

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S3/21/17

A Bill

SENATE BILL 548

5 By: Senator Files
6 By: Representative D. Douglas
7

For An Act To Be Entitled

9 AN ACT CREATING THE ARKANSAS FALSE CLAIMS ACT;
10 CONCERNING THE SUBMISSION OF FALSE CLAIMS TO THE
11 STATE OR A LOCAL GOVERNMENT; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 CREATING THE ARKANSAS FALSE CLAIMS ACT;
16 AND CONCERNING THE SUBMISSION OF FALSE
17 CLAIMS TO THE STATE OR A LOCAL
18 GOVERNMENT.
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20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 *SECTION 1. Arkansas Code Title 16, is amended to add an additional*
24 *chapter to read as follows:*

CHAPTER 129

ARKANSAS FALSE CLAIMS ACT

16-129-101. Title.

29 *This chapter may be cited and referred to as the "Arkansas False Claims*
30 *Act."*

16-129-102. Scope.

33 *This chapter does not apply to claims under the Medicaid Fraud False*
34 *Claims Act, § 20-77-901 et seq.*

16-129-103. Definitions.



1 As used in this chapter:

2 (1) "Claim" means, whether under contract or otherwise, a
3 request or demand for money or property that is:

4 (A) Presented to an officer, employee, or agent of this
5 state or of a local governing body of this state; or

6 (B) Made to a contractor, grantee, or other recipient, if
7 the money or property is to be spent or used on behalf of, or to advance a
8 program or interest of, this state or a local governing body of this state,
9 and this state or the local governing body of this state:

10 (i) Provides or has provided any portion of the
11 money or property requested or demanded; or

12 (ii) Is required to reimburse the contractor,
13 grantee, or other recipient for any portion of the money or property that is
14 requested or demanded;

15 (2) "Enforcement entity" means:

16 (A) The Attorney General;

17 (B) A state agency, board, division, commission,
18 committee, council, office, or other governmental entity performing a state
19 government function; and

20 (C) A governing body for a county, municipality, or other
21 political subdivision;

22 (3) "False claim" means a claim that is, either in whole or
23 part, false or fraudulent;

24 (4) "Investigation" means an inquiry conducted by an
25 investigator to ascertain whether a person is or has been engaged in a
26 violation of this chapter;

27 (5)(A) "Knowing", "knowingly", or "known" means that a person,
28 regarding information:

29 (i) Has actual knowledge of the information;

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

32 (iii) Acts in reckless disregard of the truth or
33 falsity of the information.

34 (B) "Knowing", "knowingly", or "known" under this
35 subdivision (5) requires no proof of specific intent to defraud;

36 (6) "Local government" means a county, municipality, or other

1 political subdivision;

2 (7) "Material" means having a natural tendency to influence, or
3 to be capable of influencing, the payment or receipt of money or property;

4 (8) "Obligation" means an established duty, whether or not
5 fixed, arising from an express or implied contractual, grantor-grantee, or
6 licensor-licensee relationship, from:

7 (A) A fee-based or similar relationship;

8 (B) Statute or regulation; or

9 (C) The retention of any overpayment;

10 (9) "Person" means a natural person, a corporation, a firm, an
11 association, an organization, a partnership, a limited liability company, a
12 business, or a trust; and

13 (10) "State" means the State of Arkansas and any state
14 department, board, division, commission, committee, council, office, or other
15 governmental entity performing a government function for the state.

16
17 16-129-104. Liability for actions.

18 (a) A person is liable to the state or a local government if he or
19 she:

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

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

24 (3) Is authorized to make or deliver a document certifying
25 receipt of property used, or to be used, by the state or local government
26 and, intending to defraud the state or local government, makes or delivers
27 the receipt without completely knowing that the information on the receipt is
28 true;

29 (4) Has possession, custody, or control of property or money
30 used, or to be used, by the state or local government and knowingly fails to
31 remit or deliver, or delivers, or causes to be delivered, less than all of
32 that money or property;

33 (5) Knowingly makes, uses, or causes to be made or used, a false
34 record or statement material to an obligation to pay or transmit money or
35 property to the state or local government;

36 (6) Knowingly conceals or knowingly and improperly avoids or

1 decreases an obligation to pay or transmit money or property to the state or
2 local government;

3 (7) Conspires with another person to perform an act described in
4 subdivisions (a)(1)-(6) of this section; or

5 (8) Causes or induces another person to perform an act described
6 in subdivisions (a)(1)-(6) of this section.

7 (b) A person who is found liable under this section is subject to a
8 civil penalty of not less than two thousand five hundred dollars (\$2,500) and
9 not more than ten thousand dollars (\$10,000) per act described under
10 subsection (a) of this section plus two (2) times the amount of damages that
11 the state or local government sustains because of the act or acts.

12 (c) This section applies to claims, records, or statements made under
13 a tax law of this state only if:

14 (1) The net income or sales of the person against whom the
15 action is brought equals or exceeds five hundred thousand dollars (\$500,000)
16 for any taxable year subject to an action brought under this chapter; and

17 (2)(A) The damages pleaded in an action equal or exceed one
18 hundred thousand dollars (\$100,000).

19 (B) However, this subdivision (c)(2) does not modify or
20 restrict the application of this subsection to an act alleged that relates to
21 a violation of a tax law of this state.

22
23 16-129-105. Enforcement.

24 (a) If after investigation an enforcement entity finds that a person
25 has violated or is violating § 16-129-104, the enforcement entity may bring a
26 civil action under this section against the person.

