
HOUSE BILL 1370

State of Washington

68th Legislature

2023 Regular Session

By Representatives Reeves, Corry, Reed, Morgan, Ramel, Pollet, and Leavitt; by request of Department of Financial Institutions

Read first time 01/17/23. Referred to Committee on Consumer Protection & Business.

1 AN ACT Relating to the payment of awards to whistleblowers who
2 report violations of state or federal securities laws and providing
3 protection to whistleblowers and internal reporters; amending RCW
4 42.56.400 and 43.320.115; and adding a new chapter to Title 21 RCW.

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 whistleblower award and protection act.

8 NEW SECTION. **Sec. 2.** The definitions in this section apply
9 throughout this chapter unless the context clearly requires
10 otherwise.

11 (1) "Monetary sanction" means any moneys, including penalties,
12 disgorgement, and interest, ordered to be paid as a result of an
13 administrative or judicial action.

14 (2) "Original information" means information that is:

15 (a) Derived from the independent knowledge or analysis of a
16 whistleblower;

17 (b) Not already known to the securities administrator or the
18 securities division from any other source, unless the whistleblower
19 is the original source of the information;

1 (c) Not exclusively derived from an allegation made in an
2 administrative or judicial hearing, in a government report, hearing,
3 audit, or investigation, or from the news media, unless the
4 whistleblower is the source of the information; and

5 (d) Provided to the securities division for the first time after
6 the effective date of this section.

7 (3) "Securities administrator" means the administrator of the
8 securities act of Washington, chapter 21.20 RCW, designated pursuant
9 to RCW 21.20.460.

10 (4) "Securities division" means the division of the department of
11 financial institutions that administers the securities act of
12 Washington, chapter 21.20 RCW.

13 (5) "Whistleblower" means an individual who, alone or jointly
14 with others, provides the state or other law enforcement agency with
15 information pursuant to the provisions set forth in this chapter, and
16 the information relates to a possible violation of state or federal
17 securities laws, including any rules or regulations thereunder, that
18 has occurred, is ongoing, or is about to occur.

19 NEW SECTION. **Sec. 3.** Subject to the provisions of this chapter,
20 the securities administrator may award an amount to one or more
21 whistleblowers who voluntarily provide original information in
22 writing, and in the form and manner required by the securities
23 administrator, to the securities division that leads to the
24 successful enforcement of an administrative or judicial action under
25 chapter 21.20 RCW.

26 NEW SECTION. **Sec. 4.** Any individual who anonymously makes a
27 claim must be represented by counsel. Prior to the payment of an
28 award, a whistleblower shall disclose their identity and provide such
29 other information as the securities division may require, directly or
30 through counsel, for the whistleblower.

31 NEW SECTION. **Sec. 5.** If the securities administrator determines
32 to make one or more awards under section 3 of this act, the aggregate
33 amount of awards that may be awarded in connection with an
34 administrative or judicial action may not be less than 10 percent nor
35 more than 30 percent of the monetary sanctions imposed and collected
36 in the related administrative or judicial action.

1 (5) In the whistleblower's submission, the whistleblower's other
2 dealings with the securities administrator, or in the whistleblower's
3 dealings with another authority in connection with a related action,
4 knowingly and willfully makes any false, fictitious, or fraudulent
5 statement or representation, or uses any false writing or document
6 knowing that it contains any false, fictitious, or fraudulent
7 statement or entry with intent to mislead or otherwise hinder the
8 securities administrator or another authority;

9 (6) Knows that, or has a reckless disregard as to whether, the
10 original information provided is false, fictitious, or fraudulent;

11 (7) Has a legal duty to report the original information to the
12 securities administrator or securities division;

13 (8) Is, or was at the time the whistleblower acquired the
14 original information submitted to the securities division, a member,
15 officer, or employee of the department of financial institutions, the
16 securities and exchange commission, any other state securities
17 regulatory authority, a self-regulatory organization, the public
18 company accounting oversight board, or any law enforcement
19 organization;

20 (9) Is, or was at the time the whistleblower acquired the
21 original information submitted to the securities division, a member,
22 officer, or employee of a foreign government, any political
23 subdivision, department, agency, or instrumentality of a foreign
24 government, or any other foreign financial regulatory authority as
25 that term is defined in 15 U.S.C. 78c(a) (52);

26 (10) Is the spouse, parent, child, or sibling of the securities
27 administrator or an employee of the department of financial
28 institutions, or resides in the same household as the securities
29 administrator or an employee of the department of financial
30 institutions; or

31 (11) Directly or indirectly acquires the original information
32 provided to the securities division from a person:

33 (a) Who is subject to subsection (2) of this section, unless the
34 information is not excluded from that person's use, or provides the
35 securities division with information about possible violations
36 involving that person;

37 (b) Who is a person described in subsection (8), (9), or (10) of
38 this section; or

39 (c) With the intent to evade any provision of this chapter.

