from Section 26-20-15 is



493 renumbered and amended to read:

494 ~~[26-20-15]~~. **26-20a-403. Limitation of actions -- Civil acts antedating this**  
 495 **section -- Civil burden of proof -- Estoppel -- Joint civil liability -- Venue.**

496 (1) An action under this chapter may not be brought after the later of:

497 (a) six years after the ~~[date]~~ day on which the violation ~~[was]~~ is committed; or

498 (b) three years after the ~~[date]~~ day on which an official of the state charged with  
 499 responsibility to act in the circumstances ~~[discovers the violation, but in no event more than 10~~  
 500 ~~years after the date on which the violation was committed]~~ knows, or reasonably should have  
 501 known, of the facts that are material to the violation.

502 (2) A civil action brought under this chapter may be brought for acts occurring prior to  
 503 the effective date of this section if the limitations period set forth in Subsection (1) has not  
 504 lapsed.

505 (3) In any civil action brought under this chapter the state or relator shall be required to  
 506 prove by a preponderance of evidence, all essential elements of the cause of action including  
 507 damages.

508 (4) Notwithstanding any other provision of law, a final judgment rendered in favor of  
 509 the state in any criminal proceeding under this chapter, whether upon a verdict after trial or  
 510 upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential  
 511 elements of the offense in any civil action under this chapter ~~[which]~~ that involves the same  
 512 transaction.

513 (5) Civil liability under this chapter shall be joint and several for a violation committed  
 514 by two or more persons.

515 (6) Any action brought by the state under this chapter shall be brought in district court  
 516 in Salt Lake County or in any county where the defendant resides or does business.

517 Section 14. Section **26-20a-501**, which is renumbered from Section 26-20-13 is  
 518 renumbered and amended to read:

519 **Part 5. Investigation and Enforcement**

520 ~~[26-20-13]~~. **26-20a-501. Medicaid fraud enforcement.**

521 (1) This chapter shall be enforced in accordance with this section.

522 (2) The department is responsible for:

523 (a) (i) investigating and prosecuting suspected civil violations of this chapter; or

524 (ii) referring suspected civil violations of this chapter to the attorney general for  
525 investigation and prosecution; and

526 (b) promptly referring suspected criminal violations of this chapter to the attorney  
527 general for criminal investigation and prosecution.

528 (3) The attorney general has:

529 (a) concurrent jurisdiction with the department for investigating and prosecuting  
530 suspected civil violations of this chapter; and

531 (b) exclusive jurisdiction to investigate and prosecute all suspected criminal violations  
532 of this chapter.

533 (4) The department and the attorney general share concurrent civil enforcement  
534 authority under this chapter and may enter into an interagency agreement regarding the  
535 investigation and prosecution of violations of this chapter in accordance with this section, the  
536 requirements of Title XIX of the federal Social Security Act, and applicable federal regulations.

537 (5) ~~[Any]~~ A state government officer or agency that is aware of a violation of this  
538 chapter ~~[which comes to the attention of any state government officer or agency shall be~~  
539 ~~reported]~~ shall report the violation to the attorney general or the department. All state  
540 government officers and agencies shall cooperate with and assist in any prosecution for  
541 violation of this chapter.

542 Section 15. Section ~~26-20a-502~~, which is renumbered from Section 26-20-14 is  
543 renumbered and amended to read:

544 ~~[26-20-14].~~ **26-20a-502. Investigations -- Authority of attorney general.**

545 (1) The attorney general may take investigative action under Subsection (2) if the  
546 attorney general has reason to believe that:

547 (a) a person has information or custody or control of documentary material relevant to  
548 the subject matter of an investigation of an alleged violation of this chapter;

549 (b) a person is committing, has committed, or is about to commit a violation of this  
550 chapter; or

551 (c) it is in the public interest to conduct an investigation to ascertain whether or not a  
552 person is committing, has committed, or is about to commit a violation of this chapter.

553 (2) In taking investigative action, the attorney general may:

554 (a) require the person to file on a prescribed form a statement in writing, under oath or

555 affirmation describing:

556 (i) the facts and circumstances concerning the alleged violation of this chapter; and

557 (ii) other information considered necessary by the attorney general;

558 (b) examine under oath a person in connection with the alleged violation of this

559 chapter; and

560 (c) in accordance with ~~[Subsections (7) through (18)]~~ Section 26-20a-505, execute in

561 writing[;] and serve ~~[on the person;]~~ a civil investigative demand requiring ~~[the]~~ a person to

562 produce the documentary material and permit inspection and copying of the material.

563 ~~[(3) The attorney general may not release or disclose information that is obtained under~~

564 ~~Subsection (2)(a) or (b), or any documentary material or other record derived from the~~

565 ~~information obtained under Subsection (2)(a) or (b), except:]~~

566 ~~[(a) by court order for good cause shown;]~~

567 ~~[(b) with the consent of the person who provided the information;]~~

568 ~~[(c) to an employee of the attorney general or the department;]~~

569 ~~[(d) to an agency of this state, the United States, or another state;]~~

570 ~~[(e) to a special assistant attorney general representing the state in a civil action;]~~

571 ~~[(f) to a political subdivision of this state; or]~~

572 ~~[(g) to a person authorized by the attorney general to receive the information.]~~

573 ~~[(4) The attorney general may use documentary material derived from information~~

574 ~~obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general~~

575 ~~determines necessary in the enforcement of this chapter, including presentation before a court.]~~

576 ~~[(5) (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to~~

577 ~~submit to an examination as required by Subsection (2)(b), the attorney general may file in~~

578 ~~district court a complaint for an order to compel the person to within a period stated by court~~

579 ~~order:]~~

580 ~~[(i) file the statement required by Subsection (2)(a); or]~~

581 ~~[(ii) submit to the examination required by Subsection (2)(b).]~~

582 ~~[(b) Failure to comply with an order entered under Subsection (5)(a) is punishable as~~

583 ~~contempt.]~~

584 ~~[(6) A civil investigative demand must:]~~

585 ~~[(a) state the rule or statute under which the alleged violation of this chapter is being~~

586 investigated;]

587       ~~[(b) describe the:]~~

588       ~~[(i) general subject matter of the investigation; and]~~

589       ~~[(ii) class or classes of documentary material to be produced with reasonable~~

590 ~~specificity to fairly indicate the documentary material demanded;]~~

591       ~~[(c) designate a date within which the documentary material is to be produced; and]~~

