
SUBSTITUTE SENATE BILL 5310

State of Washington

62nd Legislature

2011 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline, Pflug, and Keiser)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to false claims against the government; amending
2 RCW 74.09.210; adding a new chapter to Title 4 RCW; prescribing
3 penalties; and providing an effective date.

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)(a) "Claim" means any request or demand, whether under a
11 contract or otherwise, for money or property and whether or not a
12 government entity has title to the money or property, that:

13 (i) Is presented to an officer, employee, or agent of a government
14 entity; or

15 (ii) Is made to a contractor, grantee, or other recipient, if the
16 money or property is to be spent or used on the government entity's
17 behalf or to advance a government entity program or interest, and the
18 government entity:

1 (A) Provides or has provided any portion of the money or property
2 requested or demanded; or

3 (B) Will reimburse such contractor, grantee, or other recipient for
4 any portion of the money or property which is requested or demanded.

5 (b) A "claim" does not include requests or demands for money or
6 property that the government entity has paid to an individual as
7 compensation for employment or as an income subsidy with no
8 restrictions on that individual's use of the money or property.

9 (c) A "claim" does not include, in relation to any public works
10 contract, a request for payment or other submission which is
11 conditioned upon compliance with a contractual time requirement that
12 limits the contractor's ability to guarantee the accuracy of the
13 submission, provided that the contractor later amends the claim when
14 the claim overstated the actual cost.

15 (2) "Custodian" means the custodian, or any deputy custodian,
16 designated by the attorney general.

17 (3) "Documentary material" includes the original or any copy of any
18 book, record, report, memorandum, paper, communication, tabulation,
19 chart, or other document, or data compilations stored in or accessible
20 through computer or other information retrieval systems, together with
21 instructions and all other materials necessary to use or interpret the
22 data compilations, and any product of discovery.

23 (4) "False claims act investigation" means any inquiry conducted by
24 any false claims act investigator for the purpose of ascertaining
25 whether any person is or has been engaged in any violation of this
26 chapter.

27 (5) "False claims act investigator" means any attorney or
28 investigator employed by the state attorney general who is charged with
29 the duty of enforcing or carrying into effect any provision of this
30 chapter, or any officer or employee of the state of Washington acting
31 under the direction and supervision of the attorney or investigator in
32 connection with an investigation pursuant to this chapter.

33 (6) "Government entity" means all state government entities and all
34 local government entities. A "state government entity" includes every
35 state office, department, division, bureau, board, commission, or other
36 state agency. A "local government entity" includes every county,
37 city, town, municipal corporation, quasi-municipal corporation, or

1 special purpose district, or any office, department, division, bureau,
2 board, commission, or agency thereof, or other local public agency.

3 (7)(a) "Knowing" and "knowingly" mean that a person, with respect
4 to information:

5 (i) Has actual knowledge of the information;

6 (ii) Acts in deliberate ignorance of the truth or falsity of the
7 information; or

8 (iii) Acts in reckless disregard of the truth or falsity of the
9 information.

10 (b) "Knowing" and "knowingly" do not require proof of specific
11 intent to defraud.

12 (8) "Material" means having a natural tendency to influence, or be
13 capable of influencing, the payment or receipt of money or property.

14 (9) "Obligation" means an established duty, whether or not fixed,
15 arising from an express or implied contractual, grantor-grantee, or
16 licensor-licensee relationship, from a fee-based or similar
17 relationship, from statute or rule, or from the retention of any
18 overpayment.

19 (10) "Official use" means any use that is consistent with the law,
20 and the rules and policies of the attorney general, including use in
21 connection with: Internal attorney general memoranda and reports;
22 communications between the attorney general and a federal, state, or
23 local government agency, or a contractor of a federal, state, or local
24 government agency, undertaken in furtherance of an investigation or
25 prosecution of a case; interviews of any qui tam relator or other
26 witness; oral examinations; depositions; preparation for and response
27 to civil discovery requests; introduction into the record of a case or
28 proceeding; applications, motions, memoranda, and briefs submitted to
29 a court or other tribunal; and communications with attorney general
30 investigators, auditors, consultants and experts, the counsel of other
31 parties, and arbitrators or mediators, concerning an investigation,
32 case, or proceeding.

33 (11) "Person" means any natural person, partnership, corporation,
34 association, or other legal entity, including any local or political
35 subdivision of a state. However, "person" does not include the state.

36 (12) "Product of discovery" includes:

37 (a) The original or duplicate of any deposition, interrogatory,

1 document, thing, result of the inspection of land or other property,
2 examination, or admission, which is obtained by any method of discovery
3 in any judicial or administrative proceeding of an adversarial nature;

4 (b) Any digest, analysis, selection, compilation, or derivation of
5 any item listed in (a) of this subsection; and

6 (c) Any index or other manner of access to any item listed in (a)
7 of this subsection.

8 (13) "Qui tam action" is an action brought by a person under
9 section 6 of this act.

10 (14) "Qui tam relator" or "relator" is a person who brings an
11 action under section 6 of this act.

