AN ACT Relating to false claims against the government; amending RCW 48.80.020; adding a new chapter to Title 4 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. This chapter may be known and cited as the "Washington state false claims act."

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "False claim" means any claim that contains or is based upon a materially incorrect fact, statement, representation, or record.
(3) "Governmental entity" means the state of Washington and any political subdivision thereof. A governmental entity includes its officials and employees, acting in such capacities.

(4) "Knowing" and "knowingly" mean that a person, with respect to information, and with or without specific intent to defraud:
   (a) Has actual knowledge of the information; or
   (b) Acts in deliberate ignorance of or in reckless disregard of the truth or falsity of the information.

(5) "Person" means any individual, firm, partnership, corporation, company, association, or other legal entity whose conduct is not subject to 31 U.S.C. Sec. 3729 as now or hereafter amended, chapter 48.80 RCW, RCW 74.09.210 through 74.09.260, or 51.48.250 through 51.48.290.

(6) "Public attorney" means any person that is authorized by a governmental entity to initiate legal actions or claims on the governmental entity’s behalf.

(7) "Recovery" means any money paid or to be paid pursuant to section 4 of this act as a civil penalty or damages as a result of the initiation of a civil action under section 6 of this act, whether resulting from an award of the court, from a settlement of the parties, or from an alternative remedy pursuant to section 7(5) of this act, but "recovery" shall not include costs including or not including attorneys’ fees.

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

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

NEW SECTION. Sec. 3. (1) A person commits a "wrongful act" under this chapter if that person:
   (a) Knowingly presents or causes to be presented to a governmental entity a false claim for payment or approval;
   (b) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved;
   (c) Conspires to get a false claim allowed or paid;
   (d) Has possession, custody, or control of property or money used, or to be used, by a governmental entity and knowingly delivers, or
causes to be delivered, less property than the amount for which the
person receives a certificate or receipt;

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

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

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

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

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

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

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

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

(2) Notwithstanding subsection (1) of this section, a court may
assess against a person who commits a wrongful act an amount the court
finds reasonable considering the level of involvement of the person who
commits a wrongful act but not to exceed a twenty-five percent
reduction of the damages sustained by the governmental entity as a result of the wrongful act, if the court finds all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Limiting the length of the testimony of the witnesses;
(iii) Limiting the person’s cross-examination of witnesses; or
(iv) Otherwise limiting the participation by the person in the litigation.
(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.
(3) If a governmental entity elects not to proceed with the action, the person who initiated the action has the right to conduct the action. The governmental entity may request, and following such request shall be served with, copies of all pleadings filed in the action and supplied with copies of all deposition transcripts, interrogatory answers, documents produced, test results, or other discovery materials, at the governmental entity’s expense for the cost of reproducing the materials. If the person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the governmental entity to intervene at a later date upon a showing of good cause.
(4) Whether or not the governmental entity proceeds with the action, upon a showing by the governmental entity that certain actions of discovery by the person initiating the action would interfere with an investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than ninety days. Such a showing shall be made in camera. The court may extend the ninety-day period upon a further showing in camera that the governmental entity has pursued the criminal or civil investigation or proceedings with reasonable diligence and the proposed discovery in the civil action would interfere with the ongoing criminal or civil investigation or proceedings.
(5) Notwithstanding section 6 of this act, a governmental entity may elect to pursue a claim through an available alternate remedy, including an administrative proceeding. If an alternative remedy is undertaken, any civil actions shall be stayed and the person initiating the civil action has the same rights in the proceeding, including with respect to recoveries and costs, including reasonable attorneys’ fees, as the person would have if the action had continued under this section. A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an
action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state, if all time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

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

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

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

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

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

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

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

Sec. 12. RCW 48.80.020 and 1995 c 285 s 25 are each amended to
read as follows:
Unless the context clearly requires otherwise, the definitions in
this section apply throughout this chapter.
(1) "Claim" means any attempt to cause a health care payer to make a health care payment.

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

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

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

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

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

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

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