592       ~~[(d) identify an authorized employee of the attorney general to whom the documentary~~

593 ~~material is to be made available for inspection and copying.]~~

594       ~~[(7) A civil investigative demand may require disclosure of any documentary material~~

595 ~~that is discoverable under the Utah Rules of Civil Procedure.]~~

596       ~~[(8) Service of a civil investigative demand may be made by:]~~

597       ~~[(a) delivering an executed copy of the demand to the person to be served or to a~~

598 ~~partner, an officer, or an agent authorized by appointment or by law to receive service of~~

599 ~~process on behalf of that person;]~~

600       ~~[(b) delivering an executed copy of the demand to the principal place of business in~~

601 ~~this state of the person to be served; or]~~

602       ~~[(c) mailing by registered or certified mail an executed copy of the demand addressed~~

603 ~~to the person to be served:]~~

604       ~~[(i) at the person's principal place of business in this state; or]~~

605       ~~[(ii) if the person has no place of business in this state, to the person's principal office~~

606 ~~or place of business.]~~

607       ~~[(9) Documentary material demanded in a civil investigative demand shall be produced~~

608 ~~for inspection and copying during normal business hours at the office of the attorney general or~~

609 ~~as agreed by the person served and the attorney general.]~~

610       ~~[(10) The attorney general may not produce for inspection or copying or otherwise~~

611 ~~disclose the contents of documentary material obtained pursuant to a civil investigative demand~~

612 ~~except:]~~

613       ~~[(a) by court order for good cause shown;]~~

614       ~~[(b) with the consent of the person who produced the information;]~~

615       ~~[(c) to an employee of the attorney general or the department;]~~

616       ~~[(d) to an agency of this state, the United States, or another state;]~~

617 ~~[(e) to a special assistant attorney general representing the state in a civil action;]~~

618 ~~[(f) to a political subdivision of this state; or]~~

619 ~~[(g) to a person authorized by the attorney general to receive the information.]~~

620 ~~[(11) (a) With respect to documentary material obtained pursuant to a civil~~  
621 ~~investigative demand, the attorney general shall prescribe reasonable terms and conditions~~  
622 ~~allowing such documentary material to be available for inspection and copying by the person~~  
623 ~~who produced the material or by an authorized representative of that person.]~~

624 ~~[(b) The attorney general may use such documentary material or copies of it as the~~  
625 ~~attorney general determines necessary in the enforcement of this chapter, including presentation~~  
626 ~~before a court.]~~

627 ~~[(12) A person may file a complaint, stating good cause, to extend the return date for~~  
628 ~~the demand or to modify or set aside the demand. A complaint under this Subsection (12) shall~~  
629 ~~be filed in district court and must be filed before the earlier of:]~~

630 ~~[(a) the return date specified in the demand; or]~~

631 ~~[(b) the 20th day after the date the demand is served.]~~

632 ~~[(13) Except as provided by court order, a person who has been served with a civil~~  
633 ~~investigative demand shall comply with the terms of the demand.]~~

634 ~~[(14) (a) A person who has committed a violation of this chapter in relation to the~~  
635 ~~Medicaid program in this state or to any other medical benefit program administered by the~~  
636 ~~state has submitted to the jurisdiction of this state.]~~

637 ~~[(b) Personal service of a civil investigative demand under this section may be made on~~  
638 ~~the person described in Subsection (14)(a) outside of this state.]~~

639 ~~[(15) This section does not limit the authority of the attorney general to conduct~~  
640 ~~investigations or to access a person's documentary materials or other information under another~~  
641 ~~state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil~~  
642 ~~Procedure.]~~

643 ~~[(16) The attorney general may file a complaint in district court for an order to enforce~~  
644 ~~the civil investigative demand if:]~~

645 ~~[(a) a person fails to comply with a civil investigative demand; or]~~

646 ~~[(b) copying and reproduction of the documentary material demanded;]~~

647 ~~[(i) cannot be satisfactorily accomplished; and]~~

648 ~~[(ii) the person refuses to surrender the documentary material.]~~

649 ~~[(17) If a complaint is filed under Subsection (16), the court may determine the matter~~  
650 ~~presented and may enter an order to enforce the civil investigative demand.]~~

651 ~~[(18) Failure to comply with a final order entered under Subsection (17) is punishable~~  
652 ~~by contempt.]~~

653 Section 16. Section **26-20a-503** is enacted to read:

654 **26-20a-503. Investigatory records.**

655 (1) The attorney general may not release or disclose information that is obtained under  
656 Subsection 26-20a-502(2)(a) or (b), or any documentary material or other record derived from  
657 the information obtained under Subsection 26-20a-502(2)(a) or (b), except:

658 (a) by court order for good cause shown;

659 (b) with the consent of the person who provided the information;

660 (c) to an employee of the attorney general or the department;

661 (d) to an agency of this state, the United States, or another state;

662 (e) to a special assistant attorney general representing the state in a civil action;

663 (f) to a political subdivision of this state; or

664 (g) to a person authorized by the attorney general to receive the information.

665 (2) The attorney general may use documentary material derived from information  
666 obtained under Subsection 26-20a-502(2)(a) or (b), or copies of that material, as the attorney  
667 general determines necessary in the enforcement of this chapter, including presentation before a  
668 court.

669 Section 17. Section **26-20a-504** is enacted to read:

670 **26-20a-504. Order to compel filing of statement or submission to examination.**

671 (1) If a person fails to file a statement as required under Subsection 26-20a-502(2)(a),  
672 or fails to submit to an examination as required under Subsection 26-20a-502(2)(b), the  
673 attorney general may file in district court a complaint for an order to compel the person to,  
674 within a period stated by court order:

675 (a) file the statement required under Subsection 26-20a-502(2)(a); or

676 (b) submit to the examination required by Subsection 26-20a-502(2)(b).

677 (2) Failure to comply with an order entered under Subsection (1) is punishable as  
678 contempt.

679 Section 18. Section **26-20a-505** is enacted to read:

680 **26-20a-505. Civil investigative demand -- Service.**

681 (1) A civil investigative demand shall:

682 (a) state the rule or statute under which the alleged violation of this chapter is being  
683 investigated;

684 (b) describe the general subject matter of the investigation;

685 (c) describe the class or classes of documentary material to be produced with  
686 reasonable specificity to fairly indicate the documentary material demanded;

687 (d) designate a date within which the documentary material is required to be produced;  
688 and

689 (e) identify an authorized employee of the attorney general to whom the documentary  
690 material is to be made available for inspection and copying.