12 NEW SECTION. **Sec. 3.** (1) Subject to subsection (2) of this
13 section, a person is liable to the government entity for a civil
14 penalty of not less than five thousand dollars and not more than ten
15 thousand dollars, plus three times the amount of damages which the
16 government entity sustains because of the act of that person, if the
17 person:

18 (a) Knowingly presents, or causes to be presented, a false or
19 fraudulent claim for payment or approval;

20 (b) Knowingly makes, uses, or causes to be made or used, a false
21 record or statement material to a false or fraudulent claim;

22 (c) Conspires to commit one or more of the violations in this
23 subsection (1);

24 (d) Has possession, custody, or control of property or money used,
25 or to be used, by the government entity and knowingly delivers, or
26 causes to be delivered, less than all of that money or property;

27 (e) Is authorized to make or deliver a document certifying receipt
28 of property used, or to be used, by the government entity and,
29 intending to defraud the government entity, makes or delivers the
30 receipt without completely knowing that the information on the receipt
31 is true;

32 (f) Knowingly buys, or receives as a pledge of an obligation or
33 debt, public property from an officer or employee of the government
34 entity who lawfully may not sell or pledge property; or

35 (g) Knowingly makes, uses, or causes to be made or used, a false
36 record or statement material to an obligation to pay or transmit money

1 or property to the government entity, or knowingly conceals or
2 knowingly and improperly avoids or decreases an obligation to pay or
3 transmit money or property to the government entity.

4 (2) The court may assess not less than two times the amount of
5 damages which the government entity sustains because of the act of a
6 person, if the court finds that:

7 (a) The person committing the violation of subsection (1) of this
8 section furnished the Washington state attorney general with all
9 information known to him or her about the violation within thirty days
10 after the date on which he or she first obtained the information;

11 (b) The person fully cooperated with any investigation by the
12 attorney general of the violation; and

13 (c) At the time the person furnished the attorney general with the
14 information about the violation, no criminal prosecution, civil action,
15 or administrative action had commenced under this title with respect to
16 the violation, and the person did not have actual knowledge of the
17 existence of an investigation into the violation.

18 NEW SECTION. **Sec. 4.** Any information furnished pursuant to this
19 chapter is exempt from disclosure under the public records act, chapter
20 42.56 RCW, until final disposition and all court ordered seals are
21 lifted.

22 NEW SECTION. **Sec. 5.** Subject to funds appropriated for this
23 purpose, the attorney general must diligently make a good faith effort
24 to investigate a violation under section 3 of this act. If the
25 attorney general finds that a person has violated or is violating
26 section 3 of this act, the attorney general may bring a civil action
27 under this section against the person.

28 NEW SECTION. **Sec. 6.** (1) A person may bring a civil action for a
29 violation of section 3 of this act for the person and for the
30 government entity. The action may be known as a qui tam action and the
31 person bringing the action as a qui tam relator. The action must be
32 brought in the name of the government entity.

33 (2) A relator filing an action under this chapter must serve a copy
34 of the complaint and written disclosure of substantially all material
35 evidence and information the person possesses on the attorney general

1 in electronic format. The relator must file the complaint in camera.
2 The complaint must remain under seal for at least sixty days, and may
3 not be served on the defendant until the court so orders. The attorney
4 general may elect to intervene and proceed with the action within sixty
5 days after it receives both the complaint and the material evidence and
6 information.

7 (3) The qui tam action may be dismissed by the court, however the
8 attorney general must be given notice and an opportunity to participate
9 in the hearing on the motion to dismiss.

10 (4) The attorney general may, for good cause shown, move the court
11 for extensions of the time during which the complaint remains under
12 seal under subsection (2) of this section. The motions may be
13 supported by affidavits or other submissions in camera. The defendant
14 may not be required to respond to any complaint filed under this
15 section until twenty days after the complaint is unsealed and served
16 upon the defendant.

17 (5) If the attorney general does not proceed with the action prior
18 to the expiration of the sixty-day period or any extensions obtained
19 under subsection (4) of this section, then the relator has the right to
20 conduct the action.

21 (6) When a person brings an action under this section, no person
22 other than the attorney general may intervene or bring a related action
23 based on the facts underlying the pending action.

24 NEW SECTION. **Sec. 7.** (1) If the attorney general proceeds with
25 the qui tam action, the attorney general shall have the primary
26 responsibility for prosecuting the action, and is not bound by an act
27 of the relator. The relator has the right to continue as a party to
28 the action, subject to the limitations set forth in subsection (2) of
29 this section.

30 (2)(a) The attorney general may move to dismiss the qui tam action
31 notwithstanding the objections of the relator if the relator has been
32 notified by the attorney general of the filing of the motion and the
33 court has provided the relator with an opportunity for a hearing on the
34 motion.

35 (b) The attorney general may settle the action with the defendant
36 notwithstanding the objections of the relator if the court determines,

1 after a hearing, that the proposed settlement is fair, adequate, and
2 reasonable under all the circumstances. Upon a showing of good cause,
3 the hearing may be held in camera.

4 (c) Upon a showing by the attorney general that unrestricted
5 participation during the course of the litigation by the relator would
6 interfere with or unduly delay the attorney general's prosecution of
7 the case, or would be repetitious, irrelevant, or for purposes of
8 harassment, the court may, in its discretion, impose limitations on the
9 relator's participation, such as:

- 10 (i) Limiting the number of witnesses the relator may call;
- 11 (ii) Limiting the length of the testimony of the witnesses;
- 12 (iii) Limiting the relator's cross-examination of witnesses; or
- 13 (iv) Otherwise limiting the participation by the relator in the
14 litigation.

15 (d) Upon a showing by the defendant that unrestricted participation
16 during the course of the litigation by the relator would be for
17 purposes of harassment or would cause the defendant undue burden or
18 unnecessary expense, the court may limit the participation by the
19 relator in the litigation.

20 (3) If the attorney general elects not to proceed with the qui tam
21 action, the relator has the right to conduct the action. If the
22 attorney general so requests, the relator must serve on the attorney
23 general copies of all pleadings filed in the action and shall supply
24 copies of all deposition transcripts, at the relator's expense.
25 Additionally, the relator shall provide the attorney general with
26 notice and the details of all offers of settlement. When the relator
27 proceeds with the action, the court, without limiting the status and
28 rights of the relator, may nevertheless permit the attorney general to
29 intervene at a later date upon a showing of good cause.

