

2018 -- S 2570

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE GENERALLY - THE
STATE FALSE CLAIM ACT

Introduced By: Senators Euer, Pearson, Coyne, Conley, and DiPalma

Date Introduced: March 01, 2018

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 9-1.1-3, 9-1.1-4 and 9-1.1-5 of the General Laws in Chapter 9-1.1
2 entitled "The State False Claim Act" are hereby amended to read as follows:

3 **9-1.1-3. Liability for certain acts.**

4 (a) Any person who:

5 (1) Knowingly presents, or causes to be presented a false or fraudulent claim for payment
6 or approval;

7 (2) Knowingly makes, uses, or causes to be made or used, a false record or statement
8 material to a false or fraudulent claim;

9 (3) Conspires to commit a violation of subdivisions 9-1.1-3(1), (2), ~~(3)~~, (4), (5), (6) or
10 (7);

11 (4) Has possession, custody, or control of property or money used, or to be used, by the
12 state and knowingly delivers, or causes to be delivered, less property than all of that money or
13 property;

14 (5) Is authorized to make or deliver a document certifying receipt of property used, or to
15 be used, by the state and, intending to defraud the state, makes or delivers the receipt without
16 completely knowing that the information on the receipt is true;

17 (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property
18 from an officer or employee of the state, or a member of the guard, who lawfully may not sell or

1 pledge the property; or

2 (7) Knowingly makes, uses, or causes to be made or used, a false record or statement
3 material to an obligation to pay or transmit money or property to the state, or knowingly conceals
4 or knowingly and improperly avoids or decreases an obligation to pay or transmit money or
5 property to the state; is liable to the state for a civil penalty ~~of not less than five thousand five~~
6 ~~hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000)~~ in an amount equal
7 to the civil penalty set forth in the Federal False Claims Act, following the Federal Civil Penalties
8 Inflation Agreement Act of 1990, (31 U.S.C. § 3729(a)), Pub. L. No. 101-410 section 5, 104 Stat.
9 891, note following 28 U.S.C. section 2461, as amended and annually adjusted by the Federal
10 Civil Penalties Inflation Adjustment Improvements Act of 2015, plus three (3) times the amount
11 of damages which the state sustains because of the act of that person. A person violating this
12 subsection (a) shall also be liable to the state for the costs of a civil action brought to recover any
13 such penalty or damages.

14 (b) Definitions. For purposes of this section:

15 (1) "Knowing" and "knowingly" means that a person with respect to information:

16 (i) Has actual knowledge of the information;

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

18 (iii) Acts in reckless disregard of the truth or falsity of the information; and

19 (iv) Requires no proof of specific intent to defraud.

20 (2) "Claim" means any request or demand, whether under a contract or otherwise, for
21 money or property and whether or not the state has title to the money or property, that:

22 (i) Is presented to an officer, employee, or agent of the state; or

23 (ii) Is made to a contractor, grantee, or other recipient, if the money or property is to be
24 spent or used on the state's behalf or advance a state program or interest, and if the state:

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

27 (B) Will reimburse such contractor, grantee, or other recipient for any portion of the
28 money or property which is requested or demanded; and

29 (iii) Does not include requests or demands for money or property that the state has paid to
30 an individual as compensation for state employment or as an income subsidy with no restrictions
31 on that individual's use of the money or property;

32 (3) "Obligation" means an established duty, whether or not fixed, arising from an express
33 or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or
34 similar relationship, from statute or regulation, or from the retention of any overpayment; and

1 (4) "Material" means having a natural tendency to influence, or be capable of influencing,
2 the payment or receipt of money or property.

3 (c) Exclusion. This section does not apply to claims, records, or statements made under
4 the Rhode Island personal income tax law contained in Rhode Island general laws chapter 44-30.

5 **9-1.1-4. Civil actions for false claims.**

6 (a) Responsibilities of the attorney general and solicitor. The attorney general or solicitor
7 diligently shall investigate a violation under § 9-1.1-3 of this section. If under this section the
8 attorney general or solicitor finds that a person has violated or is violating § 9-1.1-3 the attorney
9 general or solicitor may bring a civil action under this section against the person.

10 (b) Actions by private persons.

11 (1) A person may bring a civil action for a violation of § 9-1.1-3 for the person and for
12 the state. The action shall be brought in the name of the state. The action may be dismissed only
13 if the court and the attorney general give written consent to the dismissal and their reasons for
14 consenting.

15 (2) A copy of the complaint and written disclosure of substantially all material evidence
16 and information the person possesses shall be served on the state upon the attorney general. The
17 complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall
18 not be served on the defendant until the court so orders. The state may elect to intervene and
19 proceed with the action within sixty (60) days after it receives both the complaint and the material
20 evidence and information.

21 (3) The state may, for good cause shown, move the court for extensions of the time
22 during which the complaint remains under seal under paragraph (2). Any such motions may be
23 supported by affidavits or other submissions in camera. The defendant shall not be required to
24 respond to any complaint filed under this section until twenty (20) days after the complaint is
25 unsealed and served upon the defendant.