691 (2) A civil investigative demand may require disclosure of any documentary material  
692 that is discoverable under the Utah Rules of Civil Procedure.

693 (3) Service of a civil investigative demand may be made by:

694 (a) delivering an executed copy of the demand to the person to be served or to a  
695 partner, an officer, or an agent authorized by appointment or by law to receive service of  
696 process on behalf of that person;

697 (b) delivering an executed copy of the demand to the principal place of business in this  
698 state of the person to be served; or

699 (c) mailing by registered or certified mail an executed copy of the demand addressed to  
700 the person to be served:

701 (i) at the person's principal place of business in this state; or

702 (ii) if the person has no place of business in this state, to the person's principal office or  
703 place of business.

704 (4) (a) A person who has committed a violation of this chapter in relation to the  
705 Medicaid program in this state or to any other medical benefit program administered by the  
706 state has submitted to the jurisdiction of this state.

707 (b) Personal service of a civil investigative demand under this section may be made on  
708 the person described in Subsection (4)(a) outside of this state.

709 Section 19. Section **26-20a-506** is enacted to read:

710 **26-20a-506. Extension or modification of civil investigative demand -- Compliance**  
711 **with demand.**

712 (1) A person may file a complaint, stating good cause, to extend the return date for a  
713 civil investigative demand or to modify or set aside the demand.

714 (2) A person described in Subsection (1) shall file the complaint in district court before  
715 the earlier of:

716 (a) the return date specified in the civil investigative demand; or

717 (b) 20 days after the day on which the civil investigative demand is served.

718 (3) Except as provided by court order, a person who has been served with a civil  
719 investigative demand shall comply with the terms of the demand.

720 Section 20. Section **26-20a-507** is enacted to read:

721 **26-20a-507. Documentary material -- Production -- Inspection and copying.**

722 (1) Documentary material demanded in a civil investigative demand shall be produced  
723 for inspection and copying during normal business hours at the office of the attorney general or  
724 as agreed by the person served and the attorney general.

725 (2) The attorney general may not produce for inspection or copying or otherwise  
726 disclose the contents of documentary material obtained pursuant to a civil investigative demand  
727 except:

728 (a) by court order for good cause shown;

729 (b) with the consent of the person who produced the information;

730 (c) to an employee of the attorney general or the department;

731 (d) to an agency of this state, the United States, or another state;

732 (e) to a special assistant attorney general representing the state in a civil action;

733 (f) to a political subdivision of this state; or

734 (g) to a person authorized by the attorney general to receive the information.

735 (3) (a) The attorney general shall prescribe reasonable terms and conditions allowing  
736 documentary material obtained pursuant to a civil investigative demand to be made available  
737 for inspection and copying by the person who produced the material or by an authorized  
738 representative of that person.

739 (b) The attorney general may use the documentary material described in Subsection  
740 (3)(a), or copies of the documentary material, as the attorney general determines necessary in



741 the enforcement of this chapter, including presentation of the documentary material before a  
742 court.

743 Section 21. Section **26-20a-508** is enacted to read:

744 **26-20a-508. Enforcement of civil investigatory demand.**

745 (1) The attorney general may file a complaint in district court for an order to enforce a  
746 civil investigative demand if:

747 (a) a person fails to comply with the civil investigative demand; or

748 (b) (i) copying and reproduction of the documentary material demanded cannot be  
749 satisfactorily accomplished; and

750 (ii) the person upon whom the demand is served refuses to surrender the documentary  
751 material.

752 (2) If the attorney general files a complaint under Subsection (1), the court may  
753 determine the matter presented and may enter an order to enforce the civil investigative  
754 demand.

755 (3) Failure to comply with a final order entered under Subsection (2) is punishable by  
756 contempt.

757 Section 22. Section **26-20a-509** is enacted to read:

758 **26-20a-509. Investigation by other means.**

759 Nothing in this part limits the authority of the attorney general to conduct investigations  
760 or to access a person's documentary materials or other information under another state or  
761 federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

762 Section 23. Section **26-20a-601** is enacted to read:

763 **Part 6. Qui Tam Actions**

764 **26-20a-601. Filing of qui tam action -- Notice to attorney general -- Intervention**  
765 **or related action by person other than the state prohibited.**

766 (1) A relator may file a complaint in district court, in the name of the state, against a  
767 person for a violation of Part 2, Prohibited Conduct.

768 (2) A complaint filed under this section:

769 (a) may be filed in any judicial district in this state where the defendant:

770 (i) is found, resides, or transacts business; or

771 (ii) allegedly engaged in conduct that is a basis for the complaint;

772 (b) shall be filed in camera and remain under seal for at least 60 days after the day on  
773 which the attorney general's office receives the documents described in Subsection (4), or  
774 longer if extended by the court for good cause upon a motion by the attorney general; and

775 (c) may not be served on the defendant until ordered by the court.

776 (3) A motion made by the attorney general under Subsection (2)(b) may be supported  
777 by an affidavit or other in camera submission.

778 (4) A relator shall, within 10 days after the day on which the relator files a complaint  
779 described in Subsection (1), serve on the attorney general's office, pursuant to the Utah Rules  
780 of Civil Procedure:

781 (a) a copy of the complaint; and

782 (b) a written disclosure of material evidence and information relating to the complaint.

783 (5) A defendant named in a complaint filed under this section shall respond to the  
784 complaint within the time required by the Utah Rules of Civil Procedure.

785 (6) No person, other than the state, may:

786 (a) intervene in a qui tam action filed under this section; or

787 (b) bring a related action in state court that is based on the same facts as a qui tam  
788 action filed under this section.

789 (7) This section is not intended to preclude the filing of an action by a relator in federal  
790 court.

791 Section 24. Section **26-20a-602** is enacted to read:

792 **26-20a-602. Limitations on action by relator.**

793 (1) A relator may not bring an action under this chapter:

794 (a) that is based on an allegation or transaction that is the subject of a civil or  
795 administrative proceeding in this state to which the state, or a political subdivision of the state,  
796 is already a party;

797 (b) against a member of the Utah State Legislature, in the member's capacity as a  
798 legislator;

799 (c) against a person who is a member of the judiciary, in the person's capacity as a  
800 member of the judiciary; or

801 (d) against a person who is a public official, as defined in Section 20A-11-1202, in the  
802 person's capacity as a public official.

