

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2386

By: Kannady

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5
6 AS INTRODUCED

7 An Act relating to state government; creating the
8 Oklahoma State Agency False Claims Act; defining
9 terms; stating liability for certain actions;
10 providing certain exemption; stating certain
11 nonexemption; directing certain responsibilities of
12 the Attorney General; permitting certain actions by
13 specified persons; directing responsibility for
14 certain prosecution; setting certain options for the
15 state; granting certain rights; permitting certain
16 action by court in certain circumstance; permitting
17 certain alternative remedies; setting certain payment
18 of claim in specified circumstances; prohibiting
19 certain actions; prohibiting certain jurisdiction;
20 exempting state from responsibility for certain
21 expenses; permitting certain relief; directing
22 certain subpoenas; limiting proceeds in certain
23 actions; prohibiting certain civil action in
24 specified circumstances; permitting location of
certain action; providing for codification; and
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 10101 of Title 74, unless there
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma State
2 Agency False Claims Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10102 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. For purposes of this section:

7 1. "Claim":

8 a. means any request or demand for money or property,
9 whether under a contract or otherwise and whether or
10 not the state has title to the money or property,
11 that:

12 (1) is presented to an officer, employee or agent of
13 the state, or

14 (2) is made to a contractor, grantee or other
15 recipient, if the money or property is to be
16 spent or used on the state's behalf or to advance
17 a state program or interest, and if this state:

18 (a) provides or has provided any portion of the
19 money or property requested or demanded, or

20 (b) will reimburse such contractor, grantee or
21 other recipient for any portion of the money
22 or property which is requested or demanded,
23 and

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1 b. shall not include requests or demands for money or
2 property that the government has paid to an individual
3 as compensation for state employment or as an income
4 subsidy with no restrictions on the individual's use
5 of the money or property;

6 2. "Knowing" and "knowingly" mean that a person, with respect
7 to information:

8 a. has actual knowledge of the information,

9 b. acts in deliberate ignorance of the truth or falsity
10 of the information, or

11 c. acts in reckless disregard of the truth or falsity of
12 the information.

13 No proof of specific intent to defraud is required;

14 3. "Material" means having a natural tendency to influence or
15 be capable of influencing the payment or receipt of money or
16 property; and

17 4. "Obligation" means an established duty, whether or not
18 fixed, arising from an express or implied contractual grantor-
19 grantee or licensor-licensee relationship, from a fee-based or
20 similar relationship, from statute or regulation or from the
21 retention of any overpayment.

22 B. Any person who:

23 1. Knowingly presents, or causes to be presented, a false or
24 fraudulent claim for payment or approval;

1 2. Knowingly makes, uses, or causes to be made or used, a false
2 record or statement material to a false or fraudulent claim;

3 3. Conspires to commit a violation of the Oklahoma State Agency
4 False Claims Act;

5 4. Has possession, custody or control of property or money used
6 or to be used by the state and knowingly delivers or causes to be
7 delivered less than all of such money or property;

8 5. Is authorized to make or deliver a document certifying
9 receipt of property used or to be used by the state and, intending
10 to defraud the state, makes or delivers the receipt without
11 completely knowing that the information on the receipt is true;

12 6. Knowingly buys or receives as a pledge of an obligation or
13 debt, public property from an officer or employee of the state who
14 lawfully may not sell or pledge property; or

15 7. Knowingly makes, uses or causes to be made or used, a false
16 record or statement material to an obligation to pay or transmit
17 money or property to the state, or knowingly conceals or knowingly
18 and improperly avoids or decreases an obligation to pay or transmit
19 money or property to the state;

20 is liable to the State of Oklahoma for a civil penalty consistent
21 with the civil penalties provision of the Federal False Claims Act,
22 31 U.S.C. Section 3729(a), as adjusted by the Federal Civil
23 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note;
24 Public Law 101-410), and as further amended by the Federal Civil

1 Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec.
2 701 of Public Law 114-74), plus three times the amount of damages
3 which the state sustains because of the act of that person.

4 C. If the court finds that:

5 1. The person committing the violation in subsection B of this
6 section furnished officials of this state responsible for
7 investigating false claims violations with all information known to
8 such person about the violation within thirty (30) days after the
9 date on which the defendant first obtained the information;

10 2. The person fully cooperated with any state investigation of
11 the violation; and

12 3. At the time the person furnished the state with the
13 information about the violation, no criminal prosecution, civil
14 action or administrative action had commenced under this title with
15 respect to the violation and the person did not have actual
16 knowledge of the existence of an investigation into the violation,
17 the court may assess not less than two times the amount of damages
18 which the state sustains because of the act of the person.

