
HOUSE BILL 2329

State of Washington

61st Legislature

2009 Regular Session

By Representatives Pedersen and Rodne

1 AN ACT Relating to false claims involving state funds; adding a new
2 chapter to Title 7 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Claim" includes any request or demand for state funds made to
7 any employee, officer, or agent of the state, or to any contractor,
8 grantee, or other recipient, whether under contract or not.

9 (2) "Employer" includes any natural person, corporation, firm,
10 association, organization, partnership, business, trust, or state-
11 affiliated entity involved in a nongovernmental function, including
12 state universities and state hospitals.

13 (3)(a) "Knowing" and "knowingly" means that a person, with respect
14 to information, does any of the following:

15 (i) Has actual knowledge of the information;

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

18 (iii) Acts in reckless disregard of the truth or falsity of the
19 information.

1 (b) Proof of specific intent to defraud is not required.

2 (4) "Person" includes any natural person, corporation, firm,
3 association, organization, partnership, business, or trust.

4 (5) "State funds" means money, property, or services, if any
5 portion of the money, property, or services issued from, or was
6 provided by, the state, or if the state will reimburse a contractor,
7 grantee, or other recipient for any portion of the money, property, or
8 services.

9 NEW SECTION. **Sec. 2.** (1) Any person who commits any of the
10 following acts shall be liable to the state for three times the amount
11 of damages that the state sustains because of the act of that person.

12 A person who commits any of the following acts shall also be liable
13 to the state for the costs of a civil action brought to recover any of
14 those penalties or damages, and shall be liable to the state for a
15 civil penalty of not less than five thousand dollars and not more than
16 ten thousand dollars for each violation:

17 (a) Knowingly presenting or causing to be presented to any
18 employee, officer, or agent of the state, or to any contractor,
19 grantee, or other recipient of state funds, a false or fraudulent claim
20 for payment or approval;

21 (b) Knowingly making, using, or causing to be made or used, a false
22 record or statement to get a false or fraudulent claim paid or
23 approved;

24 (c) Conspiring to defraud the state by getting a false claim
25 allowed or paid, or conspiring to defraud the state by knowingly
26 making, using, or causing to be made or used, a false record or
27 statement to conceal, avoid, or decrease an obligation to pay or
28 transmit money or property to the state;

29 (d) Possession, custody, or control of public property or money
30 used or to be used by the state and knowingly delivering or causing to
31 be delivered less property than the amount for which the person
32 receives a certificate or receipt;

33 (e) Being authorized to make or deliver a document certifying
34 receipt of property used or to be used by the state and knowingly
35 making or delivering a receipt that falsely represents the property
36 used or to be used;

1 (f) Knowingly buying, or receiving as a pledge of an obligation or
2 debt, public property from any person who lawfully may not sell or
3 pledge the property;

4 (g) Knowingly making, using, or causing to be made or used, a false
5 or incomplete record or statement to conceal, avoid, or decrease an
6 obligation to pay or transmit money or property to the state;

7 (h) being a beneficiary of an inadvertent submission of a false
8 claim to any employee, officer, or agent of the state, or to any
9 contractor, grantee, or other recipient of state funds, subsequently
10 discovering the falsity of the claim, and failing to disclose the false
11 claim to the state within a reasonable time after discovery of the
12 false claim.

13 (2) Notwithstanding subsection (1) of this section, the court may
14 assess not less than two times the amount of damages that the state
15 sustains because of the act of the person described in subsection (1)
16 of this section, and no civil penalty, if the court finds all of the
17 following:

18 (a) The person committing the violation furnished officials of the
19 state who are responsible for investigating false claims violations
20 with all information known to that person about the violation within
21 thirty days after the date on which the person first obtained the
22 information;

23 (b) The person fully cooperated with any investigation by the
24 state;

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

30 (3) This section does not apply to claims, records, or statements
31 made under Title 82, 83, or 84 RCW.

32 NEW SECTION. **Sec. 3.** (1) The attorney general diligently shall
33 investigate a violation under section 2 of this act. If the attorney
34 general finds that a person has violated or is violating section 2 of
35 this act, the attorney general may bring a civil action under this
36 section against that person.

1 (2)(a) A person may bring a civil action for a violation of section
2 of this act for the person and for the state in the name of the
3 state. The person bringing the action shall be referred to as the qui
4 tam plaintiff. Once filed, the action may be dismissed only with the
5 written consent of the court, taking into account the best interest of
6 the parties involved and the public purposes behind this chapter.

7 (b) A copy of the complaint and written disclosure of substantially
8 all material evidence and information the person possesses shall be
9 served on the attorney general. The complaint shall also be filed in
10 camera, shall remain under seal for at least sixty days, and shall not
11 be served on the defendant until the court so orders. The state may
12 elect to intervene and proceed with the action within sixty days after
13 it receives both the complaint and the material evidence and the
14 information.