26 (4) Before the expiration of the sixty (60) day period or any extensions obtained under
27 paragraph (3), the state shall:

28 (i) Proceed with the action, in which case the action shall be conducted by the state; or

29 (ii) Notify the court that it declines to take over the action, in which case the person
30 bringing the action shall have the right to conduct the action.

31 (5) When a person brings an action under this subsection (b), no person other than the
32 state may intervene or bring a related action based on the facts underlying the pending action.

33 (c) Rights of the parties to Qui Tam actions.

34 (1) If the state proceeds with the action, it shall have the primary responsibility for

1 prosecuting the action, and shall not be bound by an act of the person bringing the action. Such
2 person shall have the right to continue as a party to the action, subject to the limitations set forth
3 in paragraph (2).

4 (2)(A)(i) The state may dismiss the action notwithstanding the objections of the person
5 initiating the action if the person has been notified by the state of the filing of the motion and the
6 court has provided the person with an opportunity for a hearing on the motion.

7 (ii) The state may settle the action with the defendant notwithstanding the objections of
8 the person initiating the action if the court determines, after a hearing, that the proposed
9 settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good
10 cause, such hearing may be held in camera.

11 (iii) Upon a showing by the state that unrestricted participation during the course of
12 the litigation by the person initiating the action would interfere with or unduly delay the state's
13 prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the
14 court may, in its discretion, impose limitations on the person's participation, such as:

15 (A) Limiting the number of witnesses the person may call:

16 (B) Limiting the length of the testimony of such witnesses;

17 (C) Limiting the person's cross-examination of witnesses; or

18 (D) Otherwise limiting the participation by the person in the litigation.

19 (iii)(iv) Upon a showing by the defendant that unrestricted participation during the course
20 of the litigation by the person initiating the action would be for purposes of harassment or would
21 cause the defendant undue burden or unnecessary expense, the court may limit the participation
22 by the person in the litigation.

23 (3) If the state elects not to proceed with the action, the person who initiated the action
24 shall have the right to conduct the action. If the state so requests, it shall be served with copies of
25 all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at
26 the state's expense). When a person proceeds with the action, the court, without limiting the status
27 and rights of the person initiating the action, may nevertheless permit the State to intervene at a
28 later date upon a showing of good cause.

29 (4) Whether or not the state proceeds with the action, upon a showing by the state that
30 certain actions of discovery by the person initiating the action would interfere with the state's
31 investigation or prosecution of a criminal or civil matter arising out of the same facts, the court
32 may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be
33 conducted in camera. The court may extend the sixty (60) day period upon a further showing in
34 camera that the state has pursued the criminal or civil investigation or proceedings with

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

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

13 (d) Award to Qui Tam plaintiff.

14 (1) If the ~~State~~ state proceeds with an action brought by a person under ~~subsection 9-1.1-~~
15 ~~4(b)~~ § 9-1.1-4, such person shall, subject to the second sentence of this paragraph, receive at least
16 fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action
17 or settlement of the claim, depending upon the extent to which the person substantially
18 contributed to the prosecution of the action. Where the action is one which the court finds to be
19 based primarily on disclosures of specific information (other than information provided by the
20 person bringing the action) relating to allegations or transactions in a criminal, civil, or
21 administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit,
22 or investigation, or from the news media, the court may award such sums as it considers
23 appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the
24 significance of the information and the role of the person bringing the action in advancing the
25 case to litigation. Any payment to a person under the first or second sentence of this paragraph (1)
26 shall be made from the proceeds. Any such person shall also receive an amount for reasonable
27 expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees
28 and costs. The state shall also receive an amount for reasonable expenses which the court finds to
29 have been necessarily incurred by the attorney general, including reasonable attorneys' fees and
30 costs, and the amount received shall be deposited in the false claims act fund created under this
31 chapter. All such expenses, fees, and costs shall be awarded against the defendant.

32 (2) If the state does not proceed with an action under this section, the person bringing the
33 action or settling the claim shall receive an amount which the court decides is reasonable for
34 collecting the civil penalty and damages. The amount shall be not less than twenty-five percent

1 (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall
2 be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses
3 which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs.
4 All such expenses, fees, and costs shall be awarded against the defendant.

5 (3) Whether or not the state proceeds with the action, if the court finds that the action was
6 brought by a person who planned and initiated the violation of § 9-1.1-3 upon which the action
7 was brought, then the court may, to the extent the court considers appropriate, reduce the share of
8 the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of
9 this subsection (d), taking into account the role of that person in advancing the case to litigation
10 and any relevant circumstances pertaining to the violation. If the person bringing the action is
11 convicted of criminal conduct arising from his or her role in the violation of § 9-1.1-3, that person
12 shall be dismissed from the civil action and shall not receive any share of the proceeds of the
13 action. Such dismissal shall not prejudice the right of the state to continue the action.

