

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1503

S.P. 465

In Senate, April 4, 2019

### An Act To Establish the Maine False Claims Act

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator CARPENTER of Aroostook.  
Cosponsored by Representatives: BRADSTREET of Vassalboro, CARDONE of Bangor,  
EVANGELOS of Friendship.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §15**, as amended by PL 2013, c. 235, §§1 and 2, is repealed.

3 **Sec. 2. 22 MRSA §15-A** is enacted to read:

4 **§15-A. Maine False Claims Act**

5 **1. Short title.** This section may be known and cited as "the Maine False Claims  
6 Act."

7 **2. Definitions.** As used in this section, unless the context otherwise indicates, the  
8 following terms have the following meanings.

9 A. "Claim" means a request or demand, whether under a contract or otherwise, for  
10 money or property, whether or not the State has title to the money or property, that:

11 (1) Is presented to an officer, employee or agent of the State; or

12 (2) Is made to a contractor, grantee or other recipient of the money or property, if  
13 the money or property is to be spent or used on the State's behalf or to advance a  
14 state program or interest and if the State:

15 (a) Provides or has provided any portion of the money or property requested  
16 or demanded; or

17 (b) Will reimburse the contractor, grantee or other recipient for any portion  
18 of the money or property that is requested or demanded.

19 "Claim" does not include a request or demand for money or property that the State  
20 has paid to an individual as compensation for state employment or as an income  
21 subsidy with no restrictions on that individual's use of the money or property.

22 B. "False claims action" means a court action brought under this section.

23 C. "Knowingly" or "knowing" means that a person, with respect to information:

24 (1) Has actual knowledge of the information;

25 (2) Acts in deliberate ignorance of the truth or falsity of the information; or

26 (3) Acts in reckless disregard of the truth or falsity of the information.

27 "Knowingly" and "knowing" require no specific intent to defraud.

28 D. "Material" or "materially" means having a natural tendency to influence, or be  
29 capable of influencing, the payment or receipt of money or the transfer or receipt of  
30 property.

31 E. "Obligation" means an established duty, whether or not fixed, arising from an  
32 express or implied contractual, grantor-grantee or licensor-licensee relationship, from  
33 a fee-based or similar relationship, from statute or rule, or from the retention of any  
34 overpayment.

35 F. "Person" means a natural person, corporation, firm, association, organization,  
36 partnership, business or trust.

1 G. "Plaintiff," with respect to a qui tam action, means the relator and, if the Attorney  
2 General elects to intervene in and prosecute the action, the State or both as  
3 determined in the action.

4 H. "Qui tam action" means an action brought by a person for the benefit of the  
5 person and for the benefit of the State in the name of the State and, at the election of  
6 the Attorney General, in which the State is also a plaintiff.

7 I. "Relator" means a person who brings a qui tam action for a violation of this  
8 section.

9 J. "State" means the State of Maine and any agency or political subdivision of the  
10 State.

11 **3. Acts subjecting persons to treble damages, costs and penalties; exceptions. A**  
12 **person who files a false claim is liable for damages, costs and penalties as provided in**  
13 **this subsection.**

14 A. A person who commits any of the acts listed in this paragraph is liable to the State  
15 for 3 times the amount of damages that the State sustains because of the act of that  
16 person. A person who commits any of the acts listed in this paragraph is also liable  
17 to the State for the costs, including attorney's fees, of a civil action brought to recover  
18 any of those penalties or damages and may be liable to the State for a fine of not less  
19 than \$5,500 and not more than \$11,500, as adjusted by the Federal Civil Penalties  
20 Inflation Adjustment Act of 1990, for each violation:

21 (1) Knowingly presents or causes to be presented a false or fraudulent claim for  
22 payment or approval;

23 (2) Knowingly makes, uses or causes to be made or used a false record or  
24 statement material to a false or fraudulent claim;

25 (3) Has possession, custody or control of money or property used or to be used  
26 by the State and knowingly delivers or causes to be delivered less than all of that  
27 money or property;

28 (4) Knowingly presents or causes to be presented a claim that includes items or  
29 services resulting from a violation of Section 1128B of the Social Security Act,  
30 42 United States Code, Section 1320a-7b;