803 (2) If a relator is convicted of criminal conduct that arises from the person's role in the  
804 violation upon which the action filed by the relator is based:

805 (a) the court shall dismiss the relator from the civil action; and

806 (b) the relator may not receive any of the proceeds from the action or settlement.

807 (3) A dismissal under Subsection (2)(a) does not prejudice the right of the attorney  
808 general to proceed with the action.

809 (4) Unless the attorney general objects to dismissing the claim or action, or the relator  
810 is an original source of the information upon which the claim or action is based, the court shall  
811 dismiss a claim or action brought by a relator if substantially the same allegations or  
812 transactions as alleged in the action or claim were publicly disclosed before the claim or action  
813 was filed:

814 (a) in a criminal, civil, or administrative hearing where the state, a political subdivision  
815 of the state, or an agent of the state or a political subdivision of the state, is a party;

816 (b) in a criminal, civil, or administrative hearing where the federal government, or an  
817 agent of the federal government, is a party;

818 (c) in a legislative, or other government report, hearing, audit, or investigation;

819 (d) in a congressional, federal Government Accountability Office, or other federal  
820 report, hearing, audit, or investigation; or

821 (e) in the news media.

822 Section 25. Section **26-20a-603** is enacted to read:

823 **26-20a-603. Option of state to intervene in qui tam action -- Control of action --**  
824 **Rights of state and relator.**

825 (1) The attorney general shall, within 60 days after the day on which the relator serves  
826 the documents required under Subsection 26-20a-601(4), or an extended period as ordered by  
827 the court under Subsection 26-20a-601(2)(b):

828 (a) elect to proceed with an action filed under Subsection 26-20a-601(1) by filing with  
829 the court a notice of the state's intent to proceed with the action; or

830 (b) elect to not proceed with an action filed under Subsection 26-20a-601(1) by filing  
831 with the court a notice of the state's intent to not proceed with the action.

832 (2) The attorney general may intervene and proceed with an action filed under  
833 Subsection 26-20a-601(1) after the 60-day period described in Subsection 26-20a-601(2)(b), or

834 after an extended period as ordered by the court under Subsection 26-20a-601(2)(b), if the  
835 attorney general:

836 (a) files with the court a notice of the state's intent to proceed with the action;

837 (b) serves a copy of the notice on the relator, pursuant to the Utah Rules of Civil

838 Procedure; and

839 (c) establishes good cause to intervene.

840 (3) If the attorney general intervenes in an action under Subsection (1)(a) or (2):

841 (a) the attorney general:

842 (i) shall serve a copy of the notice on the relator, pursuant to the Utah Rules of Civil

843 Procedure;

844 (ii) shall have primary control of, and responsibility for, the action;

845 (iii) may amend the relator's complaint, to clarify, add detail, or add claims against the

846 defendant; and

847 (iv) may not be bound by an act of the relator; and

848 (b) the relator shall, subject to Section 26-20a-604, have the right to continue as a party

849 to the action.

850 (4) If the attorney general files the notice described in Subsection (1)(b), the relator:

851 (a) may, subject to Subsection (2), proceed with and conduct the action; and

852 (b) shall, upon request by the attorney general, and at the attorney general's expense:

853 (i) serve the attorney general with copies of all pleadings filed in the action; and

854 (ii) provide the attorney general with copies of all deposition transcripts relating to the

855 action.

856 (5) For purposes of the statute of limitations, a claim added by the attorney general

857 under Subsection (3)(a)(iii) shall relate back to the original filing date of the relator's

858 complaint, to the extent that the claim arises from the same conduct, transaction, or occurrence

859 described in the complaint filed by the relator.

860 Section 26. Section **26-20A-604** is enacted to read:

861 **26-20A-604. Limitations on relator's participation in an action -- Stay of**

862 **discovery.**

863 (1) The court may limit a relator's participation in an action in a manner described in

864 Subsection (2):

865 (a) upon a showing by the attorney general that unrestricted participation by the relator  
866 during the course of the litigation:

867 (i) would interfere with or unduly delay the attorney general's prosecution of the case;

868 or

869 (ii) would be repetitious, irrelevant, or for the purpose of harassment; or

870 (b) upon a showing by the defendant that unrestricted participation by the relator

871 during the course of the litigation:

872 (i) would be for the purpose of harassment; or

873 (ii) would cause the defendant undue burden or unnecessary expense.

874 (2) The limitations that a court may place on a relator's participation in an action under

875 Subsection (1) include:

876 (a) limiting the number of witnesses that the relator may call;

877 (b) limiting the length of testimony of each witness that a relator may call;

878 (c) limiting the relator's cross-examination of a witness; and

879 (d) any other limitation that the court determines is appropriate.

880 (3) Regardless of whether the attorney general intervenes in an action filed under

881 Subsection 26-20a-601(1), the court may stay an action of discovery upon a showing by the

882 attorney general, in an in camera hearing, that the action of discovery would interfere with the

883 state's investigation or prosecution of a civil or criminal matter that arises out of the same facts

884 as the action filed under Subsection 26-20a-601(1).

885 (4) (a) Except as provided in Subsection (4)(b), the stay of a discovery action described  
886 in Subsection (3) may not be for longer than 60 days.

887 (b) The court may extend the 60-day period described in Subsection (4)(a) if the

888 attorney general makes a showing, in an in camera hearing, that:

889 (i) the state has pursued the investigation or prosecution of the civil or criminal matter;

890 and

891 (ii) the discovery action will interfere with the investigation or prosecution of the civil

892 or criminal matter.

893 Section 27. Section **26-20A-605** is enacted to read:

894 **26-20A-605. Dismissal or settlement of action.**

895 (1) A court may dismiss a complaint filed under Subsection 26A-20-601(1),

896 notwithstanding objection by the relator, if:

897 (a) the court and the attorney general give written consent for the dismissal that  
898 includes the reasons for the dismissal; and

899 (b) the court provides the relator with notice and an opportunity to be heard regarding  
900 the dismissal before dismissing the case.

901 (2) (a) The attorney general may settle an action filed under Subsection 26A-20-601(1),  
902 notwithstanding objection by the relator, if, after providing the relator with notice and an  
903 opportunity to be heard, the court determines that the settlement is fair, accurate, and  
904 reasonable under all circumstances.

905 (b) The hearing described in Subsection (2)(a) may be held in camera upon a showing  
906 of good cause.