1 NEW SECTION. **Sec. 10.** (1) No employer may directly or
2 indirectly terminate, discharge, demote, suspend, threaten, harass,
3 or in any other manner retaliate against, an individual because of
4 any lawful act done by the individual:

5 (a) In providing information to the state or other law
6 enforcement agency concerning a possible violation of state or
7 federal securities laws, including any rules or regulations
8 thereunder, that has occurred, is ongoing, or is about to occur;

9 (b) In initiating, testifying in, or assisting in any
10 investigation or administrative or judicial action of the securities
11 administrator, securities division, or other law enforcement agency
12 based upon or related to such information;

13 (c) In making disclosures that are required or protected under
14 the Sarbanes-Oxley act of 2002, 15 U.S.C. 7201 et seq.; the
15 securities act of 1933, 15 U.S.C. 77a et seq.; the securities
16 exchange act of 1934, 15 U.S.C. 78a et seq.; 18 U.S.C. 1513(e); any
17 other law, rule, or regulation subject to the jurisdiction of the
18 securities and exchange commission; or chapter 21.20 RCW or a rule
19 adopted thereunder; or

20 (d) In making disclosures to a person with supervisory authority
21 over the employee, or such other person working for the employer who
22 has the authority to investigate, discover, or terminate misconduct,
23 regarding matters subject to the jurisdiction of the securities
24 administrator, securities division, or the securities and exchange
25 commission.

26 (2) Notwithstanding subsection (1) of this section, an individual
27 is not protected under this section if:

28 (a) The individual knowingly or recklessly makes a false,
29 fictitious, or fraudulent statement or misrepresentation;

30 (b) The individual uses a false writing or document knowing that,
31 or with reckless disregard as to whether, the writing or document
32 contains false, fictitious, or fraudulent information; or

33 (c) The individual knows that, or has a reckless disregard as to
34 whether, the disclosure is of original information that is false or
35 frivolous.

36 (3) An individual who alleges any act of retaliation in violation
37 of subsection (1) of this section may bring an action for the relief
38 provided in subsection (6) of this section in the court of original
39 jurisdiction for the county or state where the alleged violation

1 occurs, the individual resides, or the person against whom the action
2 is filed resides or has a principal place of business.

3 (4) A subpoena requiring the attendance of a witness at a trial
4 or hearing conducted under subsection (3) of this section may be
5 served at any place in the United States, in compliance with
6 applicable court rules and the law of the other jurisdiction.

7 (5) An action under subsection (3) of this section may not be
8 brought:

9 (a) More than six years after the date on which the violation of
10 subsection (1) of this section occurred; or

11 (b) More than three years after the date when facts material to
12 the right of action are known or reasonably should have been known by
13 the employee alleging a violation of subsection (1) of this section.
14 Notwithstanding the above limitations, an action under subsection (3)
15 of this section may not in any circumstance be brought more than 10
16 years after the date on which the violation occurs.

17 (6) A court may award as relief for an individual prevailing in
18 an action brought under this section:

19 (a) Reinstatement with the same compensation, fringe benefits,
20 and seniority status that the individual would have had, but for the
21 retaliation;

22 (b) Two times the amount of back pay otherwise owed to the
23 individual, with interest;

24 (c) Compensation for litigation costs, expert witness fees, and
25 reasonable attorneys' fees;

26 (d) Actual damages;

27 (e) An injunction to restrain a violation; or

28 (f) Any combination of these remedies.

29 (7) Information that could reasonably be expected to reveal the
30 identity of a whistleblower is exempt from public disclosure under
31 chapter 42.56 RCW. This subsection does not limit the ability of any
32 person to present evidence to a grand jury or to share evidence with
33 potential witnesses or defendants in the course of an ongoing
34 criminal investigation.

35 (8) No person may take any action to impede an individual from
36 communicating directly with the securities division staff about a
37 possible securities law violation, including enforcing, or
38 threatening to enforce, a confidentiality agreement with respect to
39 such communications, except with respect to:

1 (a) Agreements concerning communications covered by the attorney-
2 client privilege, unless disclosure of that information would
3 otherwise be permitted by an attorney under applicable state attorney
4 conduct rules or otherwise; and

5 (b) Information obtained in connection with legal representation
6 of a client on whose behalf an individual or the individual's
7 employer or firm are providing services, and the individual is
8 seeking to use the information to make a whistleblower submission for
9 the individual's own benefit, unless disclosure would otherwise be
10 permitted by an attorney pursuant to applicable state attorney
11 conduct rules or otherwise.