31 (5) Is authorized to make or deliver a document certifying receipt of property  
32 used or to be used by the State and intending to defraud the State makes or  
33 delivers the receipt without completely knowing that the information on the  
34 receipt is true;

35 (6) Knowingly buys, or receives as a pledge of an obligation or debt, public  
36 property from an officer, employee or agent of the State who is not lawfully  
37 authorized to sell or pledge the property;

38 (7) Enters into an agreement, contract or understanding with an official of the  
39 State knowing the information contained therein is false;

1 (8) Knowingly makes, uses or causes to be made or used a false record or  
2 statement material to an obligation to pay or transmit money or property to the  
3 State;

4 (9) Knowingly conceals or knowingly and improperly avoids or decreases an  
5 obligation to pay or transmit money or property to the State;

6 (10) Benefits from an inadvertent submission of a false claim to the State or  
7 benefits from an overpayment from the State and subsequently discovers the  
8 falsehood of the claim or the receipt of overpayment and fails to disclose the false  
9 claim or receipt of overpayment to the State by the later of:

10 (a) The date that is 60 days after the date on which the false claim or receipt  
11 of overpayment was identified; and

12 (b) The date any corresponding cost report is due, if applicable; or

13 (11) Conspires to violate this subsection.

14 B. Notwithstanding paragraph A, a person who violates paragraph A, subparagraphs  
15 (1) to (11) is liable for an amount equal to at least 2 times the amount of damages that  
16 the State sustained because of the violation, but is not subject to a fine, if the court  
17 finds that:

18 (1) The person who committed the violation furnished officials of the State who  
19 are responsible for investigating false claims violations with all information  
20 known to the person about the violation within 30 days after the date on which  
21 the person first obtained the information;

22 (2) The person fully cooperated with any investigation into the violation by the  
23 State; and

24 (3) At the time the person furnished the State with information about the  
25 violation, no criminal prosecution, civil action or administrative action had  
26 commenced with respect to the violation and the person did not have actual  
27 knowledge of the existence of an investigation into the violation.

28 C. This subsection does not apply to claims, records or statements made to the State  
29 under Title 36.

30 **4. Attorney General investigations and prosecutions; powers of prosecuting**  
31 **authority; civil actions by persons as qui tam plaintiff and as private citizens;**  
32 **jurisdiction.** A false claims action may be brought against a person who violates  
33 subsection 3 in accordance with this subsection and subsections 5 to 7.

34 A. The Attorney General shall diligently investigate a suspected or alleged violation  
35 of subsection 3. If the Attorney General finds that a person has violated or is  
36 violating subsection 3, the Attorney General may bring a false claims action under  
37 this subsection against the person or intervene in a qui tam action brought by a person  
38 under paragraph B.

39 B. A private person may bring a qui tam action for a violation of subsection 3.

1 (1) Once filed, the qui tam action may be dismissed only with the written  
2 consent of the court and the Attorney General, after taking into account the best  
3 interests of the parties involved and the public purpose of this section.

4 (2) The relator shall serve on the Attorney General a copy of the complaint and  
5 written disclosure of substantially all material evidence and information the  
6 relator possesses as provided in the Maine Rules of Civil Procedure, Rule 5.

7 (3) The complaint must be filed in camera, must remain under seal for at least  
8 120 days and may not be served on the defendant until the court so orders.

9 (4) The Attorney General may elect to intervene in and proceed with the action  
10 on behalf of the State within 120 days after the Attorney General receives both  
11 the copy of the complaint and the written disclosure of the material evidence and  
12 information from the relator. Any information or documents furnished by the  
13 relator to the Attorney General in connection with the initiation of a qui tam  
14 action or investigation under subparagraph (2) are not public records and are  
15 exempt from disclosure under Title 1, chapter 13.

16 (5) The Attorney General may, for good cause shown, move the court for  
17 extensions of time during which the complaint remains under seal under  
18 subparagraph (3) and during which the Attorney General may elect to intervene  
19 in and proceed with the action under subparagraph (6). A motion under this  
20 subparagraph must be supported by an affidavit or other submission in camera.