30 (4) Whether or not the attorney general proceeds with the qui tam
31 action, upon a showing by the attorney general that certain actions of
32 discovery by the relator would interfere with the attorney general's
33 investigation or prosecution of a criminal or civil matter arising out
34 of the same facts, the court may stay such discovery for a period of
35 not more than sixty days. The showing must be conducted in camera.
36 The court may extend the sixty-day period upon a further showing in
37 camera that the attorney general has pursued the criminal or civil

1 investigation or proceedings with reasonable diligence and any proposed
2 discovery in the civil action will interfere with the ongoing criminal
3 or civil investigation or proceedings.

4 (5) Notwithstanding section 6 of this act, the attorney general may
5 elect to pursue its claim through any alternate remedy available to the
6 attorney general, including any administrative proceeding to determine
7 a civil money penalty. If any alternate remedy is pursued in another
8 proceeding, the relator has the same rights in the proceeding as the
9 relator would have had if the action had continued under this section.
10 Any finding of fact or conclusion of law made in the other proceeding
11 that has become final is conclusive on all parties to an action under
12 this section. For purposes of this subsection, a finding or conclusion
13 is final if it has been finally determined on appeal to the appropriate
14 court of the state of Washington, if all time for filing the appeal
15 with respect to the finding or conclusion has expired, or if the
16 finding or conclusion is not subject to judicial review.

17 NEW SECTION. **Sec. 8.** (1)(a) Subject to (b) of this subsection, if
18 the attorney general proceeds with a qui tam action, the relator must
19 receive at least fifteen percent but not more than twenty-five percent
20 of the proceeds of the action or settlement of the claim, depending
21 upon the extent to which the relator substantially contributed to the
22 prosecution of the action.

23 (b) Where the action is one which the court finds to be based
24 primarily on disclosures of specific information, other than
25 information provided by the relator, relating to allegations or
26 transactions in a criminal, civil, or administrative hearing, in a
27 congressional, administrative, or general accounting office report,
28 hearing, audit, or investigation, or from the news media, the court may
29 award an amount it considers appropriate, but in no case more than ten
30 percent of the proceeds, taking into account the significance of the
31 information and the role of the relator in advancing the case to
32 litigation.

33 (c) Any payment to a relator under (a) or (b) of this subsection
34 must be made from the proceeds. The relator must also receive an
35 amount for reasonable expenses which the court finds to have been
36 necessarily incurred, plus reasonable attorneys' fees and costs.

1 Additionally, the attorney general must receive reasonable attorneys'
2 fees and costs. All expenses, fees, and costs must be awarded against
3 the defendant.

4 (2) If the attorney general does not proceed with a qui tam action,
5 the relator shall receive an amount which the court decides is
6 reasonable for collecting the civil penalty and damages. The amount
7 may not be less than twenty-five percent and not more than thirty
8 percent of the proceeds of the action or settlement and must be paid
9 out of the proceeds. The relator must also receive an amount for
10 reasonable expenses, which the court finds to have been necessarily
11 incurred, plus reasonable attorneys' fees and costs. All expenses,
12 fees, and costs must be awarded against the defendant.

13 (3) Whether or not the attorney general proceeds with the qui tam
14 action, if the court finds that the action was brought by a person who
15 planned and initiated the violation of section 3 of this act upon which
16 the action was brought, then the court may, to the extent the court
17 considers appropriate, reduce the share of the proceeds of the action
18 which the person would otherwise receive under subsection (1) or (2) of
19 this section, taking into account the role of that person in advancing
20 the case to litigation and any relevant circumstances pertaining to the
21 violation. If the person bringing the action is convicted of criminal
22 conduct arising from his or her role in the violation of section 3 of
23 this act, that person must be dismissed from the civil action and may
24 not receive any share of the proceeds of the action. The dismissal may
25 not prejudice the right of the United States to continue the action,
26 represented by the department of justice.

27 (4) If the attorney general does not proceed with the qui tam
28 action and the relator conducts the action, the court may award to the
29 defendant reasonable attorneys' fees, costs, and expenses if the
30 defendant prevails in the action. Any fees, costs, and expenses
31 awarded by the court under this subsection must be awarded against the
32 relator.

33 (5) The attorney general and a government entity are not liable for
34 expenses which a relator incurs in bringing an action under this
35 chapter.

36 (6) Any funds recovered that are ordered to be paid to the state
37 must be distributed as follows: Actual damages must be returned to the

1 government entity to which the false claim or claims were submitted and
2 the remainder to the false claims penalty account created under section
3 14 of this act.

4 NEW SECTION. **Sec. 9.** (1) In no event may a person bring a qui tam
5 action which is based upon allegations or transactions which are the
6 subject of a civil suit or an administrative civil money penalty
7 proceeding in which the attorney general is already a party.

8 (2)(a) The court must dismiss an action or claim under this
9 section, unless opposed by the attorney general, if substantially the
10 same allegations or transactions as alleged in the action or claim were
11 publicly disclosed:

12 (i) In a federal criminal, civil, or administrative hearing in
13 which the attorney general or other governmental entity is a party;

14 (ii) In a congressional, general accounting office report, or other
15 federal report, hearing, audit, or investigation; or

16 (iii) By the news media, unless the action is brought by the
17 attorney general or the relator is an original source of the
18 information.

19 (b) For purposes of this section, "original source" means an
20 individual who either (i) prior to a public disclosure under (a) of
21 this subsection, has voluntarily disclosed to the attorney general the
22 information on which allegations or transactions in a claim are based,
23 or (ii) has knowledge that is independent of, and materially adds to,
24 the publicly disclosed allegations or transactions, and who has
25 voluntarily provided the information to the attorney general before
26 filing an action under this section.

