
SENATE BILL 5665

State of Washington 53rd Legislature 1993 Regular Session

By Senators Talmadge, Prentice and Moore

Read first time 02/08/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to false claims against the government; reenacting
2 and amending RCW 42.17.310; adding a new chapter to Title 4 RCW; and
3 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) "Government" means the executive, judicial, or legislative
11 branch, and an employee of a branch, including appointed and elected
12 officers.

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

15 (a) Has actual knowledge of the information;

16 (b) Acts in deliberate ignorance of the truth or falsity of the
17 information; or

1 (c) Acts in reckless disregard of the truth or falsity of the
2 information.

3 (3) "Claim" means a request or demand, whether under contract or
4 otherwise, for money or property that is made to a contractor, grantee,
5 or other recipient if the government provides a portion of the money or
6 property that is requested or demanded, or if the government will
7 reimburse the contractor, grantee, or other recipient for a portion of
8 the money or property that is requested or demanded.

9 NEW SECTION. **Sec. 3.** (1) Except for subsection (2) of this
10 section, a person is liable to the government for a civil penalty of at
11 least five thousand dollars and not more than ten thousand dollars,
12 plus three times the amount of damages caused, if the person:

13 (a) Knowingly presents or causes to be presented to an officer or
14 employee of the government a false claim or fraudulent claim for
15 payment or approval;

16 (b) Knowingly makes, uses, or causes to be made or used, a false
17 record or statement to get a false or fraudulent claim paid or approved
18 by the government;

19 (c) Conspires to defraud the government by getting a false or
20 fraudulent claim allowed or paid;

21 (d) Has possession, custody, or control of property or money used,
22 or to be used, by the government and, intending to defraud the
23 government or willfully conceal the property, delivers, or causes to be
24 delivered, less property than the amount for which the person receives
25 a certificate or receipt;

26 (e) Is authorized to make or deliver a document certifying receipt
27 of property used, or to be used, by the government and, intending to
28 defraud the government, makes or delivers the receipt without
29 completely knowing that the information on the receipt is true;

30 (f) Knowingly buys, or receives as a pledge of an obligation or
31 debt, public property from an officer or employee of the government,
32 who lawfully may not sell or pledge the property; or

33 (g) Knowingly makes, uses, or causes to be made or used, a false
34 record or statement to conceal, avoid, or decrease an obligation to pay
35 or transmit money or property to the government.

36 (2) For violations of subsection (1) of this section, a court may
37 assess not less than two times the amount of damages that the

1 government sustains because of the act of the person if the court finds
2 that:

3 (a) The person committing the violation of this section furnished
4 officials of the government responsible for investigating false claims
5 violations with all information known to the person about the violation
6 within thirty days after the date that the defendant first obtained the
7 information;

8 (b) The person fully cooperated with a government investigation of
9 the violation; and

10 (c) At the time the person furnished the government with the
11 information about the violation, no criminal prosecution, civil action,
12 or administrative action had commenced under this chapter with respect
13 to the violation, and the person did not have actual knowledge of the
14 existence of an investigation into the violation.

15 (3) A person violating this section is liable to the government for
16 the costs of a civil action brought to recover a penalty or damages.

17 NEW SECTION. **Sec. 4.** The attorney general shall diligently
18 investigate a violation under section 3 of this act. If the attorney
19 general finds that a person has violated or is violating section 3 of
20 this act, the attorney general may bring a civil action against the
21 person.

22 NEW SECTION. **Sec. 5.** (1) A person may bring a civil action for a
23 violation of section 3 of this act for the person and for the state.
24 The action is brought in the name of the state. The action may be
25 dismissed only if the court and the attorney general give written
26 consent to dismissal and their reasons for consenting.

27 (2) A copy of the complaint and written disclosure of substantially
28 all material evidence and information the person possesses shall be
29 served on the state under this title. The complaint shall be filed in
30 camera, remain under seal for at least sixty days, and not be served on
31 the defendant until the court orders. The state may elect to intervene
32 and proceed with the action within sixty days after it receives both
33 the complaint and the material evidence and information.

34 (3) The state may, for good cause shown, move the court for
35 extensions of the time during which the complaint remains under seal
36 under subsection (2) of this section. A motion may be supported by
37 affidavits or other submissions in camera. The defendant is not

1 required to respond to a complaint filed under this section until
2 twenty days after the complaint is unsealed and served upon the
3 defendant under this title.

4 (4) Before the expiration of the sixty-day period or extensions
5 obtained under subsection (3) of this section, the state shall:

6 (a) Proceed with the action, in which case the action is conducted
7 by the government; or

8 (b) Notify the court that it declines to take over the action, in
9 which case the person bringing the action has the right to conduct the
10 action.