12 (9) The rights and remedies provided for in this chapter may not
13 be waived by any agreement, policy form, or condition of employment,
14 including by a predispute arbitration agreement.

15 (10) Nothing in this section shall be deemed to diminish the
16 rights, privileges, or remedies of any individual under any federal
17 or state law, or under any collective bargaining agreement.

18 NEW SECTION. **Sec. 11.** The securities administrator may adopt
19 such rules and regulations as may be necessary or appropriate to
20 implement the provisions of this chapter consistent with its purpose.

21 **Sec. 12.** RCW 42.56.400 and 2022 c 8 s 2 are each amended to read
22 as follows:

23 The following information relating to insurance and financial
24 institutions is exempt from disclosure under this chapter:

25 (1) Records maintained by the board of industrial insurance
26 appeals that are related to appeals of crime victims' compensation
27 claims filed with the board under RCW 7.68.110;

28 (2) Information obtained and exempted or withheld from public
29 inspection by the health care authority under RCW 41.05.026, whether
30 retained by the authority, transferred to another state purchased
31 health care program by the authority, or transferred by the authority
32 to a technical review committee created to facilitate the
33 development, acquisition, or implementation of state purchased health
34 care under chapter 41.05 RCW;

35 (3) The names and individual identification data of either all
36 owners or all insureds, or both, received by the insurance
37 commissioner under chapter 48.102 RCW;

38 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

1 (5) Information provided under RCW 48.05.510 through 48.05.535,
2 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and
3 48.46.600 through 48.46.625;

4 (6) Examination reports and information obtained by the
5 department of financial institutions from banks under RCW 30A.04.075,
6 from savings banks under RCW 32.04.220, from savings and loan
7 associations under RCW 33.04.110, from credit unions under RCW
8 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and
9 from securities brokers and investment advisers under RCW 21.20.100,
10 information that could reasonably be expected to reveal the identity
11 of a whistleblower under section 10 of this act, and information
12 received under RCW 43.320.190, all of which are confidential and
13 privileged information;

14 (7) Information provided to the insurance commissioner under RCW
15 48.110.040(3);

16 (8) Documents, materials, or information obtained by the
17 insurance commissioner under RCW 48.02.065, all of which are
18 confidential and privileged;

19 (9) Documents, materials, or information obtained or provided by
20 the insurance commissioner under RCW 48.31B.015(2) (l) and (m),
21 48.31B.025, 48.31B.030, 48.31B.035, and 48.31B.036, all of which are
22 confidential and privileged;

23 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
24 7.70.140 that, alone or in combination with any other data, may
25 reveal the identity of a claimant, health care provider, health care
26 facility, insuring entity, or self-insurer involved in a particular
27 claim or a collection of claims. For the purposes of this subsection:

28 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

29 (b) "Health care facility" has the same meaning as in RCW
30 48.140.010(6).

31 (c) "Health care provider" has the same meaning as in RCW
32 48.140.010(7).

33 (d) "Insuring entity" has the same meaning as in RCW
34 48.140.010(8).

35 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

36 (11) Documents, materials, or information obtained by the
37 insurance commissioner under RCW 48.135.060;

38 (12) Documents, materials, or information obtained by the
39 insurance commissioner under RCW 48.37.060;