907 Section 28. Section **26-20a-606** is enacted to read:

908 **26-20a-606. Distribution of proceeds from action or settlement.**

909 (1) If the state proceeds with an action brought by a relator, the relator is, except as  
910 provided in Subsection (3) and Subsection 26-20a-602(2)(a), entitled to:

911 (a) except as provided in Subsection (1)(b) or (c), 15% of the proceeds of the action or  
912 settlement;

913 (b) except as provided in Subsection (1)(c), an amount, as determined by the court, that  
914 does not to exceed 25% of the proceeds of the action or settlement, if the court determines that  
915 the relator's contribution to the prosecution of the action warrants award of a higher percentage  
916 than the percentage described in Subsection (1)(a); or

917 (c) an amount, that the court determines is appropriate, not to exceed 10% of the  
918 proceeds of the action or settlement, taking into account the significance of the information and  
919 the role of the relator in advancing the case to litigation, if the court finds that the action is  
920 primarily based on disclosure of specific information, other than information provided by the  
921 relator:

922 (i) that relates to allegations or transactions in:

923 (A) a criminal, civil, or administrative hearing; or

924 (B) a congressional, legislative, administrative, or other federal, state, or local  
925 government report, hearing, audit, or investigation; or

926 (ii) the news media.

927 (2) If the state does not proceed with an action brought by a relator, the relator is,  
928 except as provided in Subsection (3) and Section 26-20a-602(2)(a), entitled to:

929 (a) 25% of the proceeds of the action or settlement; or

930 (b) a higher percentage of the proceeds of the action or settlement, not to exceed 30%,  
931 if the court determines that the relator's contribution to the prosecution of the action warrants  
932 award of a higher percentage.

933 (3) If the court finds that a relator planned or initiated the violation of Part 2,  
934 Prohibited Conduct, upon which the action filed by the relator is based, the court may, to the  
935 extent the court determines to be appropriate, reduce the share of the proceeds of the action that  
936 the person would otherwise receive under Subsection (1) or (2), taking into account:

937 (a) the role of the relator in advancing the case to litigation; and

938 (b) any other circumstances relating to the violation.

939 (4) The court shall also award the relator, in addition to the amounts described in  
940 Subsection (1) or (2), reasonable expenses that the court finds were necessarily incurred,  
941 including reasonable costs and attorney fees, to be paid by the defendant.

942 (5) If a relator proceeds with an action that the state does not intervene in, the court  
943 may award reasonable attorney fees and expenses to a prevailing defendant if the court finds  
944 that the action is based on a claim that was:

945 (a) clearly frivolous;

946 (b) clearly vexatious; or

947 (c) brought primarily for the purpose of harassment.

948 Section 29. Section **26-20a-607** is enacted to read:

949 **26-20a-607. State not liable for expenses of relator.**

950 The state is not liable for expenses, including costs and attorney fees, of a relator.

951 Section 30. Section **26-20a-608** is enacted to read:

952 **26-20a-608. Pursuit of claim through alternate means.**

953 (1) Notwithstanding any other provision of this part, the attorney general may elect to  
954 pursue a claim that is part of an action filed under this part through an alternate remedy,  
955 including an administrative proceeding.

956 (2) If the state makes the election described in Subsection (1):

957 (a) the relator shall have the same rights in the proceeding for the alternate remedy as

958 the relator has in an action under this part; and

959 (b) any finding of fact or conclusion of law made in the proceeding described in  
960 Subsection (2)(a) shall, upon the finding or conclusion of law becoming final, be conclusive on  
961 all parties to an action under this part.

962 Section 31. Section **26-20a-609** is enacted to read:

963 **26-20a-609. Whistleblower action.**

964 (1) A relator or another individual may file an action against a person for taking any  
965 adverse action against the relator or the individual:

966 (a) in retaliation for the relator bringing an action under this chapter or section;

967 (b) to prevent the relator or the individual from lawfully:

968 (i) engaging in conduct in furtherance of the action filed by the relator; or

969 (ii) taking action to stop or report a violation of this chapter; or

970 (c) in retaliation for the relator or the individual lawfully:

971 (i) engaging in conduct in furtherance of the action filed by the relator; or

972 (ii) taking action to stop or report a violation of this chapter.

973 (2) A relator or individual who files an action described in Subsection (1) may seek any  
974 relief necessary to:

975 (a) protect the relator or the individual from conduct described in Subsections (1)(a)  
976 through (c); or

977 (b) make the relator, or the individual subjected to the conduct described in  
978 Subsections (1)(a) through (c), whole.

979 (3) The relief described in Subsection (2) includes:

980 (a) an injunction;

981 (b) damages, including:

982 (i) twice the amount of backpay;

983 (ii) interest on backpay; and

984 (iii) compensation for any special damages;

985 (c) reinstatement to employment, position, seniority, authority, benefits, or  
986 compensation;

987 (d) litigation costs; and

988 (e) reasonable attorney fees.



989 (4) An action filed under this section may be filed in any judicial district in this state  
990 where the defendant:

991 (a) is found, resides, or transacts business; or

992 (b) allegedly engaged in any of the alleged violations described in:

993 (i) this section; or

994 (ii) Part 2, Prohibited Conduct.

995 (5) A civil action under this section may not be brought later than three years after the  
996 day on which the violation of this section occurred.

997 Section 32. Section **26-20a-701**, which is renumbered from Section 26-20-10 is  
998 renumbered and amended to read:

999 **Part 7. Miscellaneous**

1000 **~~[26-20-10]. 26-20a-701. Revocation of license of assisted living facility --~~**  
1001 **Appointment of receiver.**

1002 (1) If the license of an assisted living facility is revoked for violation of this chapter, the  
1003 county attorney may file a petition with the district court for the county in which the facility is  
1004 located for the appointment of a receiver.

1005 (2) ~~[The]~~ After a petition described in Subsection (1) is filed, the district court shall  
1006 issue an order to show cause why a receiver should not be appointed, returnable within five  
1007 days after the filing of the petition.

1008 (3) If the court finds that the facts warrant the granting of the petition, the court shall  
1009 appoint a receiver to take charge of the facility. The court may determine fair compensation for  
1010 the receiver.

1011 (4) A receiver appointed pursuant to this section shall have the powers and duties  
1012 prescribed by the court.

1013 Section 33. Section **26-20a-702** is enacted to read:

1014 **26-20a-702. Severability.**

1015 If any provision of this chapter, or the application of this chapter to any person or  
1016 circumstance, is held unconstitutional:

1017 (1) the remaining provisions of this chapter shall not be affected; and

1018 (2) the application of this chapter to other persons or circumstances shall not be  
1019 affected.

