

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

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

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

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

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

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

32 NEW SECTION. **Sec. 6.** (1) A person may bring a civil action for
33 the commission of a wrongful act in the name of the person and the
34 governmental entity. A court may only dismiss any action brought under
35 this chapter by a person other than a public attorney if the public
36 attorney provides the court with written consent to the dismissal. If

1 the action is dismissed, the court shall enter an order stating the
2 grounds for dismissal.

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

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

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

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

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

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

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

35 (2)(a) A governmental entity may petition to dismiss the action
36 notwithstanding the objections of the person initiating the action if
37 the person has been served with a copy of the motion for dismissal in

1 a manner provided by law and the court has provided the person with an
2 opportunity for a hearing on the motion.

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

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

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

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

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

36 (4) Whether or not the governmental entity proceeds with the
37 action, upon a showing by the governmental entity that certain actions
38 of discovery by the person initiating the action would interfere with
39 an investigation or prosecution of a criminal or civil matter arising

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

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

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

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

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

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

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

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

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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; and prescribing penalties."

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