11 (5) If a person brings an action under this section, no person
12 other than the state may intervene or bring a related action based on
13 the facts underlying the pending action.

14 NEW SECTION. **Sec. 6.** (1) If the government proceeds with an
15 action under section 5 of this act, it has the primary responsibility
16 for prosecuting the action and is not bound by an act of the person
17 bringing the action. The person has the right to continue as a party
18 to the action, subject to the limitations set forth in subsection (2)
19 of this section.

20 (2)(a) The state may dismiss the action notwithstanding the
21 objections of the person initiating the action if the person has been
22 notified by the state of the filing of the motion and the court has
23 provided the person with an opportunity for a hearing on the motion.

24 (b) The state may settle the action with the defendant
25 notwithstanding the objections of the person initiating the action if
26 the court determines, after a hearing, that the proposed settlement is
27 fair, adequate, and reasonable under the circumstances. Upon a showing
28 of good cause, the hearing may be held in camera.

29 (c) Upon a showing by the state that unrestricted participation
30 during the course of the litigation by the person initiating the action
31 would interfere with or unduly delay the state's prosecution of the
32 case, or would be repetitious, irrelevant, or for purposes of
33 harassment, the court may, in its discretion, impose limitations on the
34 person's participation, such as:

35 (i) Limiting the number of witnesses the person may call;

36 (ii) Limiting the length of the testimony of the witnesses;

37 (iii) Limiting the person's cross-examination of witnesses; or

1 (iv) Otherwise limiting the participation by the person in the
2 litigation.

3 (d) Upon a showing by the defendant that unrestricted participation
4 during the course of the litigation by the person initiating the action
5 would be for purposes of harassment or would cause the defendant undue
6 burden or unnecessary expense, the court may limit the participation by
7 the person in the litigation.

8 (3) If the state elects not to proceed with the action, the person
9 who initiated the action has the right to conduct the action. If the
10 state requests, it shall be served with copies of all pleadings filed
11 in the action and supplied with copies of all deposition transcripts,
12 at the state's expense. If the person proceeds with the action, the
13 court, without limiting the status and rights of the person initiating
14 the action, may nevertheless permit the state to intervene at a later
15 date upon a showing of good cause.

16 (4) Whether or not the state proceeds with the action, upon a
17 showing by the state that certain actions of discovery by the person
18 initiating the action would interfere with the state's investigation or
19 prosecution of a criminal or civil matter arising out of the same
20 facts, the court may stay the discovery for a period of not more than
21 sixty days. Such a showing is conducted in camera. The court may
22 extend the sixty-day period upon a further showing in camera that the
23 state has pursued the criminal or civil investigation or proceedings
24 with reasonable diligence and the proposed discovery in the civil
25 action would interfere with the ongoing criminal or civil investigation
26 or proceedings.

27 (5) Notwithstanding section 5 of this act, the state may elect to
28 pursue its claim through an alternate remedy available to the state,
29 including an administrative proceeding to determine a civil money
30 penalty. If an alternate remedy is pursued in another proceeding, the
31 person initiating the action has the same rights in the proceeding as
32 the person would have if the action had continued under this section.
33 A finding of fact or conclusion of law made in the other proceeding
34 that has become final is conclusive on all parties to an action under
35 this section. For purposes of this subsection, a finding or conclusion
36 is final if it has been finally determined on appeal to the appropriate
37 court of the state, if all time for filing an appeal with respect to
38 the finding or conclusion has expired, or if the finding or conclusion
39 is not subject to judicial review.

1 NEW SECTION. **Sec. 7.** (1) If the state proceeds with an action
2 brought by a person under section 5 of this act, the person shall
3 receive at least fifteen percent but not more than twenty-five percent
4 of the proceeds of the action or settlement of the claim, depending
5 upon the extent the person substantially contributed to the prosecution
6 of the action. If the action is one that the court finds is based
7 primarily on disclosures of specific information, other than
8 information provided by the person bringing the action, (a) relating to
9 allegations or transactions in a criminal, civil, or administrative
10 hearing, (b) in a congressional, administrative, or state accounting
11 office report, hearing, audit, or investigation, or (c) from the news
12 media, the court may award the sum it considers appropriate, but in no
13 case more than ten percent of the proceeds, taking into account the
14 significance of the information and the role of the person bringing the
15 action in advancing the case to litigation. A payment to a person
16 under this subsection is made from the proceeds. The person shall also
17 receive an amount for reasonable expenses which the court finds to have
18 been necessarily incurred, plus reasonable attorneys' fees and costs.
19 All expenses, fees, and costs are awarded against the defendant.

