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**SUBSTITUTE SENATE BILL 5665**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Talmadge, Prentice and Moore)

Read first time 03/01/93.

1 AN ACT Relating to false claims against the government; adding a  
2 new chapter to Title 4 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the  
5 "Washington state false claims act."

6 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
7 otherwise, the definitions in this section apply throughout this  
8 chapter.

9 (1) "Claim" means a request or demand for money, property, or  
10 services that is made to (a) a governmental entity, or (b) any other  
11 person if a governmental entity either provides a portion of the money,  
12 property, or services that are requested or demanded or reimburses any  
13 person for a portion of such money, property, or services.

14 (2) "False claim" means any claim that contains or is based upon a  
15 materially incorrect fact, statement, representation, or record.

16 (3) "Governmental entity" means the state of Washington and any  
17 political subdivision thereof. A governmental entity includes its  
18 officials and employees, acting in such capacities.

1 (4) "Knowing" and "knowingly" mean that a person, with respect to  
2 information, and with or without specific intent to defraud:

3 (a) Has actual knowledge of the information; or

4 (b) Acts in reckless disregard of the truth or falsity of the  
5 information.

6 (5) "Public attorney" means any person that is authorized by a  
7 governmental entity to investigate, initiate, maintain, or resolve  
8 legal actions or claims on the governmental entity's behalf.

9 NEW SECTION. **Sec. 3.** A person commits a "wrongful act" under this  
10 chapter if that person:

11 (1) Knowingly presents or causes to be presented to a governmental  
12 entity a false claim for payment or approval;

13 (2) Knowingly makes, uses, or causes to be made or used, a false  
14 record or statement to get a false claim paid or approved;

15 (3) Conspires to get a false claim allowed or paid;

16 (4) Has possession, custody, or control of property or money used,  
17 or to be used, by a governmental entity and knowingly delivers, or  
18 causes to be delivered, less property than the amount for which the  
19 person receives a certificate or receipt;

20 (5) Is authorized to make or deliver a document certifying receipt  
21 of property used, or to be used, by a governmental entity and makes or  
22 delivers the receipt knowing that material information on the receipt  
23 is false;

24 (6) Knowingly buys, or receives as security for an obligation or  
25 debt, public property from an officer or employee of a governmental  
26 entity, who lawfully may not sell or pledge the property; or

27 (7) Knowingly makes, uses, or causes to be made or used, a false  
28 record or statement to conceal, avoid, or decrease an obligation to pay  
29 or transmit property to a governmental entity.

30 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (2) of  
31 this section, a person who commits a wrongful act against a  
32 governmental entity is liable to the governmental entity for (a) a  
33 civil penalty of five thousand dollars; (b) an amount equal to three  
34 times the damages sustained by the governmental entity as a result of  
35 the wrongful act; and (c) all costs incurred by the governmental entity  
36 in maintaining a civil action hereunder, including attorneys' fees.

1 (2) Notwithstanding subsection (1) of this section, a court may  
2 assess against a person who commits a wrongful act an amount not less  
3 than the actual benefit received by the person as a result of the  
4 wrongful act plus all costs incurred by the governmental entity in  
5 collecting such amount, including attorneys' fees, if the court finds  
6 all of the following:

7 (a) The person committing the wrongful act furnished to a public  
8 attorney responsible for investigating false claims all information  
9 known to the person about the wrongful act within thirty days after the  
10 person first obtained the information;

11 (b) The person fully cooperated with the governmental entity's  
12 investigation of the wrongful act; and

13 (c) At the time the person furnished the governmental entity with  
14 the information about the wrongful act, no criminal prosecution, civil  
15 action, or administrative action had commenced under this chapter with  
16 respect to the violation, and the person did not have actual knowledge  
17 of the existence of an investigation into the wrongful act.

18 (3) This chapter does not apply to any controversy that results in  
19 damages to a governmental entity that have a total value of less than  
20 one thousand dollars. For the purpose of this subsection,  
21 "controversy" means any one or more wrongful acts committed by the same  
22 person.

23 NEW SECTION. **Sec. 5.** A public attorney shall diligently  
24 investigate a wrongful act. If the public attorney finds that a person  
25 has committed or is committing a wrongful act, the public attorney may  
26 bring a civil action against the person.

27 NEW SECTION. **Sec. 6.** (1) A person may bring a civil action for  
28 the commission of a wrongful act in the name of the person and the  
29 governmental entity. The action may be dismissed only if the court and  
30 the public attorney give written consent to dismissal and their reasons  
31 for consenting.

