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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2845

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State of Washington

55th Legislature

1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Constantine, Clements, Dickerson, Ogden and Anderson)

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to false claims against the government; adding a  
2 new section to chapter 42.52 RCW; adding a new chapter to Title 4 RCW;  
3 and prescribing penalties.

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

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

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

10 (1) "Claim" means a request or demand, whether under a contract or  
11 otherwise, for money or property which is made to a government employee  
12 or official, contractor, grantee, or other recipient if a governmental  
13 entity provides any portion of the money or property which is requested  
14 or demanded, or if a governmental entity will reimburse such employee,  
15 official, contractor, grantee, or other recipient for any portion of  
16 the money or property which is requested or demanded.

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

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

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

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

7 (b) Acts in deliberate ignorance of or in reckless disregard of the  
8 truth or falsity of the information.

9 (5) "Public attorney" means any person that is authorized by a  
10 governmental entity to initiate legal actions or claims on the  
11 governmental entity's behalf.

12 (6) "Recovery" means any money paid or to be paid pursuant to  
13 section 4 of this act as a civil penalty or damages, including enhanced  
14 damages pursuant to section 4 (1) or (2) of this act, as a result of  
15 the initiation of a civil action under section 6 of this act, whether  
16 resulting from an award of the court, from a settlement of the parties,  
17 or from an alternative remedy pursuant to section 7(5) of this act, but  
18 "recovery" shall not include costs including or not including  
19 attorneys' fees.

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

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (2) of  
5 this section, a person who commits a wrongful act against a  
6 governmental entity is liable to the governmental entity for (a) a  
7 civil penalty of not less than five thousand dollars and not more than  
8 ten thousand dollars; (b) an amount equal to three times the damages  
9 sustained by the governmental entity as a result of the wrongful act;  
10 and (c) all costs incurred by the governmental entity in maintaining a  
11 civil action hereunder, including attorneys' fees.

12 (2) Notwithstanding subsection (1) of this section, a court may  
13 assess against a person who commits a wrongful act an amount equal to  
14 two times the damages sustained by the governmental entity as a result  
15 of the wrongful act plus all costs incurred by the governmental entity  
16 in collecting such amount, including attorneys' fees, if the court  
17 finds all of the following:

18 (a) The person committing the wrongful act furnished to a public  
19 attorney responsible for investigating false claims all information  
20 known to the person about the wrongful act within thirty days after the  
21 person first obtained the information;

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

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

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

34 (4) This chapter does not apply to persons subject to the  
35 jurisdiction of chapter 42.52 RCW.

36 NEW SECTION. **Sec. 5.** A public attorney shall diligently  
37 investigate a wrongful act. If the public attorney finds that a person

1 has committed or is committing a wrongful act, the public attorney may  
2 bring a civil action against the person.

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

8 (2) A copy of the complaint and written disclosure of substantially  
9 all material evidence and information the person possesses shall be  
10 served on the governmental entity under this chapter. The complaint  
11 shall be filed in camera, remain under seal for at least ninety days,  
12 and not be served on the defendant until the court orders. The  
13 governmental entity may elect to intervene and proceed with the action  
14 within ninety days after it receives both the complaint and the  
15 material evidence and information.

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

23 (4) Before the expiration of the ninety-day period or extensions  
24 obtained under subsection (3) of this section, the governmental entity  
25 shall:

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

28 (b) Notify the court that it declines to take over the action, in  
29 which case the person bringing the action has the right to conduct the  
30 action.

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

34 NEW SECTION. **Sec. 7.** (1) If a governmental entity proceeds with  
35 an action under section 6 of this act, it has the primary  
36 responsibility for prosecuting the action and is not bound by an act of  
37 the person bringing the action. The person has the right to continue

1 as a party to the action, subject to the limitations set forth in  
2 subsection (2) of this section.

3 (2)(a) A governmental entity may dismiss the action notwithstanding  
4 the objections of the person initiating the action if the person has  
5 been served with a copy of the motion for dismissal in a manner  
6 provided by law and the court has provided the person with an  
7 opportunity for a hearing on the motion.

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

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

- 20 (i) Limiting the number of witnesses the person may call;
- 21 (ii) Limiting the length of the testimony of the witnesses;
- 22 (iii) Limiting the person's cross-examination of witnesses; or
- 23 (iv) Otherwise limiting the participation by the person in the  
24 litigation.