27 NEW SECTION. **Sec. 10.** (1) Any employee, contractor, or agent is
28 entitled to all relief necessary to make that employee, contractor, or
29 agent whole, if that employee, contractor, or agent is discharged,
30 demoted, suspended, threatened, harassed, or in any other manner
31 discriminated against in the terms and conditions of employment because
32 of lawful acts done by the employee, contractor, or agent or associated
33 others in furtherance of an action under this section or other efforts
34 to stop one or more violations of this chapter.

35 (2) Relief under subsection (1) of this section must include
36 reinstatement with the same seniority status that employee, contractor,

1 or agent would have had but for the discrimination, two times the
2 amount of back pay, interest on the back pay, and compensation for any
3 special damages sustained as a result of the discrimination, including
4 litigation costs and reasonable attorneys' fees, and any and all relief
5 available under RCW 49.60.030(2). An action under this subsection may
6 be brought in the appropriate superior court of the state of Washington
7 for the relief provided in this subsection.

8 (3) A civil action under this section may not be brought more than
9 three years after the date when the retaliation occurred.

10 NEW SECTION. **Sec. 11.** (1) A subpoena requiring the attendance of
11 a witness at a trial or hearing conducted under section 6 of this act
12 may be served at any place in the state of Washington.

13 (2) A civil action under section 6 of this act may be brought at
14 any time, without limitation after the date on which the violation of
15 section 3 of this act is committed.

16 (3) If the attorney general elects to intervene and proceed with a
17 qui tam action, the attorney general may file its own complaint or
18 amend the complaint of a relator to clarify or add detail to the claims
19 in which the attorney general is intervening and to add any additional
20 claims with respect to which the attorney general contends it is
21 entitled to relief.

22 (4) In any qui tam action brought under section 6 of this act, the
23 attorney general is required to prove all essential elements of the
24 cause of action, including damages, by a preponderance of the evidence.

25 (5) Notwithstanding any other provision of law or the rules for
26 superior court, a final judgment rendered in favor of the government
27 entity in any criminal proceeding charging fraud or false statements,
28 whether upon a verdict after trial or upon a plea of guilty or nolo
29 contendere, estops the defendant from denying the essential elements of
30 the offense in any action which involves the same transaction as in the
31 criminal proceeding and which is brought under section 5 or 6(1) of
32 this act.

33 NEW SECTION. **Sec. 12.** (1) Any action under section 5 or 6 of this
34 act may be brought in the superior court in any county in which the
35 defendant or, in the case of multiple defendants, any one defendant can
36 be found, resides, transacts business, or in which any act proscribed

1 by section 3 of this act occurred. The appropriate court must issue a
2 summons as required by the superior court civil rules and service must
3 occur at any place within the state of Washington.

4 (2) The superior courts have jurisdiction over any action brought
5 under the laws of any city or county for the recovery of funds paid by
6 a government entity if the action arises from the same transaction or
7 occurrence as an action brought under section 5 or 6 of this act.

8 (3) With respect to any local government that is named as a
9 coplaintiff with the state in an action brought under section 6 of this
10 act, a seal on the action ordered by the court under section 6 of this
11 act does not preclude the attorney general or the person bringing the
12 action from serving the complaint, any other pleadings, or the written
13 disclosure of substantially all material evidence and information
14 possessed by the person bringing the action on the law enforcement
15 authorities that are authorized under the law of the local government
16 to investigate and prosecute the action on behalf of the local
17 government, except that the seal applies to the law enforcement
18 authorities so served to the same extent as the seal applies to other
19 parties in the action.

20 NEW SECTION. **Sec. 13.** (1) Whenever the attorney general, or a
21 designee, for purposes of this section, has reason to believe that any
22 person may be in possession, custody, or control of any documentary
23 material or information relevant to a false claims act investigation,
24 the attorney general, or a designee, may, before commencing a civil
25 proceeding under section 6(1) of this act or making an election under
26 section 6(2) of this act, issue in writing and serve upon the person,
27 a civil investigative demand requiring the person:

28 (a) To produce the documentary material for inspection and copying;

29 (b) To answer in writing written interrogatories with respect to
30 the documentary material or information;

31 (c) To give oral testimony concerning the documentary material or
32 information; or

33 (d) To furnish any combination of such material, answers, or
34 testimony. The attorney general may delegate the authority to issue
35 civil investigative demands under this subsection (1). Whenever a
36 civil investigative demand is an express demand for any product of
37 discovery, the attorney general, the deputy attorney general, or an

1 assistant attorney general must serve, in any manner authorized by this
2 section, a copy of the demand upon the person from whom the discovery
3 was obtained and must notify the person to whom the demand is issued of
4 the date on which the copy was served. Any information obtained by the
5 attorney general or a designee of the attorney general under this
6 section may be shared with any qui tam relator if the attorney general
7 or designee determine it is necessary as part of any false claims act
8 investigation.

9 (2)(a) Each civil investigative demand issued under subsection (1)
10 of this section must state the nature of the conduct constituting the
11 alleged violation of this chapter which is under investigation, and the
12 applicable provision of law alleged to be violated.

13 (b) If the demand is for the production of documentary material,
14 the demand must:

15 (i) Describe each class of documentary material to be produced with
16 such definiteness and certainty as to permit the material to be fairly
17 identified;

18 (ii) Prescribe a return date for each class which will provide a
19 reasonable period of time within which the material so demanded may be
20 assembled and made available for inspection and copying; and

21 (iii) Identify the false claims act investigator to whom such
22 material must be made available.

