
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; and prescribing
3 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 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, 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 costs including or not including
23 attorneys' fees.

24 (8) "Reprisal or retaliation" has the meaning given in RCW
25 42.40.050.

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

29 NEW SECTION. **Sec. 3.** (1) A person commits a "wrongful act" under
30 this chapter if that person:

31 (a) Knowingly presents or causes to be presented to a governmental
32 entity a false claim for payment or approval;

33 (b) Knowingly makes, uses, or causes to be made or used, a false
34 record or statement to get a false claim paid or approved;

35 (c) Conspires to get a false claim allowed or paid;

36 (d) Has possession, custody, or control of property or money used,
37 or to be used, by a governmental entity and knowingly delivers, or

1 causes to be delivered, less property than the amount for which the
2 person receives a certificate or receipt;

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

7 (f) Knowingly buys, or receives as security for an obligation or
8 debt, public property from an officer or employee of a governmental
9 entity, who lawfully may not sell or pledge the property; or

10 (g) Knowingly makes, uses, or causes to be made or used a false
11 record or statement to conceal, avoid, or decrease an obligation to pay
12 or transmit property to a governmental entity.

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

18 (3) In any action brought under this chapter, a governmental entity
19 or person bringing the action shall be required to prove the essential
20 elements of the cause of action by a preponderance of the evidence.

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

26 (5) Applicable statute of limitations shall be pursuant to RCW
27 4.16.080.

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

34 (2) Notwithstanding subsection (1) of this section, a court may
35 assess against a person who commits a wrongful act an amount the court
36 finds reasonable considering the level of involvement of the person who
37 commits a wrongful act but not to exceed a twenty-five percent

1 reduction of the damages sustained by the governmental entity as a
2 result of the wrongful act, if the court finds all of the following:

3 (a) The person committing the wrongful act furnished to a public
4 attorney responsible for investigating false claims all information
5 known to the person about the wrongful act within thirty days after the
6 person first obtained the information;

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

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

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

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

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

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

1 until twenty days after the complaint is unsealed and served upon the
2 defendant under this chapter.

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

6 (a) Proceed with the action, in which case the action is conducted
7 by the governmental entity; 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 governmental entity may intervene or bring a related
13 action based on the facts underlying the pending action.

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

20 (2)(a) A governmental entity may petition to dismiss the action
21 notwithstanding the objections of the person initiating the action if
22 the person has been served with a copy of the motion for dismissal in
23 a manner provided by law and the court has provided the person with an
24 opportunity for a hearing on the motion.

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

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

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

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

1 (iii) Limiting the person's cross-examination of witnesses; or
2 (iv) Otherwise limiting the participation by the person in the
3 litigation.

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

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

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

31 (5) Notwithstanding section 6 of this act, a governmental entity
32 may elect to pursue a claim through an available alternate remedy,
33 including an administrative proceeding. If an alternative remedy is
34 undertaken, any civil actions shall be stayed and the person initiating
35 the civil action has the same rights in the proceeding, including with
36 respect to recoveries and costs, including reasonable attorneys' fees,
37 as the person would have if the action had continued under this
38 section. A finding of fact or conclusion of law made in the other
39 proceeding that has become final is conclusive on all parties to an

1 action under this section. For purposes of this subsection, a finding
2 or conclusion is final if it has been finally determined on appeal to
3 the appropriate court of the state, if all time for filing an appeal
4 with respect to the finding or conclusion has expired, or if the
5 finding or conclusion is not subject to judicial review.

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

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

37 (3) Whether or not a governmental entity proceeds with an action,
38 if the court finds that the action was brought by a person who planned

1 and initiated the wrongful act upon which the action was brought, then
2 the court may, to the extent the court considers appropriate, reduce
3 the share of the proceeds of the action that the person would otherwise
4 receive under subsection (1) or (2) of this section, taking into
5 account the role of that person in advancing the case to litigation and
6 relevant circumstances pertaining to the wrongful act. If the person
7 bringing the action is convicted of criminal conduct arising from his
8 or her role in the commission of a wrongful act, that person is
9 dismissed from the civil action and shall receive no recovery or award.
10 The dismissal shall not prejudice the right of the governmental entity
11 to continue the action.

12 (4) If the governmental entity does not proceed with the action and
13 the person bringing the action conducts the action, the court may award
14 to the defendant costs, including reasonable attorneys' fees, if the
15 defendant prevails in the action and the court finds that the claim of
16 the person bringing the action was clearly frivolous, clearly
17 vexatious, or brought primarily for purposes of harassment.

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

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

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

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

33 Unless the context clearly requires otherwise, the definitions in
34 this section apply throughout this chapter.

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

3 (2) "Deceptive" means presenting a claim to a health care payer
4 that contains a statement of fact or fails to reveal a material fact,
5 leading the health care payer to believe that the represented or
6 suggested state of affairs is other than it actually is. For the
7 purposes of this chapter, the determination of what constitutes a
8 material fact is a question of law to be resolved by the court.

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

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

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

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

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

26 NEW SECTION. **Sec. 13.** Sections 1 through 11 of this act
27 constitute a new chapter in Title 4 RCW.

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