21 (6) Before the expiration of the 120-day period under subparagraph (4) or of any  
22 extension ordered under subparagraph (5), the Attorney General shall:

23 (a) Proceed with the action by intervention on behalf of the State as plaintiff,  
24 in which case the action must be conducted by the Attorney General as the  
25 attorney for the plaintiff; or

26 (b) Notify the court that the Attorney General declines to take over the  
27 action, in which case the relator has the right to conduct the action as  
28 plaintiff.

29 (7) The defendant is not required to respond to any complaint filed under this  
30 paragraph until after the complaint is unsealed and served on the defendant as  
31 provided in the Maine Rules of Civil Procedure, Rule 5.

32 (8) When a person brings an action as relator under this paragraph, a person  
33 other than the Attorney General on behalf of the State may not intervene or bring  
34 a related action based on the facts underlying the action while the action is  
35 pending.

36 C. The rights of the parties to a qui tam action under this subsection are determined  
37 under this paragraph.

38 (1) If the Attorney General elects not to intervene in and proceed with the action,  
39 the relator has the right to conduct the action as plaintiff.

40 (a) At the request of the Attorney General, and upon payment by the  
41 Attorney General of the cost of transcription, copying and mailing, the relator  
42 shall serve on the Attorney General copies of all pleadings filed in the action.

1                   (b) The court, upon the Attorney General's showing good cause and without  
2                   limiting the status and rights of the relator, may permit the Attorney General  
3                   to intervene after the expiration of the 120-day period under paragraph B,  
4                   subparagraph (4) and any extension ordered under paragraph B,  
5                   subparagraph (5).

6                   (2) If the Attorney General intervenes in and proceeds with the qui tam action,  
7                   the Attorney General has the primary responsibility for prosecuting the action  
8                   and is not bound by any acts of the relator. The relator has the right to continue  
9                   as a party to the action, subject to the limitations of this subparagraph.

10                   (a) The Attorney General may move to dismiss the action for good cause  
11                   shown notwithstanding the objections of the relator if the relator has been  
12                   notified by the Attorney General of the filing of the motion and the court has  
13                   provided the relator with an opportunity to oppose the motion and present  
14                   evidence at a hearing.

15                   (b) The Attorney General may settle the action with the defendant  
16                   notwithstanding the objections of the relator if the court determines, after a  
17                   hearing at which the relator has had an opportunity to present evidence, that  
18                   the proposed settlement is fair, adequate and reasonable under all of the  
19                   circumstances.

20                   (c) Upon a showing by the Attorney General that unrestricted participation  
21                   during the course of the action by the relator would interfere with or unduly  
22                   delay the prosecution of the action by the Attorney General or would be  
23                   repetitious, irrelevant or for purposes of harassment, the court may, in its  
24                   discretion, impose limitations on the participation of the relator, including but  
25                   not limited to:

- 26                   (i) Limiting the number of witnesses the relator may call;
- 27                   (ii) Limiting the length of the testimony of the witnesses called by the  
28                   relator; and
- 29                   (iii) Limiting the relator's cross-examination of witnesses.

30                   (d) Upon a showing by the defendant that unrestricted participation during  
31                   the course of the action by the relator would be for purposes of harassment or  
32                   would cause the defendant undue burden or unnecessary expense, the court  
33                   may limit the participation of the relator in the action.

34                   (3) Whether or not the Attorney General intervenes in and proceeds with the  
35                   action, upon a showing by the Attorney General that certain actions of discovery  
36                   by the relator would interfere with the Attorney General's investigation or  
37                   prosecution of a criminal or civil matter arising out of the same facts, the court  
38                   may stay the discovery for a period of not more than 60 days. A showing under  
39                   this subparagraph must be conducted in camera. The court may extend a 60-day  
40                   stay granted under this subparagraph upon a further showing in camera that the  
41                   Attorney General has pursued the criminal or civil investigation or proceedings  
42                   with reasonable diligence and that the proposed discovery in the qui tam action  
43                   would interfere with the ongoing criminal or civil investigation or proceedings.