32 (2) A copy of the complaint and written disclosure of substantially  
33 all material evidence and information the person possesses shall be  
34 served on the governmental entity under this chapter. The complaint  
35 shall be filed in camera, remain under seal for at least sixty days,  
36 and not be served on the defendant until the court orders. The  
37 governmental entity may elect to intervene and proceed with the action

1 within sixty days after it receives both the complaint and the material  
2 evidence and information.

3 (3) The governmental entity may, for good cause shown, move the  
4 court for extensions of the time during which the complaint remains  
5 under seal under subsection (2) of this section. A motion may be  
6 supported by affidavits or other submissions in camera. The defendant  
7 is not required to respond to a complaint filed under this section  
8 until twenty days after the complaint is unsealed and served upon the  
9 defendant under this chapter.

10 (4) Before the expiration of the sixty-day period or extensions  
11 obtained under subsection (3) of this section, the governmental entity  
12 shall:

13 (a) Proceed with the action, in which case the action is conducted  
14 by the governmental entity; or

15 (b) Notify the court that it declines to take over the action, in  
16 which case the person bringing the action has the right to conduct the  
17 action.

18 (5) If a person brings an action under this section, no person  
19 other than the governmental entity may intervene or bring a related  
20 action based on the facts underlying the pending action.

21 NEW SECTION. **Sec. 7.** (1) If a governmental entity proceeds with  
22 an action under section 6 of this act, it has the primary  
23 responsibility for prosecuting the action and is not bound by an act of  
24 the person bringing the action. The person has the right to continue  
25 as a party to the action, subject to the limitations set forth in  
26 subsection (2) of this section.

27 (2)(a) A governmental entity may dismiss the action notwithstanding  
28 the objections of the person initiating the action if the person has  
29 been served with a copy of the motion for dismissal in a manner  
30 provided by law and the court has provided the person with an  
31 opportunity for a hearing on the motion.

32 (b) A governmental entity may settle an action with a defendant  
33 notwithstanding the objections of the person initiating the action if  
34 the court determines, after a hearing, that the proposed settlement is  
35 fair, adequate, and reasonable under the circumstances. Upon a showing  
36 of good cause and following the provision of notice of the hearing to  
37 all parties, the hearing may be held in camera.

1 (c) Upon a showing by a governmental entity or a defendant that  
2 unrestricted participation during the course of the litigation by the  
3 person initiating the action would interfere with or unduly delay  
4 prosecution of the case, or would be repetitious, irrelevant, or for  
5 purposes of harassment, the court may, in its discretion, impose  
6 reasonable limitations on the person's participation, including:

7 (i) Limiting the number of witnesses the person may call;

8 (ii) Limiting the length of the testimony of the witnesses;

9 (iii) Limiting the person's cross-examination of witnesses; or

10 (iv) Otherwise limiting the participation by the person in the  
11 litigation.

12 (3) If a governmental entity elects not to proceed with the action,  
13 the person who initiated the action has the right to conduct the  
14 action. The governmental entity may request, and following such  
15 request shall be served with, copies of all pleadings filed in the  
16 action and supplied with copies of all deposition transcripts, at the  
17 governmental entity's expense. If the person proceeds with the action,  
18 the court, without limiting the status and rights of the person  
19 initiating the action, may nevertheless permit the governmental entity  
20 to intervene at a later date upon a showing of good cause.

21 (4) Whether or not the governmental entity proceeds with the  
22 action, upon a showing by the governmental entity that certain actions  
23 of discovery by the person initiating the action would interfere with  
24 an investigation or prosecution of a criminal or civil matter arising  
25 out of the same facts, the court may stay the discovery for a period of  
26 not more than sixty days. Such a showing shall be made in camera. The  
27 court may extend the sixty-day period upon a further showing in camera  
28 that the governmental entity has pursued the criminal or civil  
29 investigation or proceedings with reasonable diligence and the proposed  
30 discovery in the civil action would interfere with the ongoing criminal  
31 or civil investigation or proceedings.

32 (5) Notwithstanding section 6 of this act, a governmental entity  
33 may elect to pursue a claim through an available alternate remedy,  
34 including an administrative proceeding. If an alternative remedy is  
35 undertaken, any civil actions shall be stayed and the person initiating  
36 the civil action has the same rights in the proceeding, including with  
37 respect to awards, costs, and attorneys' fees, as the person would have  
38 if the action had continued under this section. A finding of fact or  
39 conclusion of law made in the other proceeding that has become final is

1 conclusive on all parties to an action under this section. For  
2 purposes of this subsection, a finding or conclusion is final if it has  
3 been finally determined on appeal to the appropriate court of the  
4 state, if all time for filing an appeal with respect to the finding or  
5 conclusion has expired, or if the finding or conclusion is not subject  
6 to judicial review.