19 D. A person violating subsection B of this section shall also
20 be liable to this state for the costs of a civil action brought to
21 recover any such penalty or damages.

22 E. Any information furnished pursuant to subsections A through
23 D of this section shall be exempt from disclosure under the Oklahoma
24 Open Records Act.

1 F. This section does not apply to claims, records or statements
2 under the Oklahoma Tax Code or the Oklahoma Medicaid False Claims
3 Act.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 10103 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Attorney General shall diligently investigate a
8 violation under the Oklahoma State Agency False Claims Act. If the
9 Attorney General finds that a person has violated or is violating
10 the Oklahoma State Agency False Claims Act, the Attorney General may
11 bring a civil action under this section against the person.

12 B. 1. A person may bring a civil action for a violation of the
13 Oklahoma State Agency False Claims Act for the person and for this
14 state. The action shall be brought in the name of the state. The
15 action may be dismissed only if the court and the Attorney General
16 give written consent to the dismissal and state the reasons for
17 consenting.

18 2. A copy of the complaint and written disclosure of
19 substantially all material evidence and information the person
20 possesses shall be served on the state pursuant to Section 2004 of
21 Title 12 of the Oklahoma Statutes. The complaint shall be filed in
22 camera, shall remain under seal for at least sixty (60) days and
23 shall not be served on the defendant until the court so orders. The
24 state may elect to intervene and proceed with the action within

1 sixty (60) days after it receives both the complaint and the
2 material evidence and information.

3 3. The state may, for good cause shown, move the court for
4 extensions of the time during which the complaint remains under seal
5 under paragraph 2 of this subsection. Any such motions may be
6 supported by affidavits or other submissions in camera. The
7 defendant shall not be required to respond to any complaint filed
8 under this section until twenty (20) days after the complaint is
9 unsealed and served upon the defendant pursuant to Section 2004 of
10 Title 12 of the Oklahoma Statutes.

11 4. Before the expiration of the sixty-day period or any
12 extensions obtained under paragraph 3 of this subsection, the state
13 shall:

- 14 a. proceed with the action, in which case the action
15 shall be conducted by the state, or
- 16 b. notify the court that it declines to take over the
17 action, in which case the person bringing the action
18 shall have the right to conduct the action.

19 5. When a person brings an action under this section, no person
20 other than the state may intervene or bring a related action based
21 on the facts underlying the pending action.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 10104 of Title 74, unless there
24 is created a duplication in numbering, reads as follows:

1 A. If the state proceeds with the action pursuant to Section 3
2 of the Oklahoma State Agency False Claims Act, it shall have the
3 primary responsibility for prosecuting the action, and shall not be
4 bound by an act of the person bringing the action. Such person
5 shall have the right to continue as a party to the action, subject
6 to the limitations set forth in this subsection.

7 1. The state may dismiss the action notwithstanding the
8 objections of the person initiating the action if the person has
9 been notified by the state of the filing of the motion and the court
10 has provided the person with an opportunity for a hearing on the
11 motion.

12 2. The state may settle the action with the defendant
13 notwithstanding the objections of the person initiating the action
14 if the court determines, after a hearing, that the proposed
15 settlement is fair, adequate and reasonable under all the
16 circumstances. Upon a showing of good cause, the hearing may be
17 held in camera.

18 3. Upon a showing by the state that unrestricted participation
19 during the course of the litigation by the person initiating the
20 action would interfere with or unduly delay the state's prosecution
21 of the case, or would be repetitious, irrelevant or for purposes of
22 harassment, the court may, in its discretion, impose limitations on
23 the participation of the person, such as:

24 a. limiting the number of witnesses the person may call,

- 1 b. limiting the length of the testimony of the witnesses,
2 c. limiting the person's cross-examination of witnesses,
3 or
4 d. otherwise limiting the participation by the person in
5 the litigation.

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

11 B. If the state elects not to proceed with the action, the
12 person who initiated the action shall have the right to conduct the
13 action. If the state so requests, it shall be served with copies of
14 all pleadings filed in the action and shall be supplied with copies
15 of all deposition transcripts at the expense of the state. When a
16 person proceeds with the action, the court, without limiting the
17 status and rights of the person initiating the action, may
18 nevertheless permit the state to intervene at a later date upon a
19 showing of good cause.

20 C. Whether or not the state proceeds with the action, upon a
21 showing by the state that certain actions of discovery by the person
22 initiating the action would interfere with the state's investigation
23 or prosecution of a criminal or civil matter arising out of the same
24 facts, the court may stay the discovery for a period of not more

1 than sixty (60) days. Such a showing shall be conducted in camera.
2 The court may extend the sixty-day period upon a further showing in
3 camera that the state has pursued the criminal or civil
4 investigation or proceedings with reasonable diligence and any
5 proposed discovery in the civil action will interfere with the
6 ongoing criminal or civil investigation or proceedings.

