

2 **SSB 5439** - S AMD - 220

3 By Senators Hargrove, Rasmussen, Johnson, McCaslin, T. Sheldon,  
4 Zarelli, Goings, Haugen, McDonald, Hale and Roach

5 ADOPTED AS AMENDED 3/17/99

6 Strike everything after the enacting clause and insert the  
7 following:

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

10 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
11 otherwise, the definitions in this section apply throughout this  
12 chapter.

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

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

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

25 (4) "Knowing" and "knowingly" mean that a person, with respect to  
26 information, and with specific intent to defraud:

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

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

30 (5) "Person" means any individual, firm, partnership, corporation,  
31 company, association, or other legal entity whose conduct is not  
32 subject to 31 U.S.C. Sec. 3729 as now or hereafter amended, chapter  
33 48.80 RCW, RCW 74.09.210 through 74.09.260, or 51.48.250 through  
34 51.48.290.

1 (6) "Public attorney" means any person that is authorized by a  
2 governmental entity to initiate legal actions or claims on the  
3 governmental entity's behalf.

4 (7) "Recovery" means any money paid or to be paid pursuant to  
5 section 4 of this act as a civil penalty or damages as a result of the  
6 initiation of a civil action under section 6 of this act, whether  
7 resulting from an award of the court, from a settlement of the parties,  
8 or from an alternative remedy pursuant to section 7(5) of this act, but  
9 "recovery" shall not include attorneys' fees.

10 (8) "Reprisal or retaliation" has the meaning given in RCW  
11 42.40.050.

12 (9) "Whistleblower" means a person who in good faith initiates,  
13 furnishes information, or otherwise participates in an investigation  
14 of, or a civil action with respect to, a wrongful act.

15 NEW SECTION. **Sec. 3.** (1) A person commits a "wrongful act" under  
16 this chapter if each of the following occurs:

17 (a) The person:

18 (i) Makes a false representation of a material, existing fact;

19 (ii) Knows that the representation is false or has a reckless  
20 disregard to its truth; and

21 (iii) Intends that the representation should be acted on by the  
22 person to whom it is made; and

23 (b) The person to whom the representation is made:

24 (i) Is ignorant of the falsity of the representation;

25 (ii) Justifiably relies on the truth of the representation; and

26 (iii) Incurs consequent damages.

27 (2) This chapter does not apply to any claim in which the claimant  
28 relied reasonably upon and complied with the advice, directives,  
29 bulletins, rules, or other instructions of the governmental entity to  
30 which the claim is submitted or a person who acts as counsel to the  
31 governmental entity to which the claim is submitted.

32 (3) In any action brought under this chapter, a governmental entity  
33 or person bringing the action shall be required to prove all the  
34 essential elements of the cause of action by clear, cogent, and  
35 convincing evidence.

36 (4) This chapter does not apply to any controversy that results in  
37 damages to a governmental entity that have a total value of less than  
38 one thousand dollars. For the purpose of this subsection,

1 "controversy" means any one or more wrongful acts committed by the same  
2 person.

3 (5) Applicable statute of limitations shall be pursuant to RCW  
4 4.16.080.

5 (6) This chapter does not apply to persons subject to the  
6 jurisdiction of chapter 42.52 RCW.

7 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (2) of  
8 this section, a person who commits a wrongful act against a  
9 governmental entity is liable to the governmental entity for (a) a  
10 civil penalty of not less than five thousand dollars and not more than  
11 ten thousand dollars; and (b) an amount equal to the damages sustained  
12 by the governmental entity as a result of the wrongful act.

13 (2) Notwithstanding subsection (1) of this section, a court may  
14 assess against a person who commits a wrongful act an amount the court  
15 finds reasonable considering the level of involvement of the person who  
16 commits a wrongful act but not to exceed a twenty-five percent  
17 reduction of the damages sustained by the governmental entity as a  
18 result of the wrongful act, if the court finds all of the following:

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

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

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

30 NEW SECTION. **Sec. 5.** A public attorney shall diligently  
31 investigate any allegation of a wrongful act. If the public attorney  
32 finds that a person has committed or is committing a wrongful act, the  
33 public attorney may bring a civil action against the person.

34 NEW SECTION. **Sec. 6.** (1) A person may bring a civil action for  
35 the commission of a wrongful act in the name of the person and the  
36 governmental entity. A court may only dismiss any action brought under

1 this chapter by a person other than a public attorney if the public  
2 attorney provides the court with written consent to the dismissal. If  
3 the action is dismissed, the court shall enter an order stating the  
4 grounds for dismissal.

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

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

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

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

25 (b) Notify the court that it declines to take over the action, in  
26 which case the person bringing the action has the right to conduct the  
27 action.

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

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

37 (2)(a) A governmental entity may petition to dismiss the action  
38 notwithstanding the objections of the person initiating the action if

1 the person has been served with a copy of the motion for dismissal in  
2 a manner provided by law and the court has provided the person with an  
3 opportunity for a hearing on the motion.

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

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

- 16 (i) Limiting the number of witnesses the person may call;
- 17 (ii) Limiting the length of the testimony of the witnesses;
- 18 (iii) Limiting the person's cross-examination of witnesses; or
- 19 (iv) Otherwise limiting the participation by the person in the  
20 litigation.