23 (c) If the demand is for answers to written interrogatories, the
24 demand must:

25 (i) Set forth with specificity the written interrogatories to be
26 answered;

27 (ii) Prescribe dates at which time answers to written
28 interrogatories must be submitted; and

29 (iii) Identify the false claims law investigator to whom such
30 answers must be submitted.

31 (d) If the demand is for the giving of oral testimony, the demand
32 must:

33 (i) Prescribe a date, time, and place at which oral testimony must
34 be commenced;

35 (ii) Identify a false claims act investigator who must conduct the
36 examination and the custodian to whom the transcript of the examination
37 must be submitted;

1 (iii) Specify that the attendance and testimony are necessary to
2 the conduct of the investigation;

3 (iv) Notify the person receiving the demand of the right to be
4 accompanied by an attorney and any other representative; and

5 (v) Describe the general purpose for which the demand is being
6 issued and the general nature of the testimony, including the primary
7 areas of inquiry, which will be taken pursuant to the demand.

8 (e) Any civil investigative demand issued under this section which
9 is an express demand for any product of discovery is not due until
10 thirty days after a copy of the demand has been served upon the person
11 from whom the discovery was obtained.

12 (f) The date prescribed for the commencement of oral testimony
13 pursuant to a civil investigative demand issued under this section may
14 not be sooner than six days after the date on which demand is received,
15 unless the attorney general or an assistant attorney general designated
16 by the attorney general determines that exceptional circumstances are
17 present which warrant the commencement of the testimony sooner.

18 (g) The attorney general may not authorize the issuance under this
19 section of more than one civil investigative demand for oral testimony
20 by the same person unless the person requests otherwise or unless the
21 attorney general, after investigation, notifies that person in writing
22 that an additional demand for oral testimony is necessary.

23 (3) A civil investigative demand issued under subsection (1) or (2)
24 of this section may not require the production of any documentary
25 material, the submission of any answers to written interrogatories, or
26 the giving of any oral testimony if the material, answers, or testimony
27 would be protected from disclosure under:

28 (a) The standards applicable to subpoenas or subpoenas duces tecum
29 issued by a court to aid in a special inquiry investigation; or

30 (b) The standards applicable to discovery requests under the
31 superior court civil rules, to the extent that the application of these
32 standards to any demand is appropriate and consistent with the
33 provisions and purposes of this section.

34 (4) Any demand which is an express demand for any product of
35 discovery supersedes any inconsistent order, rule, or provision of law,
36 other than this section, preventing or restraining disclosure of the
37 product of discovery to any person. Disclosure of any product of
38 discovery pursuant to any express demand does not constitute a waiver

1 of any right or privilege which the person making such disclosure may
2 be entitled to invoke to resist discovery of trial preparation
3 materials.

4 (5) Any civil investigative demand issued under this section may be
5 served by a false claims act investigator, or by a commissioned law
6 enforcement official, at any place within the state of Washington.

7 (6) Service of any civil investigative demand issued under (a) of
8 this subsection or of any petition filed under subsection (25) of this
9 section may be made upon a partnership, corporation, association, or
10 other legal entity by:

11 (a) Delivering an executed copy of the demand or petition to any
12 partner, executive officer, managing agent, or general agent of the
13 partnership, corporation, association, or entity, or to any agent
14 authorized by appointment or by law to receive service of process on
15 behalf of such partnership, corporation, association, or entity;

16 (b) Delivering an executed copy of the demand or petition to the
17 principal office or place of business of the partnership, corporation,
18 association, or entity; or

19 (c) Depositing an executed copy of the demand or petition in the
20 United States mail by registered or certified mail, with a return
21 receipt requested, addressed to such partnership, corporation,
22 association, or entity at its principal office or place of business.

23 (7) Service of any demand or petition may be made upon any natural
24 person by:

25 (a) Delivering an executed copy of the demand or petition to the
26 person; or

27 (b) Depositing an executed copy of the demand or petition in the
28 United States mail by registered or certified mail, with a return
29 receipt requested, addressed to the person at the person's residence or
30 principal office or place of business.

31 (8) A verified return by the individual serving any civil
32 investigative demand issued under subsection (1) or (2) of this section
33 or any petition filed under subsection (25) of this section setting
34 forth the manner of the service constitutes proof of the service. In
35 the case of service by registered or certified mail, the return must be
36 accompanied by the return post office receipt of delivery of the
37 demand.

1 (9) The production of documentary material in response to a civil
2 investigative demand served under this section must be made under a
3 sworn certificate, in the form as the demand designates, by:

4 (a) In the case of a natural person, the person to whom the demand
5 is directed; or

6 (b) In the case of a person other than a natural person, a person
7 having knowledge of the facts and circumstances relating to the
8 production and authorized to act on behalf of the person. The
9 certificate must state that all of the documentary material required by
10 the demand and in the possession, custody, or control of the person to
11 whom the demand is directed has been produced and made available to the
12 false claims act investigator identified in the demand.

13 (10) Any person upon whom any civil investigative demand for the
14 production of documentary material has been served under this section
15 shall make such material available for inspection and copying to the
16 false claims act investigator identified in the demand at the principal
17 place of business of the person, or at another place as the false
18 claims act investigator and the person thereafter may agree and
19 prescribe in writing, or as the court may direct under subsection (25)
20 of this section. The material must be made available on the return
21 date specified in the demand, or on a later date as the false claims
22 act investigator may prescribe in writing. The person may, upon
23 written agreement between the person and the false claims act
24 investigator, substitute copies for originals of all or any part of the
25 material.

26 (11) Each interrogatory in a civil investigative demand served
27 under this section must be answered separately and fully in writing
28 under oath and must be submitted under a sworn certificate, in the form
29 as the demand designates, by:

30 (a) In the case of a natural person, the person to whom the demand
31 is directed; or

32 (b)(i) In the case of a person other than a natural person, the
33 person or persons responsible for answering each interrogatory.