14 (4) If the state does not proceed with the action and the person bringing the action
15 conducts the action, the court may award to the defendant its reasonable attorneys' fees and
16 expenses if the defendant prevails in the action and the court finds that the claim of the person
17 bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of
18 harassment.

19 (e) Certain actions barred.

20 (1) No court shall have jurisdiction over an action brought by a former or present member
21 of the guard under ~~subsection 9-1.1-4(b)~~ [§ 9-1.1-4](#) (actions by private persons) against a member
22 of the guard arising out of such person's service in the guard.

23 (2) No court shall have jurisdiction over an action brought pursuant to subsection 9-1.1-
24 4(b) (actions by private persons) against the governor, lieutenant governor, the attorney general,
25 members of the general assembly, a member of the judiciary, the treasurer, secretary of state, the
26 auditor general, any director of a state agency, and any other individual appointed to office by the
27 governor if the action is based on evidence or information known to the state when the action was
28 brought.

29 (3) In no event may a person bring an action under subsection 9-1.1-4(b) which is based
30 upon allegations or transactions which are the subject of a civil suit or an administrative civil
31 money penalty proceeding in which the state is already a party.

32 (4) (A) The court shall dismiss an action or claim under this section, unless opposed by
33 the state, if substantially the same allegations or transactions as alleged in the action or claim
34 ~~where~~ [were](#) publically disclosed:

1 (i) In a state criminal, civil, or administrative hearing, in which the state or its agents is a
2 party;

3 (ii) In a legislative or auditor general's or other state of Rhode Island report, hearing,
4 audit, or investigation; or

5 (iii) From the news media, unless the action is brought by the attorney general or the
6 person bringing the action is an original source of the information.

7 (B) For purposes of this paragraph, "original source" means an individual who either: (i)
8 Prior to the public disclosure under subparagraph 9-1.4-4(e)(4)(A), has voluntarily disclosed to
9 the state the information on which the allegations or transactions in a claim are based; or (ii) Who
10 has knowledge that is independent of and materially adds to the publicly disclosed allegations or
11 transaction, and who has voluntarily provided the information to the state before filing an action
12 under this section.

13 (f) State not liable for certain expenses. The state is not liable for expenses which a
14 person incurs in bringing an action under this section.

15 (g) Any employee, contractor, agent, or associated others who is discharged, demoted,
16 suspended, threatened, harassed, or in any other manner discriminated against in the terms and
17 conditions of employment because of lawful acts done by the employee, contractor, agent or
18 associated others in furtherance of an action under this section, or other efforts to stop one or
19 more violations of this ~~subsection~~ [chapter](#) including investigation for, initiation of, testimony for,
20 or assistance in an action filed or to be filed under this section, shall be entitled to all relief
21 necessary to make the employee, contractor, agent or associated others whole. Such relief shall
22 include reinstatement with the same seniority status such employee, contractor, agent or
23 associated others would have had but for the discrimination, two (2) times the amount of back
24 pay, interest on the back pay, and compensation for any special damages sustained as a result of
25 the discrimination, including litigation costs and reasonable attorneys' fees. An employee,
26 contractor, agent or associated others may bring an action in the appropriate superior court for the
27 relief provided in this subsection 9-1.1-4(g).

28 (h) Limitation on bringing civil action. A civil action under subsection (g) may not be
29 brought more than three (3) years after the date when the retaliation occurred.

30 **9-1.1-5. False claims procedure.**

31 (a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under
32 § 9-1.1-4, may be served at any place in the state.

33 (b) A civil action under § 9-1.1-4 may not be brought:

34 (1) More than 6 years after the date on which the violation of § 9-1.1-3 is committed, or

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

5 (c) If the state elects to intervene and proceed with an action brought under ~~subsection 9-~~
6 ~~1-1-4(i)~~ § 9-1.1-4, the state may file its own complaint or amend the complaint of a person who
7 has brought an action under § 9-1.1-4 to clarify or add detail to the claims in which the state is
8 intervening and to add any additional claims with respect to which the state contends it is entitled
9 to relief. For statute of limitations purposes, any such state pleading shall relate back to the filing
10 date of the complaint of the person who originally brought the action, to the extent that the claim
11 of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set
12 forth, in the prior complaint of that person.

13 (d) In any action brought under § 9-1.1-4, the state shall be required to prove all essential
14 elements of the cause of action, including damages, by a preponderance of the evidence.

15 (e) Notwithstanding any other provision of law, a final judgment rendered in favor of the
16 state in any criminal proceeding charging fraud or false statements, whether upon a verdict after
17 trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the
18 essential elements of the offense in any action which involves the same transaction as in the
19 criminal proceeding and which is brought under subsections 9-1.1-4(a) or 9-1.1-4(b).

20 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE GENERALLY - THE
STATE FALSE CLAIM ACT

- 1 This act would amend the State False Claims Act to reflect amendments to the Federal
- 2 False Claims Act.
- 3 This act would take effect upon passage.

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