
SENATE BILL 5379

State of Washington 62nd Legislature 2011 Regular Session

By Senators Benton, Hewitt, Stevens, and Carrell

Read first time 01/21/11. Referred to Committee on Judiciary.

1 AN ACT Relating to identifying and incentivizing taxpayer savings
2 and efficient delivery of government services; adding a new section to
3 chapter 42.52 RCW; adding a new chapter to Title 4 RCW; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter.

9 (1) "Claim" means a request or demand, whether under a contract or
10 otherwise, for money or property which is made to a government employee
11 or official, contractor, grantee, or other recipient if a governmental
12 entity provides any portion of the money or property which is requested
13 or demanded, or if a governmental entity will reimburse such employee,
14 official, contractor, grantee, or other recipient for any portion of
15 the money or property which is requested or demanded.

16 (2) "False claim" means any claim that contains or is based upon a
17 materially incorrect fact, statement, representation, or record.

18 (3) "Governmental entity" means the state of Washington and any

1 political subdivision thereof. A governmental entity includes its
2 officials and employees, acting in such capacities.

3 (4) "Knowing" and "knowingly" mean that a person, with respect to
4 information, and with or without specific intent to defraud:

5 (a) Has actual knowledge of the information; or

6 (b) Acts in deliberate ignorance of or in reckless disregard of the
7 truth or falsity of the information.

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

11 (6) "Recovery" means any money paid or to be paid pursuant to
12 section 3 of this act as a civil penalty or damages, including enhanced
13 damages pursuant to section 3 (1) or (2) of this act, as a result of
14 the initiation of a civil action under section 5 of this act, whether
15 resulting from an award of the court, from a settlement of the parties,
16 or from an alternative remedy pursuant to section 6(5) of this act, but
17 "recovery" shall not include costs including or not including
18 attorneys' fees.

19 NEW SECTION. **Sec. 2.** A person commits a "wrongful act" under this
20 chapter if that person:

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of
5 this section, a person who commits a wrongful act against a
6 governmental entity is liable to the governmental entity for (a) a
7 civil penalty of not less than five thousand dollars and not more than
8 ten thousand dollars; (b) an amount equal to three times the damages
9 sustained by the governmental entity as a result of the wrongful act;
10 and (c) all costs incurred by the governmental entity in maintaining a
11 civil action hereunder, including attorneys' fees.

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

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

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

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

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

34 (4) This chapter does not apply to persons subject to the
35 jurisdiction of chapter 42.52 RCW.

1 NEW SECTION. **Sec. 4.** A public attorney shall diligently
2 investigate a wrongful act. If the public attorney finds that a person
3 has committed or is committing a wrongful act, the public attorney may
4 bring a civil action against the person.

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

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

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

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

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

30 (b) Notify the court that it declines to take over the action, in
31 which case the person bringing the action has the right to conduct the
32 action.

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

1 NEW SECTION. **Sec. 6.** (1) If a governmental entity proceeds with
2 an action under section 5 of this act, it has the primary
3 responsibility for prosecuting the action and is not bound by an act of
4 the person bringing the action. The person has the right to continue
5 as a party to the action, subject to the limitations set forth in
6 subsection (2) of this section.

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

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

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

24 (i) Limiting the number of witnesses the person may call;
25 (ii) Limiting the length of the testimony of the witnesses;
26 (iii) Limiting the person's cross-examination of witnesses; or
27 (iv) Otherwise limiting the participation by the person in the
28 litigation.

29 (d) Upon a showing by the defendant that unrestricted participation
30 during the course of the litigation by the person initiating the action
31 would be for purposes of harassment or would cause the defendant undue
32 burden or unnecessary expense, the court may limit the participation by
33 the person in the litigation.

34 (3) If a governmental entity elects not to proceed with the action,
35 the person who initiated the action has the right to conduct the
36 action. The governmental entity may request, and following such
37 request shall be served with, copies of all pleadings filed in the
38 action and supplied with copies of all deposition transcripts,

1 interrogatory answers, documents produced, test results, or other
2 discovery materials, at the governmental entity's expense for the cost
3 of reproducing the materials. If the person proceeds with the action,
4 the court, without limiting the status and rights of the person
5 initiating the action, may nevertheless permit the governmental entity
6 to intervene at a later date upon a showing of good cause.