7 D. Notwithstanding subsection B of Section 3 of this act, the
8 state may elect to pursue its claim through any alternate remedy
9 available to the state, including any administrative proceeding to
10 determine a civil money penalty. If any alternate remedy is pursued
11 in another proceeding, the person initiating the action shall have
12 the same rights in the proceeding as the person would have had if
13 the action had continued under this section. Any finding of fact or
14 conclusion of law made in the other proceeding that has become final
15 shall be conclusive on all parties to an action under this section.
16 For purposes of this subsection, a finding or conclusion is final if
17 it has been finally determined on appeal to the appropriate court of
18 the State of Oklahoma, if all time for filing the appeal with
19 respect to the finding or conclusion has expired, or if the finding
20 or conclusion is not subject to judicial review.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 10105 of Title 74, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. 1. If the state proceeds with an action brought by a person
2 under subsection B of Section 3 of the Oklahoma State Agency False
3 Claims Act, the person shall, subject to paragraph 2 of this
4 subsection, receive at least fifteen percent (15%) but not more than
5 twenty-five percent (25%) of the proceeds of the action or
6 settlement of the claim, depending upon the extent to which the
7 person substantially contributed to the prosecution of the action.

8 2. Where the action is one which the court finds to be based
9 primarily on disclosures of specific information, other than
10 information provided by the person bringing the action, relating to
11 allegations or transactions in a criminal, civil or administrative
12 hearing, in a legislative, administrative or State Auditor and
13 Inspector report, hearing, audit or investigation or from the news
14 media, the court may award such sums as it considers appropriate,
15 but in no case more than ten percent (10%) of the proceeds, taking
16 into account the significance of the information and the role of the
17 person bringing the action in advancing the case to litigation.

18 3. Any payment to a person under paragraph 1 or 2 of this
19 subsection shall be made from the proceeds. Any such person shall
20 also receive an amount for reasonable expenses which the court finds
21 to have been necessarily incurred, plus reasonable attorney fees and
22 costs. All such expenses, fees and costs shall be awarded against
23 the defendant.
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1 B. If the state does not proceed with an action under Section 3
2 of this act, the person bringing the action or settling the claim
3 shall receive an amount which the court decides is reasonable for
4 collecting the civil penalty and damages. The amount shall be not
5 less than twenty-five percent (25%) and not more than thirty percent
6 (30%) of the proceeds of the action or settlement and shall be paid
7 out of the proceeds. The person shall also receive an amount for
8 reasonable expenses which the court finds to have been necessarily
9 incurred, plus reasonable attorney fees and costs. All such
10 expenses, fees and costs shall be awarded against the defendant.

11 C. Whether or not the state proceeds with the action, if the
12 court finds that the action was brought by a person who planned and
13 initiated the violation of the Oklahoma State Agency False Claims
14 Act upon which the action was brought, then the court may, to the
15 extent the court considers appropriate, reduce the share of the
16 proceeds of the action which the person would otherwise receive
17 under subsection A or B of this section, taking into account the
18 role of that person in advancing the case to litigation and any
19 relevant circumstances pertaining to the violation. If the person
20 bringing the action is convicted of criminal conduct arising from
21 his or her role in the violation of the Oklahoma State Agency False
22 Claims Act, that person shall be dismissed from the civil action and
23 shall not receive any share of the proceeds of the action. The
24 dismissal shall not prejudice the right of this state to continue

1 the action, represented by the Office of the Attorney General or its
2 assigns.

3 D. If the state does not proceed with the action and the person
4 bringing the action conducts the action, the court may award to the
5 defendant its reasonable attorney fees and expenses if the defendant
6 prevails in the action and the court finds that the claim of the
7 person bringing the action was clearly frivolous, clearly vexatious
8 or brought primarily for purposes of harassment.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 10106 of Title 74, unless there
11 is created a duplication in numbering, reads as follows:

12 A. In no event may a person bring an action under subsection B
13 of Section 3 of the Oklahoma State Agency False Claims Act which is
14 based upon allegations or transactions which are the subject of a
15 civil suit or an administrative civil money penalty proceeding in
16 which the state is already a party.