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

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

37 (4) Whether or not the governmental entity proceeds with the  
38 action, upon a showing by the governmental entity that certain actions  
39 of discovery by the person initiating the action would interfere with

1 an investigation or prosecution of a criminal or civil matter arising  
2 out of the same facts, the court may stay the discovery for a period of  
3 not more than ninety days. Such a showing shall be made in camera.  
4 The court may extend the ninety-day period upon a further showing in  
5 camera that the governmental entity has pursued the criminal or civil  
6 investigation or proceedings with reasonable diligence and the proposed  
7 discovery in the civil action would interfere with the ongoing criminal  
8 or civil investigation or proceedings.

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

23 NEW SECTION. **Sec. 8.** (1) If a governmental entity proceeds with  
24 an action brought by a person under section 6 of this act, the person  
25 shall receive at least fifteen percent but not more than twenty-five  
26 percent of any recovery in an action, depending upon the extent the  
27 person substantially contributed to the prosecution of the action. If  
28 the action is one that the court finds is based primarily on  
29 disclosures of specific information, other than information provided by  
30 the person bringing the action, (a) in a criminal, civil, or  
31 administrative hearing, (b) in a legislative, administrative, or state  
32 accounting office report, hearing, audit, or investigation, or (c) from  
33 the news media, the court may award the sum it considers appropriate,  
34 but in no case more than ten percent of the recovery, taking into  
35 account the significance of the information and the role of the person  
36 bringing the action in advancing the case to litigation. A payment to  
37 a person under this subsection shall be made from the recovery. Any  
38 payment of any portion of a recovery that is made shall be paid first

1 to the person until paid in full and then to the governmental entity.  
2 The person shall also receive an amount for costs, including reasonable  
3 attorneys' fees, which the court finds to have been necessarily  
4 incurred. All expenses, fees, and costs are awarded against the  
5 defendant who is found to have committed a wrongful act. Attorneys'  
6 fees and costs shall be paid prior to disbursement of any recovery.

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

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

29 (4) If the governmental entity does not proceed with the action and  
30 the person bringing the action conducts the action, the court may award  
31 to the defendant costs, including reasonable attorneys' fees, if the  
32 defendant prevails in the action and the court finds that the claim of  
33 the person bringing the action was frivolous, vexatious, or brought  
34 primarily for purposes of harassment.

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

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

4        NEW SECTION.    **Sec. 11.** Any person who has been subjected to  
5 workplace reprisal or retaliation as a result of being a whistleblower  
6 or an employer's belief that the person is a whistleblower has the  
7 remedies provided under chapter 49.60 RCW. Such remedies are in  
8 addition to any other remedies that the person may have under common  
9 law or statute.

10        **Sec. 12.** RCW 48.80.020 and 1995 c 285 s 25 are each amended to  
11 read as follows:

12        Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter.

14        (1) "Claim" means any attempt to cause a health care payer to make  
15 a health care payment.

16        (2) "Deceptive" means presenting a claim to a health care payer  
17 that contains a statement of fact or fails to reveal a material fact,  
18 leading the health care payer to believe that the represented or  
19 suggested state of affairs is other than it actually is. For the  
20 purposes of this chapter, the determination of what constitutes a  
21 material fact is a question of law to be resolved by the court.

22        (3) "False" means wholly or partially untrue or deceptive.

23        (4) "Health care payment" means a payment for health care services  
24 or the right under a contract, certificate, or policy of insurance to  
25 have a payment made by a health care payer for a specified health care  
26 service.

27        (5) "Health care payer" means any insurance company authorized to  
28 provide health insurance in this state, any health care service  
29 contractor authorized under chapter 48.44 RCW, any health maintenance  
30 organization authorized under chapter 48.46 RCW, any legal entity which  
31 is self-insured and providing health care benefits to its employees,  
32 ~~((and))~~ any insurer or other person responsible for paying for health  
33 care services, and includes all governmental entities at the federal,  
34 state, or local levels.

35        (6) "Person" means an individual, corporation, partnership,  
36 association, or other legal entity.



1 (7) "Provider" means any person lawfully licensed or authorized to  
2 render any health service.

3 NEW SECTION. **Sec. 13.** A new section is added to chapter 42.52 RCW  
4 to read as follows:

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

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

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

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

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

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

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

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

24 (2) For the purposes of this section:

25 (a) "Claim" means a request or demand, whether under a contract or  
26 otherwise, for money or property which is made to a government employee  
27 or official, contractor, grantee, or other recipient if a governmental  
28 entity provides any portion of the money or property which is requested  
29 or demanded, or if a governmental entity will reimburse such employee,  
30 official, contractor, grantee, or other recipient for any portion of  
31 the money or property which is requested or demanded.

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

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

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

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

1 (3) As to state officers and state employees, this section operates  
2 to the exclusion of ch\_\_\_, Laws of 1999 (SSB 5439).

3 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act  
4 constitute a new chapter in Title 4 RCW."

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6 By Senators Hargrove, Rasmussen, Johnson, McCaslin, T. Sheldon,  
7 Zarelli, Goings, Haugen, McDonald, Hale and Roach

8 ADOPTED AS AMENDED 3/17/99

9 On page 1, line 1 of the title, after "government;" strike the  
10 remainder of the title and a insert "amending RCW 48.80.020; adding a  
11 new chapter to Title 4 RCW; adding a new section to chapter 43.52 RCW;  
12 and prescribing penalties."

--- END ---