
SENATE BILL 5439

State of Washington **56th Legislature** **1999 Regular Session**

By Senators Kline, Heavey, Roach and Costa

Read first time 01/22/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to false claims against the government; adding a
2 new chapter to Title 4 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

6 NEW SECTION. **Sec. 2.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter.

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

16 (2) "False claim" means any claim that contains or is based upon a
17 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 or without 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.

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

15 (7) "Recovery" means any money paid or to be paid pursuant to
16 section 4 of this act as a civil penalty or damages, including enhanced
17 damages pursuant to section 4 (1) or (2) of this act, as a result of
18 the initiation of a civil action under section 6 of this act, whether
19 resulting from an award of the court, from a settlement of the parties,
20 or from an alternative remedy pursuant to section 7(5) of this act, but
21 "recovery" shall not include costs including or not including
22 attorneys' fees.

23 NEW SECTION. **Sec. 3.** A person commits a "wrongful act" under this
24 chapter if that person:

25 (1) Knowingly presents or causes to be presented to a governmental
26 entity a false claim for payment or approval;

27 (2) Knowingly makes, uses, or causes to be made or used, a false
28 record or statement to get a false claim paid or approved;

29 (3) Conspires to get a false claim allowed or paid;

30 (4) Has possession, custody, or control of property or money used,
31 or to be used, by a governmental entity and knowingly delivers, or
32 causes to be delivered, less property than the amount for which the
33 person receives a certificate or receipt;

34 (5) Is authorized to make or deliver a document certifying receipt
35 of property used, or to be used, by a governmental entity and makes or
36 delivers the receipt knowing that material information on the receipt
37 is false;

1 (6) Knowingly buys, or receives as security for an obligation or
2 debt, public property from an officer or employee of a governmental
3 entity, who lawfully may not sell or pledge the property; or

4 (7) Knowingly makes, uses, or causes to be made or used a false
5 record or statement to conceal, avoid, or decrease an obligation to pay
6 or transmit property to a governmental entity.

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; (b) an amount equal to three times the damages
12 sustained by the governmental entity as a result of the wrongful act;
13 and (c) all costs incurred by the governmental entity in maintaining a
14 civil action hereunder, including attorneys' fees.

15 (2) Notwithstanding subsection (1) of this section, a court may
16 assess against a person who commits a wrongful act an amount equal to
17 two times the damages sustained by the governmental entity as a result
18 of the wrongful act plus all costs incurred by the governmental entity
19 in collecting such amount, including attorneys' fees, if the court
20 finds all of the following:

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

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

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

32 (3) This chapter does not apply to any controversy that results in
33 damages to a governmental entity that have a total value of less than
34 one thousand dollars. For the purpose of this subsection,
35 "controversy" means any one or more wrongful acts committed by the same
36 person.

1 NEW SECTION. **Sec. 5.** A public attorney shall diligently
2 investigate a wrongful act. If the public attorney finds that a person
3 has committed or is committing a wrongful act, the public attorney may
4 bring a civil action against the person.

5 NEW SECTION. **Sec. 6.** (1) A person may bring a civil action for
6 the commission of a wrongful act in the name of the person and the
7 governmental entity. The action may be dismissed only if the court and
8 the public attorney give written consent to dismissal and their reasons
9 for consenting.

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

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

25 (4) Before the expiration of the sixty-day period or extensions
26 obtained under subsection (3) of this section, the governmental entity
27 shall:

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

30 (b) Notify the court that it declines to take over the action, in
31 which case the person bringing the action has the right to conduct the
32 action.

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

36 NEW SECTION. **Sec. 7.** (1) If a governmental entity proceeds with
37 an action under section 6 of this act, it has the primary

1 responsibility for prosecuting the action and is not bound by an act of
2 the person bringing the action. The person has the right to continue
3 as a party to the action, subject to the limitations set forth in
4 subsection (2) of this section.

5 (2)(a) A governmental entity may dismiss the action notwithstanding
6 the objections of the person initiating the action if the person has
7 been served with a copy of the motion for dismissal in a manner
8 provided by law and the court has provided the person with an
9 opportunity for a hearing on the motion.