27 (b)(1) A person may bring a civil action in the name of the state for
28 a violation of § 16-129-104 for the person and for the state.

29 (2)(A) At least sixty (60) days before filing the complaint, the
30 person shall provide to the enforcement entity a copy of the complaint, as
31 well as substantially all material evidence and information the person
32 possesses.

33 (B) The enforcement entity may elect to intervene and
34 proceed with the action within sixty (60) days after it receives both the
35 complaint and the material evidence and information.

36 (3)(A) The enforcement entity, for good cause shown, may move

1 the court for extensions of the time required before the filing of the
2 complaint.

3 (B) A motion under this subdivision (b)(3) may be
4 supported by affidavits or other submissions and shall be filed in camera.

5 (4) Before the expiration of the sixty-day period or any
6 extensions of time obtained under this subsection, the enforcement entity
7 shall:

8 (A) Proceed with the action, in which case the action
9 shall be conducted by the enforcement entity; or

10 (B) Notify the person in writing that the enforcement
11 entity declines to take over the action, in which case the person bringing
12 the action shall have the right to conduct the action.

13 (c) If the enforcement entity elects to intervene and proceed with an
14 action brought under § 16-129-104, it may file its own complaint or amend the
15 complaint of the person who has brought an action under § 16-129-104 to
16 clarify or add detail to the claims and to add any additional claims.

17 (d) If the enforcement entity elects not to proceed with the action,
18 the person who initiated the action shall have the right to conduct the
19 action.

20
21 16-129-106. Rights of parties to action under this chapter.

22 (a)(1) If an enforcement entity proceeds with an action under this
23 chapter, the enforcement entity shall have the primary responsibility for
24 prosecuting the action and shall not be bound by an act of the person
25 bringing the action.

26 (2) A person bringing an action under this chapter shall have
27 the right to continue as a party to the action, subject to the limitations
28 set forth subsection (b) of this section.

29 (b)(1) An enforcement entity may dismiss an action under this chapter,
30 notwithstanding the objections of the person initiating the action, if the
31 person has been notified by the enforcement entity of the filing of the
32 motion to dismiss and the court has provided the person with an opportunity
33 for a hearing on the motion.

34 (2)(A) An enforcement entity may settle an action with the
35 defendant under this chapter, notwithstanding the objections of the person
36 initiating the action, if the court determines, after a hearing, that the

1 proposed settlement is fair, adequate, and reasonable under all the
2 circumstances.

3 (B) Upon a showing of good cause, a hearing under
4 subdivision (b)(2)(A) of this section may be held in camera.

5 (3) Upon a showing by an enforcement entity that unrestricted
6 participation during the course of the litigation by the person initiating
7 the action would interfere with or unduly delay the enforcement entity's
8 prosecution of the case, or would be repetitious, irrelevant, or for purposes
9 of harassment, the court may, in its discretion, impose limitations on the
10 person's participation.

11
12 16-129-107. Award to plaintiff.

13 (a) The court shall have discretion based on a person's contribution
14 to a successful action under this chapter to award a person bringing a claim
15 a recovery in the ranges set forth under this section.

16 (b) If the enforcement entity proceeds with an action brought by a
17 person under this chapter, the person shall be entitled to recover no less
18 than twenty percent (20%) of the award and no more than twenty-five percent
19 (25%) of the award.

20 (c) If the enforcement entity does not proceed with a claim under this
21 chapter, a person bringing a claim shall be entitled to recover no less than
22 thirty percent (30%) of the award and no more than forty percent (40%) of the
23 award.

24
25 16-129-108. Certain actions barred.

26 (a) An action may not be filed under this chapter against the federal
27 government, the state or a local government, or an officer or employee of the
28 federal government or of a state or local government acting in his or her
29 official capacity.

30 (b) A person may not bring an action under this chapter that is based
31 on allegations or transactions that are the subject of a civil suit or an
32 administrative civil proceeding in which the enforcement entity is already a
33 party.

34
35 16-129-109. Attorney fees and costs.

36 (a)(1) In addition to recovery of the award under § 16-129-107, a

1 person who initiated an action under this chapter shall also receive an
2 amount for reasonable expenses and reasonable attorney's fees.

3 (2) Reasonable expenses, attorney's fees, and costs shall be
4 ordered to be paid by the defendant.

5 (b)(1) In an action brought under this chapter, the court may award an
6 enforcement entity that participates as a party in the action an amount for
7 reasonable expenses and reasonable attorney's fees.

8 (2) Reasonable expenses, attorney's fees, and costs shall be
9 ordered to be paid directly by the defendant and shall not be charged from an
10 award under this chapter.

11 (c) If the enforcement entity does not proceed with an action under
12 this chapter and the person bringing the action conducts the action, the
13 court may award to the defendant its reasonable attorney's fees and expenses
14 if the defendant prevails in the action and the court finds that the claim of
15 the person bringing the action was clearly frivolous, clearly vexatious, or
16 brought primarily for purposes of harassment.

17
18 16-129-110. Rules governing actions.

19 (a) An action brought under this subchapter shall follow the Arkansas
20 Rules of Civil Procedure and any other rule concerning practice and procedure
21 proscribed by the Supreme Court.

22 (b) If a section of this subchapter is found to be in conflict with
23 the Arkansas Rules of Civil Procedure or any other rule concerning practice
24 and procedure proscribed by the Supreme Court, the rule shall govern.

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26 /s/Files
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