15 (c) The state may, for good cause shown, move the court for
16 extensions of the time during which the complaint remains under seal
17 under (b) of this subsection. Any such motions may be supported by
18 affidavits or other submissions in camera. The defendant shall not be
19 required to respond to any complaint filed under this section until
20 after the complaint is unsealed and served upon the defendant pursuant
21 to the rules of civil procedure.

22 (d) Before the expiration of the sixty-day period or any extensions
23 obtained under (c) of this subsection, the state shall:

24 (i) Proceed with the action, in which case the action shall be
25 conducted by the state; or

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

29 (e) When a person brings a valid action under this subsection, no
30 person other than the state may intervene or bring a related action
31 based on the facts underlying the pending action.

32 (3)(a) If the state proceeds with the action, it shall have the
33 primary responsibility for prosecuting the action, and shall not be
34 bound by an act of the person bringing the action. Such person shall
35 have the right to continue as a party to the action, subject to the
36 limitations set forth in (b) of this subsection.

37 (b)(i) The state may seek to dismiss the action for good cause
38 notwithstanding the objections of the qui tam plaintiff if the qui tam

1 plaintiff has been notified by the state of the filing of the motion
2 and the court has provided the qui tam plaintiff with an opportunity to
3 oppose the motion and present evidence at a hearing.

4 (ii) The state may settle the action with the defendant
5 notwithstanding the objections of the qui tam plaintiff if the court
6 determines, after a hearing providing the qui tam plaintiff an
7 opportunity to present evidence, that the proposed settlement is fair,
8 adequate, and reasonable under all of the circumstances.

9 (iii) Upon a showing by the state that unrestricted participation
10 during the course of the litigation by the person initiating the action
11 would interfere with or unduly delay the state's prosecution of the
12 case, or would be repetitious, irrelevant, or for purposes of
13 harassment, the court may, in its discretion, impose limitations on the
14 person's participation, such as:

15 (A) Limiting the number of witnesses the person may call;

16 (B) Limiting the length of the testimony of such witnesses;

17 (C) Limiting the person's cross-examination of witnesses; or

18 (D) Otherwise limiting the participation by the person in the
19 litigation.

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

25 (c) If the state elects not to proceed with the action, the person
26 who initiated the action shall have the right to conduct the action.
27 If the state so requests, it shall be served with copies of all
28 pleadings filed in the action and shall be supplied with copies of all
29 deposition transcripts, at the state's expense. When a person proceeds
30 with the action, the court, without limiting the status and rights of
31 the person initiating the action, may nevertheless permit the state to
32 intervene at a later date upon a showing of good cause.

33 (d) Whether or not the state proceeds with the action, upon a
34 showing by the state that certain actions of discovery by the person
35 initiating the action would interfere with the state's investigation or
36 prosecution of a criminal or civil matter arising out of the same
37 facts, the court may stay such discovery for a period of not more than
38 sixty days. Such a showing shall be conducted in camera. The court

1 may extend the sixty-day period upon a further showing in camera that
2 the state has pursued the criminal or civil investigation or
3 proceedings with reasonable diligence and any proposed discovery in the
4 civil action will interfere with the ongoing criminal or civil
5 investigation or proceedings.

6 (e) Notwithstanding subsection (2) of this section, the state may
7 elect to pursue its claim through any alternate remedy available to the
8 state, including any administrative proceeding to determine a civil
9 money penalty. If any such alternate remedy is pursued in another
10 proceeding, the person initiating the action shall have the same rights
11 in such proceeding as such person would have had if the action had
12 continued under this section. Any finding of fact or conclusion of law
13 made in such other proceeding that has become final shall be conclusive
14 on all parties to an action under this section.

15 For purposes of this subsection (3)(e), a finding or conclusion is
16 final if it has been finally determined on appeal to the appropriate
17 court of the state, if all time for filing such an appeal with respect
18 to the finding or conclusion has expired, or if the finding or
19 conclusion is not subject to judicial review.

20 (4)(a)(i)(A) If the state proceeds with an action brought by a
21 person under subsection (2) of this section, such person shall, subject
22 to the limitations in (a)(i)(B) of this subsection, receive at least
23 fifteen percent but not more than twenty-five percent of the proceeds
24 of the action or settlement of the claim, which includes damages, civil
25 penalties, payments for costs of compliance, and any other economic
26 benefit realized by the government as a result of the action, depending
27 upon the extent to which the person and/or his or her counsel
28 substantially contributed to the prosecution of the action.

29 (B) Where the action is one which the court finds to be based
30 primarily on disclosures of specific information, other than
31 information provided by the person bringing the action, relating to
32 allegations or transactions specifically in a criminal, civil, or
33 administrative hearing, or in a legislative or administrative report,
34 hearing, audit, or investigation, or from the news media, the court may
35 award such sums as it considers appropriate, but in no case more than
36 ten percent of the proceeds, taking into account the significance of
37 the information and the role of the person bringing the action in
38 advancing the case to litigation.