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

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

- 22 (i) Limiting the number of witnesses the person may call;
- 23 (ii) Limiting the length of the testimony of the witnesses;
- 24 (iii) Limiting the person's cross-examination of witnesses; or
- 25 (iv) Otherwise limiting the participation by the person in the
26 litigation.

27 (d) Upon a showing by the defendant that unrestricted participation
28 during the course of the litigation by the person initiating the action
29 would be for purposes of harassment or would cause the defendant undue
30 burden or unnecessary expense, the court may limit the participation by
31 the person in the litigation.

32 (3) If a governmental entity elects not to proceed with the action,
33 the person who initiated the action has the right to conduct the
34 action. The governmental entity may request, and following such
35 request shall be served with, copies of all pleadings filed in the
36 action and supplied with copies of all deposition transcripts,
37 interrogatory answers, documents produced, test results, or other
38 discovery materials, at the governmental entity's expense for the cost
39 of reproducing the materials. If the person proceeds with the action,

1 the court, without limiting the status and rights of the person
2 initiating the action, may nevertheless permit the governmental entity
3 to intervene at a later date upon a showing of good cause.

4 (4) Whether or not the governmental entity proceeds with the
5 action, upon a showing by the governmental entity that certain actions
6 of discovery by the person initiating the action would interfere with
7 an investigation or prosecution of a criminal or civil matter arising
8 out of the same facts, the court may stay the discovery for a period of
9 not more than sixty days. Such a showing shall be made in camera. The
10 court may extend the sixty-day period upon a further showing in camera
11 that the governmental entity has pursued the criminal or civil
12 investigation or proceedings with reasonable diligence and the proposed
13 discovery in the civil action would interfere with the ongoing criminal
14 or civil investigation or proceedings.

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

29 NEW SECTION. **Sec. 8.** (1) If a governmental entity proceeds with
30 an action brought by a person under section 6 of this act, the person
31 shall receive at least fifteen percent but not more than twenty-five
32 percent of any recovery in an action, depending upon the extent the
33 person substantially contributed to the prosecution of the action. If
34 the action is one that the court finds is based primarily on
35 disclosures of specific information, other than information provided by
36 the person bringing the action, (a) in a criminal, civil, or
37 administrative hearing, (b) in a legislative, administrative, or state
38 accounting office report, hearing, audit, or investigation, or (c) from

1 the news media, the court may award the sum it considers appropriate,
2 but in no case more than ten percent of the recovery, taking into
3 account the significance of the information and the role of the person
4 bringing the action in advancing the case to litigation. A payment to
5 a person under this subsection shall be made from the recovery. Any
6 payment of any portion of a recovery that is made shall be shared pro
7 rata between the person and the governmental entity. The person shall
8 also receive an amount for costs, including reasonable attorneys' fees,
9 which the court finds to have been necessarily incurred. All expenses,
10 fees, and costs are awarded against the defendant who is found to have
11 committed a wrongful act. Attorneys' fees and costs shall be paid
12 prior to disbursement of any recovery.

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

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

35 (4) If the governmental entity does not proceed with the action and
36 the person bringing the action conducts the action, the court may award
37 to the defendant costs, including reasonable attorneys' fees, if the
38 defendant prevails in the action and the court finds that the claim of

1 the person bringing the action was clearly frivolous, clearly
2 vexatious, or brought primarily for purposes of harassment.

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

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

10 NEW SECTION. **Sec. 11.** (1) Any person who has been subjected to
11 work place reprisal or retaliation as a result of being a whistleblower
12 or an employer's belief that the person is a whistleblower has the
13 remedies provided under chapter 49.60 RCW. Such remedies are in
14 addition to any other remedies that the person may have under common
15 law or statute.

16 (2) For the purposes of this section:

17 (a) "Whistleblower" means a person who in good faith initiates,
18 furnishes information, or otherwise participates in an investigation
19 of, or a civil action with respect to, a wrongful act; and

20 (b) "Reprisal or retaliation" has the meaning given in RCW
21 42.40.050.

22 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act
23 constitute a new chapter in Title 4 RCW.

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