1 A motion with regard to discovery in a qui tam action must be filed with the court  
2 in accordance with the Maine Rules of Civil Procedure, Rules 26 to 37, as  
3 applicable.

4 (4) Notwithstanding the provisions of paragraph B, the Attorney General may  
5 elect to pursue its claim through any alternate remedy available to the State,  
6 including any administrative proceeding to determine a civil penalty. If an  
7 alternate remedy is pursued in another proceeding, the relator has the same rights  
8 in the proceeding as the relator would have had if the action had continued under  
9 this subsection. For the purposes of this subparagraph, a finding or conclusion is  
10 final if it has been finally determined on appeal to the appropriate court of the  
11 State, if all time for filing appeals with respect to the finding or conclusion has  
12 expired or if the finding or conclusion is not subject to judicial review.

13 D. If the Attorney General intervenes in and proceeds with a qui tam action under  
14 this subsection and a judgment is entered in favor of the plaintiff or a settlement is  
15 entered in the action, the court shall enter an order as follows.

16 (1) Except as provided in subparagraph (2), the court may award the relator at  
17 least 15% but not more than 25% of the proceeds of the action or settlement of  
18 the claim, depending on the extent to which the relator and the counsel for the  
19 relator contributed to the prosecution of the action. Any payment to the relator  
20 under this subparagraph must be made from the proceeds.

21 (2) If the court finds that the action is based primarily on disclosures of specific  
22 information, other than information provided by the relator, relating to allegations  
23 or transactions specifically in a criminal, civil or administrative hearing, in a  
24 legislative or administrative report, hearing, audit or investigation or from the  
25 news media, the court may award the relator such sums as it considers  
26 appropriate, but in no case more than 10% of the proceeds, taking into account  
27 the significance of the information and the role of the relator in advancing the  
28 case to litigation. Any payment to the relator under this subparagraph must be  
29 made from the proceeds.

30 (3) The court shall order payment of the reasonable expenses of the relator that  
31 the court finds to be necessarily incurred, plus reasonable attorney's fees and  
32 costs. All expenses, fees and costs must be awarded against the defendant.

33 E. If the Attorney General does not intervene in and proceed with a qui tam action  
34 under this subsection and a judgment is entered in favor of the plaintiff or a  
35 settlement is entered in the action, the court shall enter an order as follows. The  
36 relator must receive an amount that the court determines reasonable for causing to be  
37 collected the fines and damages. The amount must be at least 25% but not more than  
38 30% of the proceeds of the action or settlement and must be paid out of the proceeds.  
39 The relator must also receive an amount for reasonable expenses that the court finds  
40 to be necessarily incurred, plus reasonable attorney's fees and costs. All expenses,  
41 fees and costs must be awarded against the defendant.

42 F. Whether or not the Attorney General intervenes in and proceeds with the action,  
43 and whether or not a judgment is entered in favor of the plaintiff or a settlement is  
44 entered in the action, if the court finds that the action was brought by a relator who



1 planned and initiated the violation of subsection 3 upon which the action was  
2 brought, the court may, to the extent the court considers appropriate, reduce the share  
3 of the proceeds of the action that the person would otherwise receive under this  
4 subsection. The court shall take into account the role of the relator in advancing the  
5 case to litigation and any relevant circumstances pertaining to the violation. If the  
6 relator is convicted of a crime arising from the role of the relator in the violation of  
7 subsection 3, the relator must be dismissed from the qui tam action and may not  
8 receive any share of the proceeds of the action. Dismissal of the relator under this  
9 paragraph does not prejudice the right of the State to continue the action as plaintiff.

10 G. If the State does not proceed with the action and the person bringing the action  
11 conducts the action, the court may award to the defendant the defendant's reasonable  
12 attorney's fees and expenses if the defendant prevails in the action and the court finds  
13 that the claim of the person bringing the action was clearly frivolous, clearly  
14 vexatious or brought primarily for purposes of harassment.

15 H. Except as otherwise provided in this section, no liability may be incurred by the  
16 State, the department or the Attorney General for any expenses, attorney's fees or  
17 other costs incurred by any person in bringing or defending an action under this  
18 subsection.

