

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 2827

4  
5 By: Representative Hathorn  
6  
7

## For An Act To Be Entitled

8 THE ARKANSAS FALSE CLAIMS ACT OF 2003.  
9

### Subtitle

10 THE ARKANSAS FALSE CLAIMS ACT OF 2003.  
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15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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17 SECTION 1. As used in this act:

18 (1) "Claim" means a request or demand for money, property, or  
19 services made to:

20 (A) An officer, employee, or agent of this state or of a  
21 political subdivision of this state; or

22 (B) A contractor, grantee, or other recipient of money  
23 from the state or a political subdivision of this state if any part of the  
24 money, property, or services requested or demanded was provided by the state  
25 or political subdivision;

26 (2) "Knowingly" means with respect to information the person:

27 (A) Has knowledge of the information;

28 (B) Acts in deliberate ignorance of whether the  
29 information is true or false; or

30 (C) Acts in reckless disregard of the truth or falsity of  
31 the information;

32 (3) "Original source" means a person:

33 (A) Who has direct and independent knowledge of the  
34 information on which the allegations were based;

35 (B) Who voluntarily provided the information to the state  
36 or political subdivision before bringing an action based on the information;



1 and

2 (C) Whose information provided the basis or caused the  
3 making of the investigation, hearing, audit, or report that led to the public  
4 disclosure; and

5 (4) "Political subdivision" means all formed and constituted  
6 governing bodies created and established under authority of the Arkansas  
7 Constitution and laws of this state.

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9 SECTION 2. Liability for damages and civil penalty for certain acts.

10 (a) It shall be unlawful for any person to:

11 (1) Knowingly present or cause to be presented a false claim for  
12 payment or approval;

13 (2) Knowingly make or use, or cause to be made or used, a false  
14 record or statement to obtain payment or approval of a false claim;

15 (3) Conspire to defraud by obtaining allowance or payment of a  
16 false claim;

17 (4) Have possession, custody, or control of public property or  
18 money and knowingly deliver or cause to be delivered to the state or a  
19 political subdivision less money or property than the amount for which he or  
20 she receives a receipt;

21 (5) Being authorized to prepare or deliver a receipt for money  
22 or property to be used by the state or a political subdivision, knowingly  
23 prepare or deliver a receipt that falsely represents the money or property;

24 (6) Knowingly buy or receive as security for an obligation,  
25 public property from a person who is not authorized to sell or pledge the  
26 property;

27 (7) Knowingly make or use, or cause to be made or used, a false  
28 record or statement to conceal, avoid, or decrease an obligation to pay or  
29 transmit money or property to the state or a political subdivision; or

30 (8) Being a beneficiary of an inadvertent submission of a false  
31 claim and, after discovering the falsity of the claim, fail to disclose the  
32 falsity to the state or political subdivision within a reasonable time.

33 (b)(1) Any person who, with or without specific intent to defraud,  
34 commits any of the acts listed in subsection (a) of this section may be held  
35 liable to the state or a political subdivision, whichever is affected, for:

36 (A) Three (3) times the amount of damages sustained by the

1 state or political subdivision;

2 (B) The costs of a civil action brought to recover those  
 3 damages; and

4 (C) A civil penalty of not less than two thousand dollars  
 5 (\$2,000) or more than ten thousand dollars (\$10,000) for each act.

6 (2) No civil penalty shall be assessed if the court finds that  
 7 the person against whom the judgment is entered:

8 (A) Furnished all information known to him or her  
 9 concerning the act, within thirty (30) days after becoming aware of the  
 10 information, to the Attorney General;

11 (B) Fully cooperated with any investigation of the act by  
 12 the state or political subdivision; and

13 (C) At the time the information was furnished, no criminal  
 14 prosecution, or civil or administrative proceeding had commenced with respect  
 15 to the act and the person had no knowledge of the existence of any  
 16 investigation with respect to the act.

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 18 SECTION 3. Joint and several liability.

19 Liability under this act is joint and several for an act done by two  
 20 (2) or more persons.

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 22 SECTION 4. Investigation and action by the Attorney General.

23 The Attorney General may investigate any alleged liability under this  
 24 act and may bring a civil action against the person liable.

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 26 SECTION 5. Maintenance of action by private plaintiff - Limitations -  
 27 Complaint under seal - Copy of complaint and written disclosure of  
 28 evidence to be sent to Attorney General.