20 (2) If the state does not proceed with an action under this
21 section, the person bringing the action or settling the claim shall
22 receive an amount that the court decides is reasonable for collecting
23 the civil penalty and damages. The amount shall be not less than
24 twenty-five percent and not more than thirty percent of the proceeds of
25 the action or settlement and is paid out of the proceeds. The person
26 shall also receive an amount for reasonable expenses that the court
27 finds were necessarily incurred, plus reasonable attorneys' fees and
28 costs. All expenses, fees, and costs are awarded against the
29 defendant.

30 (3) Whether or not the state proceeds with the action, if the court
31 finds that the action was brought by a person who planned and initiated
32 the violation, under section 3 of this act, upon which the action was
33 brought, then the court may, to the extent the court considers
34 appropriate, reduce the share of the proceeds of the action that the
35 person would otherwise receive under subsection (1) or (2) of this
36 section, taking into account the role of that person in advancing the
37 case to litigation and relevant circumstances pertaining to the
38 violation. If the person bringing the action is convicted of criminal
39 conduct arising from his or her role in the violation of section 3 of

1 this act, that person is dismissed from the civil action and shall not
2 receive a share of the proceeds of the action. The dismissal shall not
3 prejudice the right of the state to continue the action, represented by
4 the attorney general.

5 (4) If the state does not proceed with the action and the person
6 bringing the action conducts the action, the court may award to the
7 defendant reasonable attorneys' fees and expenses if the defendant
8 prevails in the action and the court finds that the claim of the person
9 bringing the action was clearly frivolous, clearly vexatious, or
10 brought primarily for purposes of harassment.

11 NEW SECTION. **Sec. 8.** The state is not liable for expenses that a
12 person incurs in bringing an action under section 5 of this act.

13 NEW SECTION. **Sec. 9.** An employee who is discharged, demoted,
14 suspended, threatened, harassed, or in another manner discriminated
15 against in the terms and conditions of employment by his or her
16 employer because of lawful acts done by the employee on behalf of the
17 employee or others in furtherance of an action under section 5 of this
18 act, including investigation for, initiation of, testimony for, or
19 assistance in an action filed or to be filed under section 5 of this
20 act, is entitled to all relief necessary to make the employee whole.
21 The relief shall include reinstatement with the same seniority status
22 that the employee would have had but for the discrimination, two times
23 the amount of back pay, interest on the back pay, and compensation for
24 special damages sustained as a result of the discrimination, including
25 litigation costs and reasonable attorneys' fees.

26 NEW SECTION. **Sec. 10.** Information furnished under this chapter is
27 exempt from disclosure under RCW 42.17.310.

28 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act shall
29 constitute a new chapter in Title 4 RCW.

30 **Sec. 12.** RCW 42.17.310 and 1992 c 139 s 5 and 1992 c 71 s 12 are
31 each reenacted and amended to read as follows:

32 (1) The following are exempt from public inspection and copying:

1 (a) Personal information in any files maintained for students in
2 public schools, patients or clients of public institutions or public
3 health agencies, or welfare recipients.

4 (b) Personal information in files maintained for employees,
5 appointees, or elected officials of any public agency to the extent
6 that disclosure would violate their right to privacy.

7 (c) Information required of any taxpayer in connection with the
8 assessment or collection of any tax if the disclosure of the
9 information to other persons would (i) be prohibited to such persons by
10 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result
11 in unfair competitive disadvantage to the taxpayer.

12 (d) Specific intelligence information and specific investigative
13 records compiled by investigative, law enforcement, and penology
14 agencies, and state agencies vested with the responsibility to
15 discipline members of any profession, the nondisclosure of which is
16 essential to effective law enforcement or for the protection of any
17 person's right to privacy.

18 (e) Information revealing the identity of persons who are witnesses
19 to or victims of crime or who file complaints with investigative, law
20 enforcement, or penology agencies, other than the public disclosure
21 commission, if disclosure would endanger any person's life, physical
22 safety, or property. If at the time a complaint is filed the
23 complainant, victim or witness indicates a desire for disclosure or
24 nondisclosure, such desire shall govern. However, all complaints filed
25 with the public disclosure commission about any elected official or
26 candidate for public office must be made in writing and signed by the
27 complainant under oath.

28 (f) Test questions, scoring keys, and other examination data used
29 to administer a license, employment, or academic examination.

30 (g) Except as provided by chapter 8.26 RCW, the contents of real
31 estate appraisals, made for or by any agency relative to the
32 acquisition or sale of property, until the project or prospective sale
33 is abandoned or until such time as all of the property has been
34 acquired or the property to which the sale appraisal relates is sold,
35 but in no event shall disclosure be denied for more than three years
36 after the appraisal.

37 (h) Valuable formulae, designs, drawings, and research data
38 obtained by any agency within five years of the request for disclosure
39 when disclosure would produce private gain and public loss.