1020 Section 34. Section **67-5-1** is amended to read:

1021 **67-5-1. General duties.**

1022 The attorney general shall:

1023 (1) perform all duties in a manner consistent with the attorney-client relationship under  
1024 Section 67-5-17;

1025 (2) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court  
1026 and the Court of Appeals of this state, and all courts of the United States, and prosecute or  
1027 defend all causes to which the state, or any officer, board, or commission of the state in an  
1028 official capacity is a party; and take charge, as attorney, of all civil legal matters in which the  
1029 state is interested;

1030 (3) after judgment on any cause referred to in Subsection (2), direct the issuance of  
1031 process as necessary to execute the judgment;

1032 (4) account for, and pay over to the proper officer, all moneys that come into the  
1033 attorney general's possession that belong to the state;

1034 (5) keep a file of all cases in which the attorney general is required to appear, including  
1035 any documents and papers showing the court in which the cases have been instituted and tried,  
1036 and whether they are civil or criminal, and:

1037 (a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to  
1038 judgment, a memorandum of the judgment and of any process issued whether satisfied, and if  
1039 not satisfied, the return of the sheriff;

1040 (b) if criminal, the nature of the crime, the mode of prosecution, the stage of  
1041 proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the  
1042 execution, if the sentence has been executed, if not executed, of the reason of the delay or  
1043 prevention; and

1044 (c) deliver this information to the attorney general's successor in office;

1045 (6) exercise supervisory powers over the district and county attorneys of the state in all  
1046 matters pertaining to the duties of their offices, and from time to time require of them reports of  
1047 the condition of public business entrusted to their charge;

1048 (7) give the attorney general's opinion in writing and without fee to the Legislature or  
1049 either house, and to any state officer, board, or commission, and to any county attorney or  
1050 district attorney, when required, upon any question of law relating to their respective offices;

1051 (8) when required by the public service or directed by the governor, assist any county,  
1052 district, or city attorney in the discharge of ~~[his]~~ the county, district, or city attorney's duties;

1053 (9) purchase in the name of the state, under the direction of the state Board of  
1054 Examiners, any property offered for sale under execution issued upon judgments in favor of or  
1055 for the use of the state, and enter satisfaction in whole or in part of the judgments as the  
1056 consideration of the purchases;

1057 (10) when the property of a judgment debtor in any judgment mentioned in Subsection  
1058 (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance  
1059 taking precedence of the judgment in favor of the state, redeem the property, under the  
1060 direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and  
1061 pay all money necessary for the redemption, upon the order of the state Board of Examiners,  
1062 out of any money appropriated for these purposes;

1063 (11) when in his opinion it is necessary for the collection or enforcement of any  
1064 judgment, institute and prosecute on behalf of the state any action or proceeding necessary to  
1065 set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the  
1066 cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any  
1067 money not otherwise appropriated;

1068 (12) discharge the duties of a member of all official boards of which the attorney  
1069 general is or may be made a member by the Utah Constitution or by the laws of the state, and  
1070 other duties prescribed by law;

1071 (13) institute and prosecute proper proceedings in any court of the state or of the  
1072 United States, to restrain and enjoin corporations organized under the laws of this or any other  
1073 state or territory from acting illegally or in excess of their corporate powers or contrary to  
1074 public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations,  
1075 and wind up their affairs;

1076 (14) institute investigations for the recovery of all real or personal property that may  
1077 have escheated or should escheat to the state, and for that purpose, subpoena any persons  
1078 before any of the district courts to answer inquiries and render accounts concerning any  
1079 property, examine all books and papers of any corporations, and when any real or personal  
1080 property is discovered that should escheat to the state, institute suit in the district court of the  
1081 county where the property is situated for its recovery, and escheat that property to the state;

1082 (15) administer the Children's Justice Center as a program to be implemented in  
1083 various counties pursuant to Sections 67-5b-101 through 67-5b-107;

1084 (16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4,  
1085 Constitutional Defense Council;

1086 (17) pursue any appropriate legal action to implement the state's public lands policy  
1087 established in Subsection 63C-4-105(1);

1088 (18) investigate and prosecute violations of all applicable state laws relating to fraud in  
1089 connection with the state Medicaid program and any other medical assistance program  
1090 administered by the state, including violations of Title 26, Chapter [20;] 20a, Utah False  
1091 Claims Act;

1092 (19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients  
1093 at:

1094 (a) health care facilities that receive payments under the state Medicaid program; and

1095 (b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C.  
1096 Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility; and

1097 (20) (a) report at least twice per year to the Legislative Management Committee on any  
1098 pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

1099 (i) cost the state more than \$500,000; or

1100 (ii) require the state to take legally binding action that would cost more than \$500,000  
1101 to implement; and

1102 (b) if the meeting is closed, include an estimate of the state's potential financial or other  
1103 legal exposure in that report.

1104 Section 35. Section **76-8-1202** is amended to read:

1105 **76-8-1202. Application of part.**

1106 (1) This part does not apply to offenses by providers under the state's Medicaid  
1107 program that are actionable under Title 26, Chapter [20;] 20a, Utah False Claims Act.

1108 (2) (a) Section 35A-1-503 applies to criminal actions taken under this part.

1109 (b) The repayment of funds or other benefits obtained in violation of the provisions of  
1110 this chapter shall not constitute a defense or grounds for dismissal of a criminal action.

1111 Section 36. Section **76-10-1602 (Superseded 07/01/11)** is amended to read:

1112 **76-10-1602 (Superseded 07/01/11). Definitions.**

1113 As used in this part:

1114 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,  
1115 business trust, association, or other legal entity, and any union or group of individuals  
1116 associated in fact although not a legal entity, and includes illicit as well as licit entities.

1117 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the  
1118 commission of at least three episodes of unlawful activity, which episodes are not isolated, but  
1119 have the same or similar purposes, results, participants, victims, or methods of commission, or  
1120 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall  
1121 demonstrate continuing unlawful conduct and be related either to each other or to the  
1122 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have  
1123 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful  
1124 activity as defined by this part shall have occurred within five years of the commission of the  
1125 next preceding act alleged as part of the pattern.

1126 (3) "Person" includes any individual or entity capable of holding a legal or beneficial  
1127 interest in property, including state, county, and local governmental entities.