19 I. All money collected from the defendant in an action under this subsection, with the  
20 exception of money payable under this subsection to another person, must be paid to  
21 the State Controller for credit to the Maine False Claims Act Fund under subsection  
22 8.

23 J. The following limitations apply to qui tam actions under this subsection.

24 (1) The court does not have jurisdiction over an action brought under paragraph  
25 B against a member of the Legislature, a Judge of the District Court or a Justice  
26 of the Superior Court or Supreme Judicial Court or an executive branch official  
27 appointed by the Governor if the action is based on evidence or information  
28 known to the State when the action was brought.

29 (2) The court does not have jurisdiction over an action brought by a former or  
30 present member of the Armed Forces of the United States against another  
31 member of the Armed Forces arising out of that other member's service in the  
32 Armed Forces.

33 (3) The court shall dismiss an action or claim under paragraph B, unless opposed  
34 by the State, if substantially the same allegations or transactions as alleged in the  
35 action or claim were publicly disclosed in a state criminal, civil or administrative  
36 hearing in which the State or its agent is a party; in a federal congressional or  
37 state legislative or other report, hearing or audit, investigation; or from the news  
38 media unless the action is brought by the Attorney General or the person bringing  
39 the action is an original source of the information.

40 For purposes of this subparagraph, "original source" means an individual either  
41 who prior to a public disclosure has voluntarily disclosed to the State the  
42 information on which allegations or transactions in a claim are based or who has  
43 knowledge that is independent of and materially adds to the publicly disclosed

1 allegations or transactions and has voluntarily provided the information to the  
2 State before filing an action under paragraph B.

3 (4) A person may not bring an action under paragraph B if the action is based  
4 upon allegations or transactions that are the subject of a civil suit or an  
5 administrative civil penalty proceeding in which the State is already a party.

6 K. An employee, contractor or agent who is discharged, demoted, suspended,  
7 threatened, harassed or in any other manner discriminated against in the terms and  
8 conditions of employment by the employer of the employee, contractor or agent  
9 because of lawful acts done by the employee, contractor or agent in furtherance of a  
10 qui tam action brought or to be brought under this subsection or other efforts to stop  
11 one or more violations of this section, including investigation for, initiation of,  
12 testimony for or assistance in an action filed or to be filed under this subsection, is  
13 entitled to all relief necessary to make the employee, contractor or agent whole.  
14 Relief under this paragraph includes reinstatement with the same seniority status that  
15 the employee, contractor or agent would have had but for the discriminatory action, 2  
16 times the amount of back pay, interest on the back pay and compensation for any  
17 special damages sustained as a result of the discriminatory action, including litigation  
18 costs and reasonable attorney's fees. An employee, contractor or agent may bring an  
19 action in Superior Court in the county in which the employer is located or the county  
20 of residence of the employee, contractor or agent. An action may not be brought  
21 more than 3 years after the last act of the employer that is alleged to violate this  
22 paragraph.

23 **5. Limitation of actions; burden of proof.** The following provisions apply to an  
24 action under subsection 4.

25 A. An action under subsection 4 may not be brought more than 6 years after the date  
26 on which the violation was committed or more than 3 years after the date when facts  
27 material to the cause of action are known or reasonably should have been known by  
28 the state official charged with the responsibility to act in such circumstances but in no  
29 event more than 10 years after the date on which the violation is committed,  
30 whichever occurs later.

31 B. If the Attorney General elects to intervene in and proceed with an action brought  
32 under subsection 4, paragraph B, the Attorney General may file a complaint or amend  
33 the complaint of a relator to clarify or add detail to the claims in which the Attorney  
34 General is intervening on behalf of the State and to add any additional claims with  
35 respect to which the Attorney General contends the State is entitled to relief. For  
36 statute of limitations purposes, any such Attorney General pleading relates back to  
37 the filing date of the complaint of the relator who originally brought the action, to the  
38 extent that the claim of the Attorney General on behalf of the State arises out of the  
39 conduct, transactions or occurrences set forth or attempted to be set forth in the prior  
40 complaint of the relator.

41 C. A civil action under subsection 4 may be brought for activity prior to the effective  
42 date of this subsection if the limitations period set in paragraph A has not lapsed.