17 B. The court shall dismiss an action or claim under this
18 section, unless opposed by the state, if substantially the same
19 allegations or transactions as alleged in the action or claim were
20 publicly disclosed in a criminal, civil or administrative hearing in
21 which the state or its agent is a party, in a legislative or State
22 Auditor and Inspector report, hearing, audit or investigation or
23 from the news media, unless the action is brought by the Attorney
24 General or the person bringing the action is an original source of

1 the information. For purposes of this subsection, "original source"
2 means an individual who either:

3 1. Prior to a public disclosure under subsection B of this
4 section, has voluntarily disclosed to the state the information on
5 which allegations or transactions in a claim are based; or

6 2. Has knowledge that is independent of and materially adds to
7 the publicly disclosed allegations or transactions, and who has
8 voluntarily provided the information to the state before filing an
9 action under the Oklahoma State Agency False Claims Act.

10 C. The state is not liable for expenses which a person incurs
11 in bringing an action under this section.

12 D. In civil actions brought under this section by this state,
13 the provisions of Title 28 of the Oklahoma Statutes shall apply.

14 E. Any employee, contractor or agent shall be entitled to:

15 1. All relief necessary to make the employee, contractor or
16 agent whole, if the employee, contractor or agent is discharged,
17 demoted, suspended, threatened, harassed or in any other manner
18 discriminated against in the terms and conditions of employment
19 because of lawful acts done by the employee, contractor, agent or
20 associated others in furtherance of an action under this act or
21 other efforts to stop one or more violations of the Oklahoma State
22 Agency False Claims Act; or

23 2. Relief which shall include reinstatement with the same
24 seniority status the employee, contractor or agent would have had

1 but for the discrimination, two times the amount of back pay,
2 interest on the back pay and compensation for any special damages
3 sustained as a result of the discrimination, including litigation
4 costs and reasonable attorney fees. An action under this section
5 may be brought in the appropriate district court of the State of
6 Oklahoma for the relief provided in this subsection.

7 F. An action under this section shall not be brought more than
8 three (3) years after the date when the retaliation occurred.

9 SECTION 7. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 10107 of Title 74, unless there
11 is created a duplication in numbering, reads as follows:

12 A. A subpoena requiring the attendance of a witness at a trial
13 or hearing conducted under the Oklahoma State Agency False Claims
14 Act may be served at any place in Oklahoma.

15 B. A civil action under Section 3 of this act may not be
16 brought:

17 1. More than six (6) years after the date on which the
18 violation of the Oklahoma State Agency False Claims Act is
19 committed; or

20 2. More than three (3) years after the date when facts material
21 to the right of action are known or reasonably should have been
22 known by the official of the State of Oklahoma charged with
23 responsibility to act in the circumstances, but in no event more
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1 than ten (10) years after the date on which the violation is
2 committed, whichever occurs last.

3 C. If the state elects to intervene and proceed with an action
4 brought under Section 3 of this act, the state may file its own
5 complaint or amend the complaint of a person who has brought an
6 action under Section 3 of this act to clarify or add detail to the
7 claims in which the state is intervening and to add any additional
8 claims with respect to which the state contends it is entitled to
9 relief. For statute of limitations purposes, any such state
10 pleading shall relate back to the filing date of the complaint of
11 the person who originally brought the action to the extent that the
12 claim of the state arises out of the conduct, transactions or
13 occurrences set forth, or attempted to be set forth, in the prior
14 complaint of the person.

15 D. In any action brought under Section 3 of this act, this
16 state shall be required to prove all essential elements of the cause
17 of action, including damages, by a preponderance of the evidence.

18 E. Notwithstanding any other provision of law, a final judgment
19 rendered in favor of this state in any criminal proceeding charging
20 fraud or false statements, whether upon a verdict after trial or
21 upon a plea of guilty or nolo contendere, shall estop the defendant
22 from denying the essential elements of the offense in any action
23 which involves the same transaction as in the criminal proceeding

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1 and which is brought under the Oklahoma State Agency False Claims
2 Act.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10108 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any action under Section 3 of the Oklahoma State Agency
7 False Claims Act may be brought in any judicial district in which
8 the defendant or, in the case of multiple defendants, any one
9 defendant can be found, resides, transacts business or in which any
10 act proscribed by the Oklahoma State Agency False Claims Act
11 occurred. A summons as required by Section 2004 of Title 12 of the
12 Oklahoma Statutes shall be issued by the appropriate district court
13 and served at any place within or outside the State of Oklahoma.

14 B. The district courts shall have jurisdiction over any action
15 brought under the laws of the state for the recovery of funds paid
16 by a state or local government if the action arises from the same
17 transaction or occurrence as an action brought under the Oklahoma
18 State Agency False Claims Act.

19 SECTION 9. This act shall become effective November 1, 2019.
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