34 (ii) If any interrogatory is objected to, the reasons for the
35 objection must be stated in the certificate instead of an answer. The
36 certificate must state that all information required by the demand and
37 in the possession, custody, control, or knowledge of the person to whom
38 the demand is directed has been submitted. To the extent that any

1 information is not furnished, the information must be identified and
2 reasons set forth with particularity regarding the reasons why the
3 information was not furnished.

4 (12) The examination of any person pursuant to a civil
5 investigative demand for oral testimony served under this section must
6 be taken before an officer authorized to administer oaths and
7 affirmations by the laws of the state of Washington or of the place
8 where the examination is held. The officer before whom the testimony
9 is to be taken must put the witness on oath or affirmation and must,
10 personally or by someone acting under the direction of the officer and
11 in the officer's presence, record the testimony of the witness. The
12 testimony must be recorded and transcribed. When the testimony is
13 fully transcribed, the officer before whom the testimony is taken shall
14 promptly transmit a copy of the transcript of the testimony to the
15 custodian. This subsection does not preclude the taking of testimony
16 by any means authorized by, and in a manner consistent with, the
17 superior court civil rules.

18 (13) The false claims act investigator conducting the examination
19 shall exclude from the place where the examination is held all persons
20 except the person giving the testimony, the attorney for and any other
21 representative of the person giving the testimony, the attorney
22 general, any person who may be agreed upon by the attorney for the
23 government and the person giving the testimony, the officer before whom
24 the testimony is to be taken, and any stenographer taking the
25 testimony.

26 (14) The oral testimony of any person taken pursuant to a civil
27 investigative demand served under this section must be taken in the
28 county within which such person resides, is found, or transacts
29 business, or in another place as may be agreed upon by the false claims
30 act investigator conducting the examination and the person.

31 (15) When the testimony is fully transcribed, the false claims act
32 investigator or the officer before whom the testimony is taken must
33 afford the witness, who may be accompanied by counsel, a reasonable
34 opportunity to examine and read the transcript, unless the examination
35 and reading are waived by the witness. Any changes in form or
36 substance which the witness desires to make must be entered and
37 identified upon the transcript by the officer or the false claims act
38 investigator, with a statement of the reasons given by the witness for

1 making the changes, and the original must be retained within the
2 transcript for purposes of comparison. The transcript must then be
3 signed by the witness, unless the witness in writing waives the
4 signing, is ill, cannot be found, or refuses to sign. If the
5 transcript is not signed by the witness within thirty days after being
6 afforded a reasonable opportunity to examine it, the officer or the
7 false claims act investigator must sign it and state on the record the
8 fact of the waiver, illness, absence of the witness, or the refusal to
9 sign, together with the reasons given.

10 (16) The officer before whom the testimony is taken must certify on
11 the transcript that the witness was sworn by the officer and that the
12 transcript is a true record of the testimony given by the witness, and
13 the officer or false claims act investigator must promptly deliver the
14 transcript, or send the transcript by registered or certified mail, to
15 the custodian.

16 (17) Upon payment of reasonable charges therefor, the false claims
17 act investigator must furnish a copy of the transcript to the witness
18 only, except that the attorney general, the deputy attorney general, or
19 an assistant attorney general may, for good cause, limit the witness to
20 inspection of the official transcript of the witness' testimony.

21 (18)(a) Any person compelled to appear for oral testimony under a
22 civil investigative demand issued under subsection (1) or (2) of this
23 section may be accompanied, represented, and advised by counsel.
24 Counsel may advise the person, in confidence, with respect to any
25 question asked of the person. The person or counsel may object on the
26 record to any question, in whole or in part, and must briefly state for
27 the record the reason for the objection. An objection may be made,
28 received, and entered upon the record when it is claimed that the
29 person is entitled to refuse to answer the question on the grounds of
30 any constitutional or other legal right or privilege, including the
31 privilege against self-incrimination. The person may not otherwise
32 object to or refuse to answer any question, and may not directly or
33 through counsel otherwise interrupt the oral examination. If the
34 person refuses to answer any question, a special injury proceeding
35 petition may be filed in the superior court under subsection (25) of
36 this section for an order compelling the person to answer the
37 question.

1 (b) If the person refuses to answer any question on the grounds of
2 the privilege against self-incrimination, the testimony of the person
3 may be compelled in accordance with the provisions of the superior
4 court civil rules.

5 (19) Any person appearing for oral testimony under a civil
6 investigative demand issued under subsection (1) or (2) of this section
7 is entitled to the same fees and allowances which are paid to witnesses
8 in the superior courts.

9 (20) The attorney general must designate a false claims act
10 investigator to serve as custodian of documentary material, answers to
11 interrogatories, and transcripts of oral testimony received under this
12 section, and must designate such additional false claims act
13 investigators as the attorney general determines from time to time to
14 be necessary to serve as deputies to the custodian.

15 (21)(a) A false claims act investigator who receives any
16 documentary material, answers to interrogatories, or transcripts of
17 oral testimony under this section must transmit them to the custodian.
18 The custodian shall take physical possession of the material, answers,
19 or transcripts and is responsible for the use made of them and for the
20 return of documentary material under subsection (23) of this section.

21 (b) The custodian may cause the preparation of the copies of the
22 documentary material, answers to interrogatories, or transcripts of
23 oral testimony as may be required for official use by any false claims
24 act investigator, or employee of the attorney general. The material,
25 answers, and transcripts may be used by any authorized false claims act
26 investigator or other officer or employee in connection with the taking
27 of oral testimony under this section.

