
ENGROSSED SUBSTITUTE SENATE BILL 5439

State of Washington

56th Legislature

1999 Regular Session

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

Read first time 03/03/99.

1 AN ACT Relating to false claims against the government; amending
2 RCW 48.80.020; adding a new chapter to Title 4 RCW; adding a new
3 section to chapter 42.52 RCW; 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 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) "Person" means any individual, firm, partnership, corporation,
10 company, association, or other legal entity whose conduct is not
11 subject to 31 U.S.C. Sec. 3729 as now or hereafter amended, chapter
12 48.80 RCW, RCW 74.09.210 through 74.09.260, or 51.48.250 through
13 51.48.290.

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

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

23 (8) "Reprisal or retaliation" has the meaning given in RCW
24 42.40.050.

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

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

30 (a) The person:

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

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

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

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

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

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

1 (iii) Incurs consequent damages.

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

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

11 (4) This chapter does not apply to any controversy that results in
12 damages to a governmental entity that have a total value of less than
13 one thousand dollars. For the purpose of this subsection,
14 "controversy" means any one or more wrongful acts committed by the same
15 person.

16 (5) Applicable statute of limitations shall be pursuant to RCW
17 4.16.080.

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

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

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

32 (a) The person committing the wrongful act furnished to a public
33 attorney responsible for investigating false claims all information
34 known to the person about the wrongful act within thirty days after the
35 person first obtained the information;

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

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

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

10 NEW SECTION. **Sec. 6.** (1) A person may bring a civil action for
11 the commission of a wrongful act in the name of the person and the
12 governmental entity. A court may only dismiss any action brought under
13 this chapter by a person other than a public attorney if the public
14 attorney provides the court with written consent to the dismissal. If
15 the action is dismissed, the court shall enter an order stating the
16 grounds for dismissal.

17 (2) A copy of the complaint and written disclosure of substantially
18 all material evidence and information the person possesses shall be
19 served on the governmental entity under this chapter. The complaint
20 shall be filed in camera, remain under seal for at least ninety days,
21 and not be served on the defendant until the court orders. The
22 governmental entity may elect to intervene and proceed with the action
23 within ninety days after it receives both the complaint and the
24 material evidence and information.

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

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

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

1 (b) Notify the court that it declines to take over the action, in
2 which case the person bringing the action has the right to conduct the
3 action.

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

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

13 (2)(a) A governmental entity may petition to dismiss the action
14 notwithstanding the objections of the person initiating the action if
15 the person has been served with a copy of the motion for dismissal in
16 a manner provided by law and the court has provided the person with an
17 opportunity for a hearing on the motion.

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

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

- 30 (i) Limiting the number of witnesses the person may call;
31 (ii) Limiting the length of the testimony of the witnesses;
32 (iii) Limiting the person's cross-examination of witnesses; or
33 (iv) Otherwise limiting the participation by the person in the
34 litigation.

35 (d) Upon a showing by the defendant that unrestricted participation
36 during the course of the litigation by the person initiating the action
37 would be for purposes of harassment or would cause the defendant undue

1 burden or unnecessary expense, the court may limit the participation by
2 the person in the litigation.

3 (3) If a governmental entity elects not to proceed with the action,
4 the person who initiated the action has the right to conduct the
5 action. The governmental entity may request, and following such
6 request shall be served with, copies of all pleadings filed in the
7 action and supplied with copies of all deposition transcripts,
8 interrogatory answers, documents produced, test results, or other
9 discovery materials, at the governmental entity's expense for the cost
10 of reproducing the materials. If the person proceeds with the action,
11 the court, without limiting the status and rights of the person
12 initiating the action, may nevertheless permit the governmental entity
13 to intervene at a later date upon a showing of good cause.

14 (4) Whether or not the governmental entity proceeds with the
15 action, upon a showing by the governmental entity that certain actions
16 of discovery by the person initiating the action would interfere with
17 an investigation or prosecution of a criminal or civil matter arising
18 out of the same facts, the court may stay the discovery for a period of
19 not more than ninety days. Such a showing shall be made in camera.
20 The court may extend the ninety-day period upon a further showing in
21 camera that the governmental entity has pursued the criminal or civil
22 investigation or proceedings with reasonable diligence and the proposed
23 discovery in the civil action would interfere with the ongoing criminal
24 or civil investigation or proceedings.

25 (5) Notwithstanding section 6 of this act, a governmental entity
26 may elect to pursue a claim through an available alternate remedy,
27 including an administrative proceeding. If an alternative remedy is
28 undertaken, any civil actions shall be stayed and the person initiating
29 the civil action has the same rights in the proceeding, including with
30 respect to recoveries and costs, including reasonable attorneys' fees,
31 as the person would have if the action had continued under this
32 section. A finding of fact or conclusion of law made in the other
33 proceeding that has become final is conclusive on all parties to an
34 action under this section. For purposes of this subsection, a finding
35 or conclusion is final if it has been finally determined on appeal to
36 the appropriate court of the state, if all time for filing an appeal
37 with respect to the finding or conclusion has expired, or if the
38 finding or conclusion is not subject to judicial review.

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

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

32 (3) Whether or not a governmental entity proceeds with an action,
33 if the court finds that the action was brought by a person who planned
34 and initiated the wrongful act upon which the action was brought, then
35 the court may, to the extent the court considers appropriate, reduce
36 the share of the proceeds of the action that the person would otherwise
37 receive under subsection (1) or (2) of this section, taking into
38 account the role of that person in advancing the case to litigation and
39 relevant circumstances pertaining to the wrongful act. If the person

1 bringing the action is convicted of criminal conduct arising from his
2 or her role in the commission of a wrongful act, that person is
3 dismissed from the civil action and shall receive no recovery or award.
4 The dismissal shall not prejudice the right of the governmental entity
5 to continue the action.

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

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

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

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

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

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

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

31 (2) "Deceptive" means presenting a claim to a health care payer
32 that contains a statement of fact or fails to reveal a material fact,
33 leading the health care payer to believe that the represented or
34 suggested state of affairs is other than it actually is. For the

1 purposes of this chapter, the determination of what constitutes a
2 material fact is a question of law to be resolved by the court.

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

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

8 (5) "Health care payer" means any insurance company authorized to
9 provide health insurance in this state, any health care service
10 contractor authorized under chapter 48.44 RCW, any health maintenance
11 organization authorized under chapter 48.46 RCW, any legal entity which
12 is self-insured and providing health care benefits to its employees,
13 ((and)) any insurer or other person responsible for paying for health
14 care services, and includes all governmental entities at the federal,
15 state, or local levels.

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

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

20 NEW SECTION. Sec. 13. A new section is added to chapter 42.52 RCW
21 to read as follows:

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

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

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

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

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

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

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

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

4 (2) For the purposes of this section:

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

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

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

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

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

19 (3) As to state officers and state employees, this section operates
20 to the exclusion of ch___, Laws of 1999 (SSB 5439).

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

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