1128 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,  
1129 command, encourage, or intentionally aid another person to engage in conduct which would  
1130 constitute any offense described by the following crimes or categories of crimes, or to attempt  
1131 or conspire to engage in an act which would constitute any of those offenses, regardless of  
1132 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor  
1133 or a felony:

1134 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized  
1135 Recording Practices Act;

1136 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality  
1137 Code, Sections 19-1-101 through 19-7-109;

1138 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
1139 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources  
1140 Code of Utah, or Section 23-20-4;

1141 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title  
1142 26, Chapter ~~[20, Utah False Claims Act, Sections 26-20-1 through 26-20-12]~~ 20a, Part 2,  
1143 Prohibited Acts;

- 1144 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal  
1145 Offenses;
- 1146 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform  
1147 Land Sales Practices Act;
- 1148 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
1149 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
1150 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,  
1151 Clandestine Drug Lab Act;
- 1152 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform  
1153 Securities Act;
- 1154 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6 Utah  
1155 Procurement Code;
- 1156 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 1157 (k) a threat of terrorism, Section 76-5-107.3;
- 1158 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 1159 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 1160 (n) sexual exploitation of a minor, Section 76-5a-3;
- 1161 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 1162 (p) causing a catastrophe, Section 76-6-105;
- 1163 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 1164 (r) burglary of a vehicle, Section 76-6-204;
- 1165 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 1166 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 1167 (u) theft, Section 76-6-404;
- 1168 (v) theft by deception, Section 76-6-405;
- 1169 (w) theft by extortion, Section 76-6-406;
- 1170 (x) receiving stolen property, Section 76-6-408;
- 1171 (y) theft of services, Section 76-6-409;
- 1172 (z) forgery, Section 76-6-501;
- 1173 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 1174 (bb) deceptive business practices, Section 76-6-507;

- 1175 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or  
1176 criticism of goods, Section 76-6-508;
- 1177 (dd) bribery of a labor official, Section 76-6-509;
- 1178 (ee) defrauding creditors, Section 76-6-511;
- 1179 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1180 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1181 (hh) bribery or threat to influence contest, Section 76-6-514;
- 1182 (ii) making a false credit report, Section 76-6-517;
- 1183 (jj) criminal simulation, Section 76-6-518;
- 1184 (kk) criminal usury, Section 76-6-520;
- 1185 (ll) fraudulent insurance act, Section 76-6-521;
- 1186 (mm) retail theft, Section 76-6-602;
- 1187 (nn) computer crimes, Section 76-6-703;
- 1188 (oo) identity fraud, Section 76-6-1102;
- 1189 (pp) mortgage fraud, Section 76-6-1203;
- 1190 (qq) sale of a child, Section 76-7-203;
- 1191 (rr) bribery to influence official or political actions, Section 76-8-103;
- 1192 (ss) threats to influence official or political action, Section 76-8-104;
- 1193 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 1194 (uu) receiving bribe or bribery for endorsement of person as public servant, Section  
1195 76-8-106;
- 1196 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 1197 (ww) obstruction of justice, Section 76-8-306;
- 1198 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 1199 (yy) false or inconsistent material statements, Section 76-8-502;
- 1200 (zz) false or inconsistent statements, Section 76-8-503;
- 1201 (aaa) written false statements, Section 76-8-504;
- 1202 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1203 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1204 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1205 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or

1206 76-8-1205;  
1207 (fff) unemployment insurance fraud, Section 76-8-1301;  
1208 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection  
1209 76-9-301(2)(d) or (e), or Section 76-9-301.1;  
1210 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or  
1211 parts, Section 76-10-306;  
1212 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary  
1213 device, Section 76-10-307;  
1214 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;  
1215 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;  
1216 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;  
1217 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section  
1218 76-10-1002;  
1219 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,  
1220 Section 76-10-1003;  
1221 (ooo) sales in containers bearing registered trademark of substituted articles, Section  
1222 76-10-1004;  
1223 (ppp) selling or dealing with article bearing registered trademark or service mark with  
1224 intent to defraud, Section 76-10-1006;  
1225 (qqq) gambling, Section 76-10-1102;  
1226 (rrr) gambling fraud, Section 76-10-1103;  
1227 (sss) gambling promotion, Section 76-10-1104;  
1228 (ttt) possessing a gambling device or record, Section 76-10-1105;  
1229 (uuu) confidence game, Section 76-10-1109;  
1230 (vvv) distributing pornographic material, Section 76-10-1204;  
1231 (www) inducing acceptance of pornographic material, Section 76-10-1205;  
1232 (xxx) dealing in harmful material to a minor, Section 76-10-1206;  
1233 (yyy) distribution of pornographic films, Section 76-10-1222;  
1234 (zzz) indecent public displays, Section 76-10-1228;  
1235 (aaaa) prostitution, Section 76-10-1302;  
1236 (bbbb) aiding prostitution, Section 76-10-1304;



1237 (cccc) exploiting prostitution, Section 76-10-1305;  
1238 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;  
1239 (eeee) communications fraud, Section 76-10-1801;  
1240 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money  
1241 Laundering and Currency Transaction Reporting Act;  
1242 (gggg) vehicle compartment for contraband, Section 76-10-2801;  
1243 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in  
1244 this state; and  
1245 (iiii) any act illegal under the laws of the United States and enumerated in Title 18,  
1246 Section 1961 (1)(B), (C), and (D) of the United States Code.

1247 Section 37. Section **76-10-1602 (Effective 07/01/11)** is amended to read:

1248 **76-10-1602 (Effective 07/01/11). Definitions.**

1249 As used in this part:

1250 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,  
1251 business trust, association, or other legal entity, and any union or group of individuals  
1252 associated in fact although not a legal entity, and includes illicit as well as licit entities.

1253 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the  
1254 commission of at least three episodes of unlawful activity, which episodes are not isolated, but  
1255 have the same or similar purposes, results, participants, victims, or methods of commission, or  
1256 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall  
1257 demonstrate continuing unlawful conduct and be related either to each other or to the  
1258 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have  
1259 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful  
1260 activity as defined by this part shall have occurred within five years of the commission of the  
1261 next preceding act alleged as part of the pattern.

1262 (3) "Person" includes any individual or entity capable of holding a legal or beneficial  
1263 interest in property, including state, county, and local governmental entities.