28 (c)(i) Except as otherwise provided in this subsection (21), no
29 documentary material, answers to interrogatories, or transcripts of
30 oral testimony, or copies thereof, while in the possession of the
31 custodian, may be available for examination by any individual other
32 than a false claims act investigator or other officer or employee of
33 the attorney general authorized under (b) of this subsection.

34 (ii) The prohibition in (c)(i) of this subsection on the
35 availability of material, answers, or transcripts does not apply if
36 consent is given by the person who produced the material, answers, or
37 transcripts, or, in the case of any product of discovery produced
38 pursuant to an express demand for the material, consent is given by the

1 person from whom the discovery was obtained. Nothing in this
2 subsection (c)(ii) is intended to prevent disclosure to the
3 legislature, including any committee or subcommittee for use by such an
4 agency in furtherance of its statutory responsibilities.

5 (d) While in the possession of the custodian and under the
6 reasonable terms and conditions as the attorney general shall
7 prescribe:

8 (i) Documentary material and answers to interrogatories must be
9 available for examination by the person who produced the material or
10 answers, or by a representative of that person authorized by that
11 person to examine the material and answers; and

12 (ii) Transcripts of oral testimony must be available for
13 examination by the person who produced the testimony, or by a
14 representative of that person authorized by that person to examine the
15 transcripts.

16 (22) Whenever any official has been designated to appear before any
17 court, special inquiry judge, or state administrative judge in any case
18 or proceeding, the custodian of any documentary material, answers to
19 interrogatories, or transcripts of oral testimony received under this
20 section may deliver to the official the material, answers, or
21 transcripts for official use in connection with any case or proceeding
22 as the official determines to be required. Upon the completion of
23 such a case or proceeding, the official must return to the custodian
24 any material, answers, or transcripts so delivered which have not
25 passed into the control of any court, grand jury, or agency through
26 introduction into the record of such a case or proceeding.

27 (23) If any documentary material has been produced by any person in
28 the course of any false claims act investigation pursuant to a civil
29 investigative demand under this section, and:

30 (a) Any case or proceeding before the court or special inquiry
31 judge arising out of the investigation, or any proceeding before any
32 administrative judge involving the material, has been completed; or

33 (b) No case or proceeding in which the material may be used has
34 been commenced within a reasonable time after completion of the
35 examination and analysis of all documentary material and other
36 information assembled in the course of the investigation; then, the
37 custodian must, upon written request of the person who produced the
38 material, return to the person the material, other than copies

1 furnished to the false claims act investigator under subsection (10) of
2 this section or made for the attorney general under subsection (21)(b)
3 of this section which has not passed into the control of any court,
4 grand jury, or agency through introduction into the record of the case
5 or proceeding.

6 (24) In the event of the death, disability, or separation from
7 service of the attorney general of the custodian of any documentary
8 material, answers to interrogatories, or transcripts of oral testimony
9 produced pursuant to civil investigative demand under this section, or
10 in the event of the official relief of the custodian from
11 responsibility for the custody and control of the material, answers, or
12 transcripts, the attorney general must promptly:

13 (a) Designate another false claims act investigator to serve as
14 custodian of the material, answers, or transcripts; and

15 (b) Transmit in writing to the person who produced the material,
16 answers, or testimony notice of the identity and address of the
17 successor so designated. Any person who is designated to be a
18 successor under this subsection (24) has, with regard to the material,
19 answers, or transcripts, the same duties and responsibilities as were
20 imposed by this section upon that person's predecessor in office,
21 except that the successor may not be held responsible for any default
22 or dereliction which occurred before that designation.

23 (25) Whenever any person fails to comply with any civil
24 investigative demand issued under subsection (1) or (2) of this
25 section, or whenever satisfactory copying or reproduction of any
26 material requested in the demand cannot be done and the person refuses
27 to surrender the material, the attorney general may file, in any
28 superior court of the state of Washington for any county in which the
29 person resides, is found, or transacts business, and serve upon the
30 person a petition for an order of the court for the enforcement of the
31 civil investigative demand.

32 (26)(a) Any person who has received a civil investigative demand
33 issued under subsection (1) or (2) of this section may file, in the
34 superior court of the state of Washington for the county within which
35 the person resides, is found, or transacts business, and serve upon the
36 false claims act investigator identified in the demand a petition for
37 an order of the court to modify or set aside the demand. In the case
38 of a petition addressed to an express demand for any product of

1 discovery, a petition to modify or set aside the demand may be brought
2 only in the district court of the United States for the judicial
3 district in which the proceeding in which the discovery was obtained is
4 or was last pending. Any petition filed under this subsection (26)(a)
5 must be filed:

6 (i) Within thirty days after the date of service of the civil
7 investigative demand, or at any time before the return date specified
8 in the demand, whichever date is earlier; or

9 (ii) Within a longer period as may be prescribed in writing by any
10 false claims act investigator identified in the demand.

11 (b) The petition must specify each ground upon which the petitioner
12 relies in seeking relief under (a) of this subsection, and may be based
13 upon any failure of the demand to comply with the provisions of this
14 section or upon any constitutional or other legal right or privilege of
15 the person. During the pendency of the petition in the court, the
16 court may stay, as it deems proper, the running of the time allowed for
17 compliance with the demand, in whole or in part, except that the person
18 filing the petition must comply with any portions of the demand not
19 sought to be modified or set aside.

20 (27)(a) In the case of any civil investigative demand issued under
21 subsection (1) or (2) of this section which is an express demand for
22 any product of discovery, the person from whom the discovery was
23 obtained may file, in the superior court of the state of Washington for
24 the county in which the proceeding in which the discovery was obtained
25 is or was last pending, and serve upon any false claims act
26 investigator identified in the demand and upon the recipient of the
27 demand, a petition for an order of the court to modify or set aside
28 those portions of the demand requiring production of any product of
29 discovery. Any petition under this subsection (27)(a) must be filed:

30 (i) Within twenty days after the date of service of the civil
31 investigative demand, or at any time before the return date specified
32 in the demand, whichever date is earlier; or

33 (ii) Within a longer period as may be prescribed in writing by any
34 false claims act investigator identified in the demand.