29 (a)(1) Any private individual may maintain an action under this act  
 30 if:

31 (A) Money, property, or services provided by the state are  
 32 involved;

33 (B) Money, property, or services provided by the political  
 34 subdivision are involved; or

35 (C) Money, property, or services of both the state and a  
 36 political subdivision are involved.

1           (2) Once an action is commenced, it may only be dismissed with  
2 leave of the court, after the court considers the public purposes of this act  
3 and the best interests of the parties.

4           (b) If a private individual brings an action under this act, no other  
5 person may bring another action under this act based on the same facts.

6           (c) An action may not be maintained by a private individual under this  
7 act:

8                   (1) Against a member of the General Assembly, the  
9 judiciary, an elected officer of the executive department of state  
10 government, or a member of the governing body of a political subdivision, if  
11 the action is based upon evidence or information known to the state or  
12 political subdivision at the time the action was brought; or

13                   (2) If the action is based upon allegations or  
14 transactions that are the subject of a civil action or an administrative  
15 proceeding for a monetary penalty to which the state or political subdivision  
16 is already a party.

17           (d)(1) A complaint filed under this act must be placed under seal and  
18 remain sealed until the Attorney General has decided whether to intervene.

19                   (2) No service may be made upon the defendant until the  
20 complaint is unsealed.

21           (e) On the date the private individual files his or her complaint, he  
22 or she shall send a copy of the complaint together with a written disclosure  
23 of substantially all material evidence and information he or she possesses to  
24 the Attorney General by mail with return receipt requested.

25           (f)(1)(A) If the government proceeds with an action brought by a  
26 person under this act, the person shall, subject to subdivision (f)(2) of  
27 this section, receive at least fifteen percent (15%), but not more than  
28 twenty-five percent (25%) of the proceeds of the action or settlement of the  
29 claim, depending upon the extent to which the person substantially  
30 contributed to the prosecution of the action.

31                   (B) If the court finds the action to be based primarily on  
32 disclosures of specific information, other than information provided by the  
33 person bringing the action, relating to allegations or transactions in a  
34 criminal trial, civil proceeding, administrative hearing, a congressional,  
35 administrative, or Government Accounting Office report, hearing, audit, or  
36 investigation, or from the news media, the court may award sums it considers

1 appropriate, but in no case more than ten percent (10%) of the proceeds,  
 2 taking into account the significance of the information and the role of the  
 3 person in bringing the action and advancing the case to litigation.

4 (C) Any payment to a person under this subdivision (f)(1)  
 5 shall be made from the proceeds.

6 (D) The person may be awarded an amount for reasonable  
 7 expenses which the court finds to have been necessarily incurred, plus  
 8 reasonable attorney's fees and costs.

9 (E) All expenses, fees, and costs shall be awarded against  
 10 the defendant.

11 (2)(A) If the government does not proceed with an action under  
 12 this act, the person bringing the action or settling the claim shall receive  
 13 an amount which the court decides is reasonable for collecting the civil  
 14 penalty and damages.

15 (B) The amount shall be not less than twenty-five percent  
 16 (25%) and not more than thirty percent (30%) of the proceeds of the action or  
 17 settlement and shall be paid out of the proceeds.

18 (C) The person may be awarded an amount for reasonable  
 19 expenses which the court finds to have been necessarily incurred, plus  
 20 reasonable attorney's fees and costs.

21 (D) All expenses, fees, and costs shall be awarded against  
 22 the defendant.

23  
 24 SECTION 6. Action based on information public employee discovered  
 25 during public employment prohibited in certain circumstances.

26 No action may be maintained under this act that is based upon  
 27 information discovered by a present or former employee of the state or a  
 28 political subdivision during his or her employment, unless he or she first in  
 29 good faith exhausted internal procedures for reporting and seeking recovery  
 30 of the proceeds of the fraudulent activity through official channels and the  
 31 state or political subdivision failed to act on the information provided for  
 32 at least six (6) months.

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 34 SECTION 7. Action based upon certain public disclosures may only be  
 35 brought by attorney general or original source of information.

36 No action may be maintained under this act that is based upon the

1 public disclosure of allegations or transactions in a criminal trial, civil  
2 proceeding, administrative hearing, an investigation, report, hearing, or  
3 audit conducted by or at the request of the General Assembly, an auditor, the  
4 governing body of a political subdivision, or from the news media, unless the  
5 action is brought by the Attorney General or an original source of the  
6 information.

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