25 (d) Upon a showing by the defendant that unrestricted participation  
26 during the course of the litigation by the person initiating the action  
27 would be for purposes of harassment or would cause the defendant undue  
28 burden or unnecessary expense, the court may limit the participation by  
29 the person in the litigation.

30 (3) If a governmental entity elects not to proceed with the action,  
31 the person who initiated the action has the right to conduct the  
32 action. The governmental entity may request, and following such  
33 request shall be served with, copies of all pleadings filed in the  
34 action and supplied with copies of all deposition transcripts,  
35 interrogatory answers, documents produced, test results, or other  
36 discovery materials, at the governmental entity's expense for the cost  
37 of reproducing the materials. If the person proceeds with the action,  
38 the court, without limiting the status and rights of the person

1 initiating the action, may nevertheless permit the governmental entity  
2 to intervene at a later date upon a showing of good cause.

3 (4) Whether or not the governmental entity proceeds with the  
4 action, upon a showing by the governmental entity that certain actions  
5 of discovery by the person initiating the action would interfere with  
6 an investigation or prosecution of a criminal or civil matter arising  
7 out of the same facts, the court may stay the discovery for a period of  
8 not more than sixty days. Such a showing shall be made in camera. The  
9 court may extend the sixty-day period upon a further showing in camera  
10 that the governmental entity has pursued the criminal or civil  
11 investigation or proceedings with reasonable diligence and the proposed  
12 discovery in the civil action would interfere with the ongoing criminal  
13 or civil investigation or proceedings.

14 (5) Notwithstanding section 6 of this act, a governmental entity  
15 may elect to pursue a claim through an available alternate proceeding,  
16 including an administrative proceeding. If an alternative proceeding  
17 is undertaken, any civil actions shall be stayed and the person  
18 initiating the civil action has the same rights in the alternative  
19 proceeding, including any recovery under section 8 of this act, as the  
20 person would have if the action had continued under this section. A  
21 finding of fact or conclusion of law made in the alternative proceeding  
22 that has become final is conclusive on all parties to an action under  
23 this section. For purposes of this subsection, a finding or conclusion  
24 is final if it has been finally determined on appeal to the appropriate  
25 court of the state, if all time for filing an appeal with respect to  
26 the finding or conclusion has expired, or if the finding or conclusion  
27 is not subject to judicial review.

28 NEW SECTION. **Sec. 8.** (1) If a governmental entity proceeds with  
29 an action brought by a person under section 6 of this act, the person  
30 shall receive at least ten percent but not more than fifteen percent of  
31 any recovery in an action, depending upon the extent the person  
32 substantially contributed to the prosecution of the action. If the  
33 action is one that the court finds is based primarily on disclosures of  
34 specific information, other than information provided by the person  
35 bringing the action, (a) in a criminal, civil, or administrative  
36 hearing, (b) in a legislative, administrative, or state accounting  
37 office report, hearing, audit, or investigation, or (c) from the news  
38 media, the court may award the sum it considers appropriate, but in no

1 case more than ten percent of the recovery, taking into account the  
2 significance of the information and the role of the person bringing the  
3 action in advancing the case to litigation. A payment to a person  
4 under this subsection shall be made from the recovery. Any payment of  
5 any portion of a recovery that is made shall be shared pro rata between  
6 the person and the governmental entity. The person shall also receive  
7 an amount for costs, including reasonable attorneys' fees, which the  
8 court finds to have been necessarily incurred. All expenses, fees, and  
9 costs are awarded against the defendant who is found to have committed  
10 a wrongful act. Attorneys' fees and costs shall be paid prior to  
11 disbursement of any recovery.

12 (2) If a governmental entity does not proceed with an action under  
13 this section, the person bringing the action shall receive an amount  
14 that the court decides is reasonable for collecting the civil penalty  
15 and damages. The amount shall be not less than twenty-five percent and  
16 not more than thirty percent of the recovery and is paid out of the  
17 proceeds. The person shall also receive an amount for costs, including  
18 reasonable attorneys' fees, that the court finds were necessarily  
19 incurred. All expenses, fees, and costs are awarded against the  
20 defendant who is found to have committed a wrongful act.