35 (b) The petition must specify each ground upon which the petitioner
36 relies in seeking relief under (a) of this subsection, and may be based
37 upon any failure of the portions of the demand from which relief is
38 sought to comply with the provisions of this section, or upon any

1 constitutional or other legal right or privilege of the petitioner.
2 During the pendency of the petition, the court may stay, as it deems
3 proper, compliance with the demand and the running of the time allowed
4 for compliance with the demand.

5 (28) At any time during which any custodian is in custody or
6 control of any documentary material or answers to interrogatories
7 produced, or transcripts of oral testimony given, by any person in
8 compliance with any civil investigative demand issued under subsection
9 (1) or (2) of this section, the person, and in the case of an express
10 demand for any product of discovery, the person from whom the discovery
11 was obtained, may file, in the superior court of the state of
12 Washington for the county within which the office of the custodian is
13 situated, and serve upon the custodian, a petition for an order of the
14 court to require the performance by the custodian of any duty imposed
15 upon the custodian by this section.

16 (29) Whenever any petition is filed in any superior court of the
17 state of Washington under this section, the court has jurisdiction to
18 hear and determine the matter so presented, and to enter an order or
19 orders as may be required to carry out the provisions of this section.
20 Any final order so entered is subject to appeal under the rules of
21 appellate procedure. Any disobedience of any final order entered under
22 this section by any court must be punished as a contempt of the court.

23 (30) The superior court civil rules apply to any petition under
24 this section, to the extent that the rules are not inconsistent with
25 the provisions of this section.

26 (31) Any documentary material, answers to written interrogatories,
27 or oral testimony provided under any civil investigative demand issued
28 under subsection (1) or (2) of this section are exempt from disclosure
29 under the public records act, chapter 42.56 RCW.

30 NEW SECTION. **Sec. 14.** The false claims penalty account is created
31 in the state treasury. All receipts from civil penalties collected
32 under RCW 74.09.210, all receipts received under settlements that
33 originated under a filing under the federal false claims act, and all
34 civil penalties and any other moneys received pursuant to an action
35 that originated under this chapter must be deposited into the account.
36 Moneys in the account may be spent only after appropriation and must be
37 distributed as follows:

1 (1) Moneys received from medicaid fraud-related actions must be
2 appropriated as follows: Fifty percent to the office of the attorney
3 general; up to thirty-three percent to the department of social and
4 health services; and the remainder to the general fund. The department
5 of social and health services and the office of the attorney general
6 may only expend funds appropriated from this account for medicaid fraud
7 enforcement activities.

8 (2) All other funds in the account must be appropriated as follows:
9 Up to fifty percent to the office of the attorney general and the
10 remainder to the general fund. The office of the attorney general may
11 only expend funds appropriated pursuant to this subsection for
12 investigation and prosecution of false claims act violations.

13 **Sec. 15.** RCW 74.09.210 and 1989 c 175 s 146 are each amended to
14 read as follows:

15 (1) No person, firm, corporation, partnership, association, agency,
16 institution, or other legal entity, but not including an individual
17 public assistance recipient of health care, (~~shall~~) may, on behalf of
18 himself, herself, or others, obtain or attempt to obtain benefits or
19 payments under this chapter in a greater amount than that to which
20 entitled by means of:

21 (a) A willful false statement;

22 (b) By willful misrepresentation, or by concealment of any material
23 facts; or

24 (c) By other fraudulent scheme or device, including, but not
25 limited to:

26 (i) Billing for services, drugs, supplies, or equipment that were
27 unfurnished, of lower quality, or a substitution or misrepresentation
28 of items billed; or

29 (ii) Repeated billing for purportedly covered items, which were not
30 in fact so covered.

31 (2) Any person or entity knowingly violating any of the provisions
32 of subsection (1) of this section (~~shall be~~) is liable for repayment
33 of any excess benefits or payments received, plus interest at the rate
34 and in the manner provided in RCW 43.20B.695. (~~Such~~) The person or
35 other entity (~~shall further~~), in addition to any other penalties
36 provided by law, (~~be~~) is subject to civil penalties. The secretary
37 may assess civil penalties in an amount not to exceed three times the

1 amount of such excess benefits or payments(~~(:—PROVIDED, That))~~.
2 However, these civil penalties (~~(shall))~~ do not apply to any acts or
3 omissions occurring prior to September 1, 1979. RCW 43.20A.215 governs
4 notice of a civil fine and provides the right to an adjudicative
5 proceeding.

6 (3) A criminal action need not be brought against a person for that
7 person to be civilly liable under this section.

8 (4) In all proceedings under this section, service, adjudicative
9 proceedings, and judicial review of such determinations shall be in
10 accordance with chapter 34.05 RCW, the administrative procedure act.

11 (5) Civil penalties (~~(shall))~~ must be deposited in the (~~general~~
12 ~~fund~~) false claims penalty account created under section 14 of this
13 act upon (~~(their))~~ receipt.

14 NEW SECTION. Sec. 16. This chapter does not apply to any claim or
15 aggregated claims submitted to a city, by the same person, where the
16 total amount in controversy does not exceed fifty thousand dollars.

17 NEW SECTION. Sec. 17. Sections 1 through 14 and section 16 of
18 this act constitute a new chapter in Title 4 RCW.

19 NEW SECTION. Sec. 18. This act takes effect July 1, 2012.

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