

HOUSE BILL ANALYSIS

ESSB 5439

Title: An act relating to false claims against the government.

Brief Description: Enacting the Washington state false claims act.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Heavey, Roach and Costa).

Brief Summary of Bill

- Allows the state government or a person on behalf of the government to pursue a civil action against a defendant who has knowingly submitted a false claim to the government.
- Allocates a portion of the recovery to a person who initiates a civil action on behalf of the government.
- Provides whistle blower– protection to a person who initiates a civil action on behalf of the government, or aids in an investigation of a false claim.
- Prohibits public employees from submitting false claims to the government.

HOUSE COMMITTEE ON JUDICIARY

Staff: Jim Morishima (786-7191).

Background:

When the state makes payments based on false or intentionally misleading information, it can recover these payments under tort law, contract law, or as restitution ordered in a criminal prosecution. Furthermore, there are statutory prohibitions and proceedings for false claims involving health insurance (The Health Care False Claims Act) and false claims for health care services submitted to the Department of Social and Health Services (DSHS) and the Department of Labor and Industries (L&I). However, aside from these provisions, there is no explicit civil remedy for false claims against the state government.

Under federal law, a person may bring an action on behalf of the federal government to recover for a false claim. Under certain circumstances, this person is given a portion of the resulting recovery. There is no similar provision in state law.

Summary of Bill:

A person commits a wrongful act— when he or she knowingly causes a false claim to be presented to a government entity which causes over \$1,000 worth of damage. A person who commits a wrongful act against the government is liable for a civil penalty of \$5,000 to \$10,000, actual damages, and attorney fees and costs. A court can reduce the penalty by up to 25 percent if the person cooperates with the government investigation. Furthermore, the penalty is inapplicable to a person who reasonably relied upon the advice or rules of the government entity or of a person who acts as counsel to the government entity.

A public attorney must diligently investigate any allegation of a wrongful act. If the public attorney finds that a person has committed a wrongful act, the attorney may bring a civil action against that person. A person may also bring a civil action on behalf of the government. If the civil action is brought by a person, the government has the option of taking control of the action.

Wrongdoing on the part of the defendant must be proved by clear, cogent, and convincing evidence. If the government decides to take over an action initiated by a person, the government may limit that person's participation in the proceedings. The government may also pursue the action through alternate remedies, including administrative proceedings. If the government elects not to proceed with the action, the person may conduct the action on his or her own.

If the government proceeds with an action initiated by a person, the person must receive between 15 and 25 percent of the recovery unless the action is based on information obtained from sources other than the person, in which case the person may receive up to 10 percent of the recovery. If the person proceeds with the action on his or her own, the person must receive between 25 and 30 percent of the recovery. If the action is based on the person's own wrongful act, the court may reduce the person's share accordingly. If the defendant pays the judgment in installments, the person must be paid in full before the government collects payment.

An individual who initiates a civil action or aids in an investigation of a false claim is given whistle blower— protection.

Public employees are prohibited from submitting false claims to the government. A public employee who violates this prohibition will be subject to disciplinary action under the law regarding ethics in public service.

False claims under the Health Care False Claims Act and false claims for health care services against the DSHS and the L&I are specifically exempt from the act.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research