7 NEW SECTION. **Sec. 8.** (1) If a governmental entity proceeds with  
8 an action brought by a person under section 6 of this act, the person  
9 shall receive at least fifteen percent but not more than twenty-five  
10 percent of any recovery in an action or settlement of the claim,  
11 depending upon the extent the person substantially contributed to the  
12 prosecution of the action. If the action is one that the court finds  
13 is based primarily on disclosures of specific information, other than  
14 information provided by the person bringing the action, (a) in a  
15 criminal, civil, or administrative hearing, (b) in a legislative,  
16 administrative, or state accounting office report, hearing, audit, or  
17 investigation, or (c) from the news media, the court may award the sum  
18 it considers appropriate, but in no case more than ten percent of the  
19 proceeds, taking into account the significance of the information and  
20 the role of the person bringing the action in advancing the case to  
21 litigation. A payment to a person under this subsection is made from  
22 the award. Any payment of any portion of an award or recovery that is  
23 made shall be shared pro rata between the person and the governmental  
24 entity. The person shall also receive an amount for reasonable  
25 expenses which the court finds to have been necessarily incurred, plus  
26 reasonable attorneys' fees and costs. All expenses, fees, and costs  
27 are awarded against the defendant who is found to have committed a  
28 wrongful act.

29 (2) If a governmental entity does not proceed with an action under  
30 this section, the person bringing the action or settling the claim  
31 shall receive an amount that the court decides is reasonable for  
32 collecting the civil penalty and damages. The amount shall be not less  
33 than twenty-five percent and not more than thirty percent of the  
34 recovery or settlement and is paid out of the proceeds. The person  
35 shall also receive an amount for reasonable expenses that the court  
36 finds were necessarily incurred, plus reasonable attorneys' fees and  
37 costs. All expenses, fees, and costs are awarded against the defendant  
38 who is found to have committed a wrongful act.

1 (3) Whether or not a governmental entity proceeds with an action,  
2 if the court finds that the action was brought by a person who planned  
3 and initiated the wrongful act upon which the action was brought, then  
4 the court may, to the extent the court considers appropriate, reduce  
5 the share of the proceeds of the action that the person would otherwise  
6 receive under subsection (1) or (2) of this section, taking into  
7 account the role of that person in advancing the case to litigation and  
8 relevant circumstances pertaining to the wrongful act. If the person  
9 bringing the action is convicted of criminal conduct arising from his  
10 or her role in the commission of a wrongful act, that person is  
11 dismissed from the civil action and shall receive no recovery or award.  
12 The dismissal shall not prejudice the right of the governmental entity  
13 to continue the action.

14 (4) If the governmental entity does not proceed with the action and  
15 the person bringing the action conducts the action, the court may award  
16 to the defendant reasonable attorneys' fees and expenses if the  
17 defendant prevails in the action.

18 NEW SECTION. **Sec. 9.** No governmental entity is liable for  
19 expenses that a person incurs in bringing an action under section 6 of  
20 this act.

21 NEW SECTION. **Sec. 10.** (1) Any person who initiates, furnishes  
22 information, or otherwise participates in an investigation of, or a  
23 civil action with respect to, a wrongful act is entitled to the rights  
24 and protections afforded to (a) governmental employees under chapter  
25 42.40 RCW, if the person is an employee or official of a governmental  
26 entity, or (b) private employees under chapter ....., (Senate Bill No.  
27 5200), Laws of 1993, if the person is an "employee" of a "private  
28 employer," as those terms are defined in chapter ....., (Senate Bill  
29 No. 5200), Laws of 1993.

30 (2) This section shall become effective on August 1, 1993, only if  
31 chapter ....., (Senate Bill No. 5200), Laws of 1993 takes effect on or  
32 before August 1, 1993.

33 NEW SECTION. **Sec. 11.** (1) Any person who has been subjected to  
34 work place reprisal or retaliation as a result of being a whistleblower  
35 or an employer's belief that the person is a whistleblower has the  
36 remedies provided under chapter 49.60 RCW. Such remedies are in

1 addition to any other remedies that the person may have under common  
2 law or statute.

3 (2) For the purposes of this section:

4 (a) "Whistleblower" means a person who in good faith initiates,  
5 furnishes information, or otherwise participates in an investigation  
6 of, or a civil action with respect to, a wrongful act; and

7 (b) "Reprisal or retaliation" has the meaning given in RCW  
8 42.40.050.

9 (3) This section shall become effective on August 1, 1993, if  
10 chapter ....., (Senate Bill No. 5200), Laws of 1993 does not take  
11 effect on or before August 1, 1993.

12 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act shall  
13 constitute a new chapter in Title 4 RCW.

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