21 (3) Whether or not a governmental entity proceeds with an action,  
22 if the court finds that the action was brought by a person who planned  
23 and initiated the wrongful act upon which the action was brought, or  
24 failed to take steps to stop, correct, or report the act, then the  
25 court may, to the extent the court considers appropriate, reduce the  
26 share of the proceeds of the action that the person would otherwise  
27 receive under subsection (1) or (2) of this section, taking into  
28 account the role of that person in advancing the case to litigation and  
29 relevant circumstances pertaining to the wrongful act. If the person  
30 bringing the action is convicted of criminal conduct arising from his  
31 or her role in the commission of a wrongful act, that person is  
32 dismissed from the civil action and shall receive no recovery or award.  
33 The dismissal shall not prejudice the right of the governmental entity  
34 to continue the action.

35 (4) If the governmental entity does not proceed with the action and  
36 the person bringing the action conducts the action, the court may award  
37 to the defendant costs, including reasonable attorneys' fees, if the  
38 defendant prevails in the action and the court finds that the claim of

1 the person bringing the action was clearly frivolous, clearly  
2 vexatious, or brought primarily for purposes of harassment.

3 NEW SECTION. **Sec. 9.** In no event may a person bring an action  
4 under section 6 of this act which is based upon allegations or  
5 transactions which are the subject of a civil suit or an administrative  
6 proceeding in which the governmental entity is already a party.

7 NEW SECTION. **Sec. 10.** No governmental entity is liable for costs,  
8 including attorneys' fees, that a person incurs in bringing an action  
9 under section 6 of this act.

10 NEW SECTION. **Sec. 11.** (1) Any person who has been subjected to  
11 work place reprisal or retaliation as a result of being a whistleblower  
12 or an employer's belief that the person is a whistleblower has the  
13 remedies provided under chapter 49.60 RCW. Such remedies are in  
14 addition to any other remedies that the person may have under common  
15 law or statute.

16 (2) For the purposes of this section:

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

20 (b) "Reprisal or retaliation" has the meaning given in RCW  
21 42.40.050.

22 NEW SECTION. **Sec. 12.** A new section is added to chapter 42.52 RCW  
23 to read as follows:

24 (1) No state officer or state employee may:

25 (a) Knowingly present or cause to be presented to an agency a false  
26 claim for payment or approval;

27 (b) Knowingly make, use, or cause to be made or used, a false  
28 record or statement to get a false claim paid or approved;

29 (c) Conspire to get a false claim allowed or paid;

30 (d) Have in their possession, custody, or control property or money  
31 used, or to be used, by an agency and knowingly deliver, or cause to be  
32 delivered, less property than the amount for which the person received  
33 a certificate or receipt;

1 (e) Authorize to make or deliver a document certifying receipt of  
2 property used, or to be used, by an agency and make or deliver the  
3 receipt knowing that material information on the receipt is false;

4 (f) Knowingly buy, or receive as security for an obligation or  
5 debt, public property from an officer or employee of an agency, who  
6 lawfully may not sell or pledge the property; or

7 (g) Knowingly make, use, or cause to be made or used a false record  
8 or statement to conceal, avoid, or decrease an obligation to pay or  
9 transmit property to an agency.

10 (2) For the purposes of this section:

11 (a) "Claim" means a request or demand, whether under a contract or  
12 otherwise, for money or property which is made to a government employee  
13 or official, contractor, grantee, or other recipient if a governmental  
14 entity provides any portion of the money or property which is requested  
15 or demanded, or if a governmental entity will reimburse such employee,  
16 official, contractor, grantee, or other recipient for any portion of  
17 the money or property which is requested or demanded.

18 (b) "False claim" means any claim that contains or is based upon a  
19 materially incorrect fact, statement, representation, or record.

20 (c) "Knowing" and "knowingly" mean that a person, with respect to  
21 information, and with or without specific intent to defraud:

22 (i) Has actual knowledge of the information; or

23 (ii) Acts in deliberate ignorance of or in reckless disregard of  
24 the truth or falsity of the information.

25 (3) As to state officers and employees, this section operates to  
26 the exclusion of sections 1 through 11 of this act.

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

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