- 1 (13) Confidential and privileged documents obtained or produced
2 by the insurance commissioner and identified in RCW 48.37.080;
- 3 (14) Documents, materials, or information obtained by the
4 insurance commissioner under RCW 48.37.140;
- 5 (15) Documents, materials, or information obtained by the
6 insurance commissioner under RCW 48.17.595;
- 7 (16) Documents, materials, or information obtained by the
8 insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and
9 (7) (a) (ii);
- 10 (17) Documents, materials, or information obtained by the
11 insurance commissioner in the commissioner's capacity as receiver
12 under RCW 48.31.025 and 48.99.017, which are records under the
13 jurisdiction and control of the receivership court. The commissioner
14 is not required to search for, log, produce, or otherwise comply with
15 the public records act for any records that the commissioner obtains
16 under chapters 48.31 and 48.99 RCW in the commissioner's capacity as
17 a receiver, except as directed by the receivership court;
- 18 (18) Documents, materials, or information obtained by the
19 insurance commissioner under RCW 48.13.151;
- 20 (19) Data, information, and documents provided by a carrier
21 pursuant to section 1, chapter 172, Laws of 2010;
- 22 (20) Information in a filing of usage-based insurance about the
23 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);
- 24 (21) Data, information, and documents that are submitted to the
25 office of the insurance commissioner by an entity providing health
26 care coverage pursuant to RCW 28A.400.275;
- 27 (22) Data, information, and documents obtained by the insurance
28 commissioner under RCW 48.29.017;
- 29 (23) Information not subject to public inspection or public
30 disclosure under RCW 48.43.730(5);
- 31 (24) Documents, materials, or information obtained by the
32 insurance commissioner under chapter 48.05A RCW;
- 33 (25) Documents, materials, or information obtained by the
34 insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6),
35 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents,
36 materials, or information independently qualify for exemption from
37 disclosure as documents, materials, or information in possession of
38 the commissioner pursuant to a financial conduct examination and
39 exempt from disclosure under RCW 48.02.065;

1 (26) Nonpublic personal health information obtained by, disclosed
2 to, or in the custody of the insurance commissioner, as provided in
3 RCW 48.02.068;

4 (27) Data, information, and documents obtained by the insurance
5 commissioner under RCW 48.02.230;

6 (28) Documents, materials, or other information, including the
7 corporate annual disclosure obtained by the insurance commissioner
8 under RCW 48.195.020;

9 (29) Findings and orders disapproving acquisition of a trust
10 institution under RCW 30B.53.100(3);

11 (30) All claims data, including health care and financial related
12 data received under RCW 41.05.890, received and held by the health
13 care authority; and

14 (31) Contracts not subject to public disclosure under RCW
15 48.200.040 and 48.43.731.

16 **Sec. 13.** RCW 43.320.115 and 2003 c 288 s 2 are each amended to
17 read as follows:

18 (1) The securities prosecution fund is created in the custody of
19 the state treasurer and shall consist of all fines received by the
20 division of securities under RCW 21.20.400(2), 21.20.110, and
21 21.20.395 and all undistributed funds from orders of disgorgement and
22 restitution under RCW 21.20.110(8) and 21.20.390(6). No appropriation
23 is required to permit expenditures from this fund, but the account is
24 subject to allotment procedures under chapter 43.88 RCW.

25 (2) Expenditures from this fund may be used solely for
26 administering the fund (~~and~~), for payment of costs, expenses, and
27 charges incurred in the preparation, initiation, and prosecution of
28 criminal charges for violations of chapters 21.20, 21.30, 19.100, and
29 19.110 RCW, and for making an award to a whistleblower under section
30 3 of this act. Only the director or the director's designee may
31 authorize expenditures from the fund.

32 (3) (~~Applications~~) Except for an award to a whistleblower under
33 section 3 of this act, applications for fund expenditures must be
34 submitted by the attorney general or the proper prosecuting attorney
35 to the director. The application must clearly identify the alleged
36 criminal violations identified in subsection (2) of this section and
37 indicate the purpose for which the funds will be used. The
38 application must also certify that any funds received will be
39 expended only for the purpose requested. Funding requests must be

1 approved by the director prior to any expenditure being incurred by
2 the requesting attorney general or prosecuting attorney. At the
3 conclusion of the prosecution, the attorney general or prosecuting
4 attorney shall provide the director with an accounting of fund
5 expenditures, a summary of the case, and certify his or her
6 compliance with any rules adopted by the director relating to the
7 administration of the fund.

8 (4) If the balance of the securities prosecution fund reaches
9 (~~three hundred fifty thousand dollars~~) \$1,000,000, all fines
10 received by the division of securities under RCW 21.20.400(2),
11 21.20.110, and 21.20.395 and all undistributed funds from orders of
12 disgorgement and restitution under RCW 21.20.110(8) and 21.20.390(6)
13 shall be deposited in the financial services regulation fund until
14 such time as the balance in the fund falls below (~~three hundred~~
15 ~~fifty thousand dollars~~) \$1,000,000, at which time the fines received
16 by the division of securities under RCW 21.20.400(2), 21.20.110, and
17 21.20.395 and all undistributed funds from orders of disgorgement and
18 restitution under RCW 21.20.110(8) and 21.20.390(6) shall be
19 deposited to the securities prosecution fund until balance in the
20 fund once again reaches (~~three hundred fifty thousand dollars~~)
21 \$1,000,000.

22 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act
23 constitute a new chapter in Title 21 RCW.

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