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SENATE BILL 5144

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Kline, Rockefeller, and Pridemore

Read first time 01/15/09. Referred to Committee on Judiciary.

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,

1 or to be used, by a governmental entity and knowingly delivers, or  
2 causes to be delivered, less property than the amount for which the  
3 person receives a certificate or receipt;

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

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

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

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

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

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

27 (5) Applicable statute of limitations shall be pursuant to RCW  
28 4.16.080.

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

35 (2) Notwithstanding subsection (1) of this section, a court may  
36 assess against a person who commits a wrongful act an amount the court  
37 finds reasonable considering the level of involvement of the person who

1 commits a wrongful act but not to exceed a twenty-five percent  
2 reduction of the damages sustained by the governmental entity as a  
3 result of the wrongful act, if the court finds all of the following:

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

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

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

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

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

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

34 (3) The governmental entity may, for good cause shown, move the  
35 court for extensions of the time during which the complaint remains  
36 under seal under subsection (2) of this section. A motion may be

1 supported by affidavits or other submissions in camera. The defendant  
2 is not required to respond to a complaint filed under this section  
3 until twenty days after the complaint is unsealed and served upon the  
4 defendant under this chapter.

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

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

10 (b) Notify the court that it declines to take over the action, in  
11 which case the person bringing the action has the right to conduct the  
12 action.

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

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

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

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

33 (c) Upon a showing by a governmental entity or a defendant that  
34 unrestricted participation during the course of the litigation by the  
35 person initiating the action would interfere with or unduly delay  
36 prosecution of the case, or would be repetitious, irrelevant, or for

1 purposes of harassment, the court may, in its discretion, impose  
2 reasonable limitations on the person's participation, including:

- 3 (i) Limiting the number of witnesses the person may call;
- 4 (ii) Limiting the length of the testimony of the witnesses;
- 5 (iii) Limiting the person's cross-examination of witnesses; or
- 6 (iv) Otherwise limiting the participation by the person in the  
7 litigation.

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

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

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

35 (5) Notwithstanding section 6 of this act, a governmental entity  
36 may elect to pursue a claim through an available alternate remedy,  
37 including an administrative proceeding. If an alternative remedy is  
38 undertaken, any civil actions shall be stayed and the person initiating

1 the civil action has the same rights in the proceeding, including with  
2 respect to recoveries and costs, including reasonable attorneys' fees,  
3 as the person would have if the action had continued under this  
4 section. A finding of fact or conclusion of law made in the other  
5 proceeding that has become final is conclusive on all parties to an  
6 action under this section. For purposes of this subsection, a finding  
7 or conclusion is final if it has been finally determined on appeal to  
8 the appropriate court of the state, if all time for filing an appeal  
9 with respect to the finding or conclusion has expired, or if the  
10 finding or conclusion is not subject to judicial review.

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

33 (2) If a governmental entity does not proceed with an action under  
34 this section, the person bringing the action shall receive an amount  
35 that the court decides is reasonable for collecting the civil penalty  
36 and damages. The amount shall be not less than twenty-five percent and  
37 not more than thirty percent of the recovery and is paid out of the

1 proceeds. The person shall also receive an amount for costs, including  
2 reasonable attorneys' fees, that the court finds were necessarily  
3 incurred. All expenses, fees, and costs are awarded against the  
4 defendant who is found to have committed a wrongful act.

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

18 (4) If the governmental entity does not proceed with the action and  
19 the person bringing the action conducts the action, the court may award  
20 to the defendant costs, including reasonable attorneys' fees, if the  
21 defendant prevails in the action and the court finds that the claim of  
22 the person bringing the action was clearly frivolous, clearly  
23 vexatious, or brought primarily for purposes of harassment.

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

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

31 NEW SECTION. **Sec. 11.** Any person who has been subjected to  
32 workplace reprisal or retaliation as a result of being a whistleblower  
33 or an employer's belief that the person is a whistleblower has the  
34 remedies provided under chapter 49.60 RCW. Such remedies are in



1 addition to any other remedies that the person may have under common  
2 law or statute.

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

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

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