

ARKANSAS SENATE
91st General Assembly - Regular Session, 2017
Amendment Form

Subtitle of Senate Bill No. 548

CREATING THE ARKANSAS FALSE CLAIMS ACT; AND CONCERNING THE SUBMISSION OF FALSE
CLAIMS TO THE STATE OR A LOCAL GOVERNMENT.

Amendment No. 1 to Senate Bill No. 548

Amend Senate Bill No. 548 as originally introduced:

Delete everything after the enacting clause and substitute the following:

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

CHAPTER 129
ARKANSAS FALSE CLAIMS ACT

16-129-101. Title.

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

16-129-102. Scope.

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

16-129-103. Definitions.

As used in this chapter:

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

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

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

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

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

(2) "Enforcement entity" means:

(A) The Attorney General;

(B) A state agency, board, division, commission,



committee, council, office, or other governmental entity performing a state government function; and

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

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

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

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

(i) Has actual knowledge of the information;

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

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

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

(6) "Local government" means a county, municipality, or other political subdivision;

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

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

(A) A fee-based or similar relationship;

(B) Statute or regulation; or

(C) The retention of any overpayment;

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

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

16-129-104. Liability for actions.

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

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

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

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

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

(5) Knowingly makes, uses, or causes to be made or used, a false

record or statement material to an obligation to pay or transmit money or property to the state or local government;

(6) Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or local government;

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

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

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

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

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

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

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

16-129-105. Enforcement.

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

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

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

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

(3)(A) The enforcement entity, for good cause shown, may move the court for extensions of the time required before the filing of the complaint.

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

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

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

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

(c) If the enforcement entity elects to intervene and proceed with an

action brought under § 16-129-104, it may file its own complaint or amend the complaint of the person who has brought an action under § 16-129-104 to clarify or add detail to the claims and to add any additional claims.

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

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

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

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

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

(2)(A) An enforcement entity may settle an action with the defendant under this chapter, 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 all the circumstances.

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

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

16-129-107. Award to plaintiff.

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

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

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

16-129-108. Certain actions barred.

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

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

16-129-109. Attorney fees and costs.

(a)(1) In addition to recovery of the award under § 16-129-107, a person who initiated an action under this chapter shall also receive an amount for reasonable expenses and reasonable attorney's fees.

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

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

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

(c) If the enforcement entity does not proceed with an action under this chapter and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney's fees and expenses 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.

16-129-110. Rules governing actions.

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

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

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Files
BPG/TDW - 03-10-2017 11:23:09
BPG423

Secretary