1 D. An action under subsection 4 may be brought by the relator in the county in  
2 which the relator resides, in the county in which the defendant has its principal place  
3 of business or in the Superior Court of Kennebec County.

4 E. In an action brought under subsection 4, the State or the relator is required to  
5 prove all essential elements of the cause of action, including damages, by a  
6 preponderance of the evidence.

7 F. Notwithstanding any other provision of law, a guilty verdict rendered in a criminal  
8 proceeding alleging false statements or fraud, whether upon a verdict after trial or  
9 upon a plea of guilty or nolo contendere, estops the defendant from denying the  
10 essential elements of the offense in an action brought under subsection 4 that involves  
11 the same transaction as in the criminal proceeding.

12 **6. Civil investigatory demands.** In an investigation of a violation under subsection  
13 3, the provisions of Title 5, section 211 apply to civil investigatory demands and to the  
14 examination of books, records, papers and memoranda of whatever nature and persons  
15 having knowledge regarding those materials. Any information obtained by means of a  
16 civil investigatory demand in connection with an action or investigation under this section  
17 may be shared with any relator if the Attorney General or a designee of the Attorney  
18 General determines it is necessary as part of any false claims act investigation under this  
19 Act.

20 **7. Applicable rules of civil procedure.** The Maine Rules of Civil Procedure apply  
21 to all aspects of service, subpoena power, discovery and court procedure of an action filed  
22 pursuant to subsection 4 unless inconsistent with the provisions of this section.

23 **8. Maine False Claims Act Fund.** There is established within the department the  
24 Maine False Claims Act Fund. If the Attorney General initiates an action under  
25 subsection 4, paragraph A or intervenes in and proceeds with an action under subsection  
26 4, paragraph B, the Attorney General is entitled to receive a fixed 33% of the proceeds of  
27 the action or settlement of the claim, which funds must be used to provide funding for  
28 investigatory, enforcement and litigation expenses within the Office of the Attorney  
29 General related to this section. The remaining 67% of the proceeds of the action or  
30 settlement must be returned to the State. The Maine False Claims Act Fund is a  
31 nonlapsing fund dedicated to the purposes of this section.

32 **9. Remedies under other laws; severability of provisions; liberality of legislative**  
33 **construction; adoption of legislative history.** The remedies provided for in this section  
34 are not exclusive and are in addition to any other remedies provided for under section 15,  
35 in any other law or available under common law. If any provision of this section or the  
36 application thereof to any person or circumstance is held to be unconstitutional, the  
37 remainder of the section and the application of the provision to other persons and  
38 circumstances is not affected thereby. This section must be liberally construed and  
39 applied to promote the public interest. This section also adopts the congressional intent  
40 behind the federal False Claims Act, 31 United States Code, Sections 3729 to 3733,  
41 including the federal False Claims Amendments Act of 1986.

42 **Sec. 3. 22 MRSA §1714-A, sub-§10,** as enacted by PL 2017, c. 442, §2, is  
43 amended to read:

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**10. No imposition of liability on other persons.** The department may not by any means, including without limitation any rule or any contract or agreement with a provider, impose liability for a debt under this section on any person other than the provider notified of the debt pursuant to subsection 2 or a person subject to collection by offset pursuant to rules adopted under subsection 5. This subsection does not prohibit the department from seeking recovery of civil penalties from any person as provided in section ~~15~~ 15-A.

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#### SUMMARY

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This bill repeals the existing law governing the civil liability of persons making false claims, and enacts the Maine False Claims Act in order to protect the State against false and fraudulent claims upon or against the State and to protect the State and the Federal Government against false and fraudulent claims under the Medicaid program, known in the State as the MaineCare program. This bill provides authorization for qui tam actions, which are brought by a person for the benefit of the person and the State in the name of the State. This bill provides protection from discrimination for an employee who participates in a qui tam action. This bill provides possible recoveries for the person who brings the qui tam action in addition to recoveries for the State. This bill establishes the Maine False Claims Act Fund to receive the proceeds payable to the State as a result of false claims litigation to be used in part for investigatory, enforcement and litigation expenses.