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

18 (5) Notwithstanding section 5 of this act, a governmental entity
19 may elect to pursue a claim through an available alternate proceeding,
20 including an administrative proceeding. If an alternative proceeding
21 is undertaken, any civil actions shall be stayed and the person
22 initiating the civil action has the same rights in the alternative
23 proceeding, including any recovery under section 7 of this act, as the
24 person would have if the action had continued under this section. A
25 finding of fact or conclusion of law made in the alternative proceeding
26 that has become final is conclusive on all parties to an action under
27 this section. For purposes of this subsection, a finding or conclusion
28 is final if it has been finally determined on appeal to the appropriate
29 court of the state, if all time for filing an appeal with respect to
30 the finding or conclusion has expired, or if the finding or conclusion
31 is not subject to judicial review.

32 NEW SECTION. **Sec. 7.** (1) If a governmental entity proceeds with
33 an action brought by a person under section 5 of this act, the person
34 shall receive at least ten percent but not more than fifteen percent of
35 any recovery in an action, depending upon the extent the person
36 substantially contributed to the prosecution of the action. If the
37 action is one that the court finds is based primarily on disclosures of

1 specific information, other than information provided by the person
2 bringing the action, (a) in a criminal, civil, or administrative
3 hearing, (b) in a legislative, administrative, or state accounting
4 office report, hearing, audit, or investigation, or (c) from the news
5 media, the court may award the sum it considers appropriate, but in no
6 case more than ten percent of the recovery, taking into account the
7 significance of the information and the role of the person bringing the
8 action in advancing the case to litigation. A payment to a person
9 under this subsection shall be made from the recovery. Any payment of
10 any portion of a recovery that is made shall be shared pro rata between
11 the person and the governmental entity. The person shall also receive
12 an amount for costs, including reasonable attorneys' fees, which the
13 court finds to have been necessarily incurred. All expenses, fees, and
14 costs are awarded against the defendant who is found to have committed
15 a wrongful act. Attorneys' fees and costs shall be paid prior to
16 disbursement of any recovery.

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

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

1 The dismissal shall not prejudice the right of the governmental entity
2 to continue the action.

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

9 NEW SECTION. **Sec. 8.** In no event may a person bring an action
10 under section 5 of this act which is based upon allegations or
11 transactions which are the subject of a civil suit or an administrative
12 proceeding in which the governmental entity is already a party.

13 NEW SECTION. **Sec. 9.** No governmental entity is liable for costs,
14 including attorneys' fees, that a person incurs in bringing an action
15 under section 5 of this act.

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

22 (2) For the purposes of this section:

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

26 (b) "Reprisal or retaliation" has the meaning given in RCW
27 42.40.050.

28 NEW SECTION. **Sec. 11.** A new section is added to chapter 42.52 RCW
29 to read as follows:

30 (1) No state officer or state employee may:

31 (a) Knowingly present or cause to be presented to an agency a false
32 claim for payment or approval;

33 (b) Knowingly make, use, or cause to be made or used, a false
34 record or statement to get a false claim paid or approved;

- 1 (c) Conspire to get a false claim allowed or paid;
- 2 (d) Have in their possession, custody, or control property or money
- 3 used, or to be used, by an agency and knowingly deliver, or cause to be
- 4 delivered, less property than the amount for which the person received
- 5 a certificate or receipt;
- 6 (e) Authorize to make or deliver a document certifying receipt of
- 7 property used, or to be used, by an agency and make or deliver the
- 8 receipt knowing that material information on the receipt is false;
- 9 (f) Knowingly buy, or receive as security for an obligation or
- 10 debt, public property from an officer or employee of an agency, who
- 11 lawfully may not sell or pledge the property; or
- 12 (g) Knowingly make, use, or cause to be made or used a false record
- 13 or statement to conceal, avoid, or decrease an obligation to pay or
- 14 transmit property to an agency.
- 15 (2) For the purposes of this section:
- 16 (a) "Claim" means a request or demand, whether under a contract or
- 17 otherwise, for money or property which is made to a government employee
- 18 or official, contractor, grantee, or other recipient if a governmental
- 19 entity provides any portion of the money or property which is requested
- 20 or demanded, or if a governmental entity will reimburse such employee,
- 21 official, contractor, grantee, or other recipient for any portion of
- 22 the money or property which is requested or demanded.
- 23 (b) "False claim" means any claim that contains or is based upon a
- 24 materially incorrect fact, statement, representation, or record.
- 25 (c) "Knowing" and "knowingly" mean that a person, with respect to
- 26 information, and with or without specific intent to defraud:
- 27 (i) Has actual knowledge of the information; or
- 28 (ii) Acts in deliberate ignorance of or in reckless disregard of
- 29 the truth or falsity of the information.
- 30 (3) As to state officers and employees, this section operates to
- 31 the exclusion of sections 1 through 10 of this act.

32 NEW SECTION. **Sec. 12.** Sections 1 through 10 of this act
33 constitute a new chapter in Title 4 RCW.

--- END ---