1 (i) Preliminary drafts, notes, recommendations, and intra-agency
2 memorandums in which opinions are expressed or policies formulated or
3 recommended except that a specific record shall not be exempt when
4 publicly cited by an agency in connection with any agency action.

5 (j) Records which are relevant to a controversy to which an agency
6 is a party but which records would not be available to another party
7 under the rules of pretrial discovery for causes pending in the
8 superior courts.

9 (k) Records, maps, or other information identifying the location of
10 archaeological sites in order to avoid the looting or depredation of
11 such sites.

12 (l) Any library record, the primary purpose of which is to maintain
13 control of library materials, or to gain access to information, which
14 discloses or could be used to disclose the identity of a library user.

15 (m) Financial information supplied by or on behalf of a person,
16 firm, or corporation for the purpose of qualifying to submit a bid or
17 proposal for (a) a ferry system construction or repair contract as
18 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
19 or improvement as required by RCW 47.28.070.

20 (n) Railroad company contracts filed prior to July 28, 1991, with
21 the utilities and transportation commission under RCW 81.34.070, except
22 that the summaries of the contracts are open to public inspection and
23 copying as otherwise provided by this chapter.

24 (o) Financial and commercial information and records supplied by
25 private persons pertaining to export services provided pursuant to
26 chapter 43.163 RCW and chapter 53.31 RCW.

27 (p) Financial disclosures filed by private vocational schools under
28 chapter 28C.10 RCW.

29 (q) Records filed with the utilities and transportation commission
30 or attorney general under RCW 80.04.095 that a court has determined are
31 confidential under RCW 80.04.095.

32 (r) Financial and commercial information and records supplied by
33 businesses during application for loans or program services provided by
34 chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

35 (s) Membership lists or lists of members or owners of interests of
36 units in timeshare projects, subdivisions, camping resorts,
37 condominiums, land developments, or common-interest communities
38 affiliated with such projects, regulated by the department of
39 licensing, in the files or possession of the department.

1 (t) All applications for public employment, including the names of
2 applicants, resumes, and other related materials submitted with respect
3 to an applicant.

4 (u) The residential addresses and residential telephone numbers of
5 employees or volunteers of a public agency which are held by the agency
6 in personnel records, employment or volunteer rosters, or mailing lists
7 of employees or volunteers.

8 (v) The residential addresses and residential telephone numbers of
9 the customers of a public utility contained in the records or lists
10 held by the public utility of which they are customers.

11 (w) Information obtained by the board of pharmacy as provided in
12 RCW 69.45.090.

13 (x) Information obtained by the board of pharmacy or the department
14 of health and its representatives as provided in RCW 69.41.044,
15 69.41.280, and 18.64.420.

16 (y) Financial information, business plans, examination reports, and
17 any information produced or obtained in evaluating or examining a
18 business and industrial development corporation organized or seeking
19 certification under chapter 31.24 RCW.

20 (z) Financial and commercial information supplied to the state
21 investment board by any person when the information relates to the
22 investment of public trust or retirement funds and when disclosure
23 would result in loss to such funds or in private loss to the providers
24 of this information.

25 (aa) Financial and valuable trade information under RCW 51.36.120.

26 (bb) Client records maintained by an agency that is a domestic
27 violence program as defined in RCW 70.123.020 or a rape crisis center
28 as defined in RCW 70.125.030.

29 (cc) Information that identifies a person who, while an agency
30 employee: (i) Seeks advice, under an informal process established by
31 the employing agency, in order to ascertain his or her rights in
32 connection with a possible unfair practice under chapter 49.60 RCW
33 against the person; and (ii) requests his or her identity or any
34 identifying information not be disclosed.

35 (dd) Business related information protected from public inspection
36 and copying under RCW 15.86.110.

37 (ee) Information obtained under chapter 4.-- RCW (sections 1
38 through 10 of this act).

1 (2) Except for information described in subsection (1)(c)(i) of
2 this section and confidential income data exempted from public
3 inspection pursuant to RCW 84.40.020, the exemptions of this section
4 are inapplicable to the extent that information, the disclosure of
5 which would violate personal privacy or vital governmental interests,
6 can be deleted from the specific records sought. No exemption may be
7 construed to permit the nondisclosure of statistical information not
8 descriptive of any readily identifiable person or persons.

9 (3) Inspection or copying of any specific records exempt under the
10 provisions of this section may be permitted if the superior court in
11 the county in which the record is maintained finds, after a hearing
12 with notice thereof to every person in interest and the agency, that
13 the exemption of such records is clearly unnecessary to protect any
14 individual's right of privacy or any vital governmental function.

15 (4) Agency responses refusing, in whole or in part, inspection of
16 any public record shall include a statement of the specific exemption
17 authorizing the withholding of the record (or part) and a brief
18 explanation of how the exemption applies to the record withheld.

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