
SECOND SUBSTITUTE HOUSE BILL 2845

State of Washington 55th Legislature 1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Constantine, Clements, Dickerson, Ogden and Anderson)

Read first time 02/07/98. Referred to Committee on .

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) "Public attorney" means any person that is authorized by a
10 governmental entity to initiate legal actions or claims on the
11 governmental entity's behalf.

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

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

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (2) of
5 this section, a person who commits a wrongful act against a
6 governmental entity is liable to the governmental entity for (a) a
7 civil penalty of not less than five thousand dollars and not more than
8 ten thousand dollars; (b) an amount equal to three times the damages
9 sustained by the governmental entity as a result of the wrongful act;
10 and (c) all costs incurred by the governmental entity in maintaining a
11 civil action hereunder, including attorneys' fees.

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

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

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

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

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

34 NEW SECTION. **Sec. 5.** A public attorney shall diligently
35 investigate a wrongful act. If the public attorney finds that a person
36 has committed or is committing a wrongful act, the public attorney may
37 bring a civil action against the person.

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

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

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

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

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

26 (b) Notify the court that it declines to take over the action, in
27 which case the person bringing the action has the right to conduct the
28 action.

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

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

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

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

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

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

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

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

21 (iv) Otherwise limiting the participation by the person in the
22 litigation.

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

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

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

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

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

1 action in advancing the case to litigation. A payment to a person
2 under this subsection shall be made from the recovery. Any payment of
3 any portion of a recovery that is made shall be shared pro rata between
4 the person and the governmental entity. The person shall also receive
5 an amount for costs, including reasonable attorneys' fees, which the
6 court finds to have been necessarily incurred. All expenses, fees, and
7 costs are awarded against the defendant who is found to have committed
8 a wrongful act. Attorneys' fees and costs shall be paid prior to
9 disbursement of any recovery.

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

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

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

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

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

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

14 (2) For the purposes of this section:

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

18 (b) "Reprisal or retaliation" has the meaning given in RCW
19 42.40.050.

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

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