1264 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,  
1265 command, encourage, or intentionally aid another person to engage in conduct which would  
1266 constitute any offense described by the following crimes or categories of crimes, or to attempt  
1267 or conspire to engage in an act which would constitute any of those offenses, regardless of

1268 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor  
1269 or a felony:

1270 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized  
1271 Recording Practices Act;

1272 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality  
1273 Code, Sections 19-1-101 through 19-7-109;

1274 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
1275 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources  
1276 Code of Utah, or Section 23-20-4;

1277 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title  
1278 26, Chapter ~~[20, Utah False Claims Act, Sections 26-20-1 through 26-20-12]~~ 20a, Part 2,  
1279 Prohibited Acts;

1280 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal  
1281 Offenses and Procedure Act;

1282 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform  
1283 Land Sales Practices Act;

1284 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
1285 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
1286 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,  
1287 Clandestine Drug Lab Act;

1288 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform  
1289 Securities Act;

1290 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6 Utah  
1291 Procurement Code;

1292 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

1293 (k) a threat of terrorism, Section 76-5-107.3;

1294 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

1295 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

1296 (n) sexual exploitation of a minor, Section 76-5a-3;

1297 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

1298 (p) causing a catastrophe, Section 76-6-105;

- 1299 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 1300 (r) burglary of a vehicle, Section 76-6-204;
- 1301 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 1302 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 1303 (u) theft, Section 76-6-404;
- 1304 (v) theft by deception, Section 76-6-405;
- 1305 (w) theft by extortion, Section 76-6-406;
- 1306 (x) receiving stolen property, Section 76-6-408;
- 1307 (y) theft of services, Section 76-6-409;
- 1308 (z) forgery, Section 76-6-501;
- 1309 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 1310 (bb) deceptive business practices, Section 76-6-507;
- 1311 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or  
1312 criticism of goods, Section 76-6-508;
- 1313 (dd) bribery of a labor official, Section 76-6-509;
- 1314 (ee) defrauding creditors, Section 76-6-511;
- 1315 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1316 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1317 (hh) bribery or threat to influence contest, Section 76-6-514;
- 1318 (ii) making a false credit report, Section 76-6-517;
- 1319 (jj) criminal simulation, Section 76-6-518;
- 1320 (kk) criminal usury, Section 76-6-520;
- 1321 (ll) fraudulent insurance act, Section 76-6-521;
- 1322 (mm) retail theft, Section 76-6-602;
- 1323 (nn) computer crimes, Section 76-6-703;
- 1324 (oo) identity fraud, Section 76-6-1102;
- 1325 (pp) mortgage fraud, Section 76-6-1203;
- 1326 (qq) sale of a child, Section 76-7-203;
- 1327 (rr) bribery to influence official or political actions, Section 76-8-103;
- 1328 (ss) threats to influence official or political action, Section 76-8-104;
- 1329 (tt) receiving bribe or bribery by public servant, Section 76-8-105;

1330 (uu) receiving bribe or bribery for endorsement of person as public servant, Section  
1331 76-8-106;  
1332 (vv) official misconduct, Sections 76-8-201 and 76-8-202;  
1333 (ww) obstruction of justice, Section 76-8-306;  
1334 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;  
1335 (yy) false or inconsistent material statements, Section 76-8-502;  
1336 (zz) false or inconsistent statements, Section 76-8-503;  
1337 (aaa) written false statements, Section 76-8-504;  
1338 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;  
1339 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;  
1340 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;  
1341 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or  
1342 76-8-1205;  
1343 (fff) unemployment insurance fraud, Section 76-8-1301;  
1344 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection  
1345 76-9-301(2)(d) or (e), or Section 76-9-301.1;  
1346 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or  
1347 parts, Section 76-10-306;  
1348 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary  
1349 device, Section 76-10-307;  
1350 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;  
1351 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;  
1352 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;  
1353 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section  
1354 76-10-1002;  
1355 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,  
1356 Section 76-10-1003;  
1357 (ooo) sales in containers bearing registered trademark of substituted articles, Section  
1358 76-10-1004;  
1359 (ppp) selling or dealing with article bearing registered trademark or service mark with  
1360 intent to defraud, Section 76-10-1006;

- 1361 (qqq) gambling, Section 76-10-1102;
- 1362 (rrr) gambling fraud, Section 76-10-1103;
- 1363 (sss) gambling promotion, Section 76-10-1104;
- 1364 (ttt) possessing a gambling device or record, Section 76-10-1105;
- 1365 (uuu) confidence game, Section 76-10-1109;
- 1366 (vvv) distributing pornographic material, Section 76-10-1204;
- 1367 (www) inducing acceptance of pornographic material, Section 76-10-1205;
- 1368 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
- 1369 (yyy) distribution of pornographic films, Section 76-10-1222;
- 1370 (zzz) indecent public displays, Section 76-10-1228;
- 1371 (aaaa) prostitution, Section 76-10-1302;
- 1372 (bbbb) aiding prostitution, Section 76-10-1304;
- 1373 (cccc) exploiting prostitution, Section 76-10-1305;
- 1374 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;
- 1375 (eeee) communications fraud, Section 76-10-1801;
- 1376 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money
- 1377 Laundering and Currency Transaction Reporting Act;
- 1378 (gggg) vehicle compartment for contraband, Section 76-10-2801;
- 1379 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in
- 1380 this state; and
- 1381 (iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
- 1382 Sec. 1961 (1)(B), (C), and (D).
- 1383 Section 38. **Repealer.**
- 1384 This bill repeals:
- 1385 Section **26-20-6, Conspiracy to defraud prohibited.**
- 1386 Section 39. **Effective date.**
- 1387 This bill takes effect on May 10, 2011, except that the amendments to Section
- 1388 76-10-1602 (Effective 07/01/11) take effect on July 1, 2011.

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**Legislative Review Note**  
as of 9-22-10 6:49 AM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

## S.B. 103

SHORT TITLE: **Utah False Claims Act Amendments**

SPONSOR: **McAdams, B.**

2011 GENERAL SESSION, STATE OF UTAH

### STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the Attorney General's Office \$41,900 ongoing from the General Fund and \$125,700 in federal funds for 1.5 FTEs beginning in FY 2012. The magnitude of the savings from recoveries will depend upon the number of claims received and successfully prosecuted.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$41,900	\$41,900
Federal Funds	\$0	\$125,700	\$125,700
Total Expenditure	\$0	\$167,600	\$167,600
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$167,600)	(\$167,600)
Net Impact, General/Education Funds	\$0	(\$41,900)	(\$41,900)

### LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

### DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.