1 (ii) Any payment to a person under (a)(i) of this subsection shall
2 be made from the proceeds. Any such person shall also receive an
3 amount for reasonable expenses which the appropriate state court judge
4 finds to have been necessarily incurred, plus reasonable attorneys'
5 fees and costs. All such expenses, fees, and costs shall be awarded
6 against the defendant.

7 (b) If the state does not proceed with an action under this
8 section, the person bringing the action or settling the claim shall
9 receive an amount that the court decides is reasonable for collecting
10 the civil penalty and damages. The amount shall be not less than
11 twenty-five percent and not more than thirty percent of the proceeds of
12 the action or settlement and shall be paid out of such proceeds, which
13 includes damages, civil penalties, payments for costs of compliance,
14 and any other economic benefit realized by the government as a result
15 of the action. Such person shall also receive an amount for reasonable
16 expenses that the court finds to have been necessarily incurred, plus
17 reasonable attorneys' fees and costs. All such expenses, fees, and
18 costs shall be awarded against the defendant.

19 (c) Whether or not the state proceeds with the action, if the court
20 finds that the action was brought by a person who planned and initiated
21 the violation of section (2) of this act upon which the action was
22 brought, then the court may, to the extent the court considers
23 appropriate, reduce the share of the proceeds of the action which the
24 person would otherwise receive under (a) or (b) of this subsection,
25 taking into account the role of that person in advancing the case to
26 litigation and any relevant circumstances pertaining to the violation.
27 If the person bringing the action is convicted of criminal conduct
28 arising from his or her role in the violation of section 2 of this act,
29 that person shall be dismissed from the civil action and shall not
30 receive any share of the proceeds of the action. Such dismissal shall
31 not prejudice the right of the state to continue the action.

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

1 (5)(a) No court shall have jurisdiction over an action brought
2 under subsection (2) of this section against a member of the state
3 legislative branch, a member of the judiciary, or a senior executive
4 branch official if the action is based on evidence or information known
5 to the state when the action was brought.

6 (b) In no event may a person bring an action under subsection (2)
7 of this section that is based upon allegations or transactions which
8 are the subject of a civil suit or an administrative civil money
9 penalty proceeding in which the state is already a party.

10 (c) Upon motion of the attorney general, the court may, in
11 consideration of all the equities, dismiss a relator if the elements of
12 the actionable false claims alleged in the qui tam complaint have been
13 publicly disclosed specifically in the news media or in a publicly
14 disseminated governmental report, at the time the complaint is filed.

15 (6) The state is not liable for expenses that a person incurs in
16 bringing an action under this section.

17 (7) Any employee who is discharged, demoted, suspended, threatened,
18 harassed, or in any other manner discriminated against in the terms and
19 conditions of employment by his or her employer because of lawful acts
20 done by the employee on behalf of the employee or others in furtherance
21 of an action under this section, including investigation for,
22 initiation of, testimony for, or assistance in an action filed or to be
23 filed under this section, shall be entitled to all relief necessary to
24 make the employee whole. Such relief shall include reinstatement with
25 the same seniority status such employee would have had but for the
26 discrimination, two times the amount of back pay, interest on the back
27 pay, and compensation for any special damages sustained as a result of
28 the discrimination, including litigation costs and reasonable
29 attorneys' fees. An employee may bring an action in the appropriate
30 court of the state for the relief provided in this subsection.

31 NEW SECTION. **Sec. 4.** (1) A civil action under section 3 of this
32 act may not be brought more than ten years after the date on which the
33 violation was committed.

34 (2) A civil action under section 3 of this act may be brought for
35 activity prior to the effective date of this section if the limitations
36 period set in subsection (1) of this section has not lapsed.

1 (3) In any action brought under section 3 of this act, the state or
2 the qui tam plaintiff shall be required to prove all essential elements
3 of the cause of action, including damages, by a preponderance of the
4 evidence.

5 (4) Notwithstanding any other provision of law, a guilty verdict
6 rendered in a criminal proceeding charging false statements or fraud,
7 whether upon a verdict after trial or upon a plea of guilty or nolo
8 contendere, shall estop the defendant from denying the essential
9 elements of the offense in any action that involves the same
10 transaction as in the criminal proceeding and that is brought under
11 section (3) (1), (2), or (3) of this act.

12 NEW SECTION. **Sec. 5.** (1) The provisions of this chapter are not
13 exclusive, and the remedies provided for in this chapter shall be in
14 addition to any other remedies provided for in any other law or
15 available under common law.

16 (2) If any provision of this act or its application to any person
17 or circumstance is held invalid, the remainder of the act or the
18 application of the provision to other persons or circumstances is not
19 affected.

20 (3) This chapter shall be liberally construed and applied to
21 promote the public interest. This chapter also adopts the
22 congressional intent behind the federal false claims act (31 U.S.C.
23 Secs. 3729-3733), including the legislative history underlying the 1986
24 amendments to the federal false claims act.

25 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
26 a new chapter in Title 7 RCW.

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