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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

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

Introduced By: Senator Michael J. McCaffrey

Date Introduced: May 17, 2012

Referred To: Senate Judiciary

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.** -- (a) Any person who:
- 4 (1) Knowingly presents, or causes to be presented, ~~to an officer or employee of the state~~
5 ~~or a member of the guard~~ a false or fraudulent claim for payment or approval;
- 6 (2) Knowingly makes, uses, or causes to be made or used, a false record or statement ~~to~~
7 ~~get a~~ material to a false or fraudulent claim ~~paid or approved by the state;~~
- 8 (3) Conspires to ~~defraud the state by getting a false or fraudulent claim allowed or paid~~
9 commit a violation of subdivision (1),(2), (3), (4), (5), (6) or (7);
- 10 (4) Has possession, custody, or control of property or money used, or to be used, by the
11 state and, ~~intending to defraud the state or willfully to conceal the property,~~ knowingly delivers,
12 or causes to be delivered, less ~~property~~ than all of that money or property; ~~the amount for which~~
13 ~~the person receives a certificate or receipt;~~
- 14 (5) ~~Is Authorized~~ authorized to make or deliver a document certifying receipt of property
15 used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt
16 without 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
19 pledge ~~the~~ property; or

1 (7) Knowingly makes, uses, or causes to be made or used, a false record or statement
2 material to ~~conceal, avoid or decrease~~ an obligation to pay or transmit money or property to the
3 state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to
4 pay or transmit money or property to the state; is liable to the state for a civil penalty of not less
5 than ~~five thousand dollars (\$5,000)~~ five thousand five hundred dollars (\$5,500) and not more than
6 ~~ten thousand dollars (\$10,000)~~ eleven thousand dollars (\$11,000), plus three (3) times the amount
7 of damages which the state sustains because of the act of that person. A person violating this
8 subsection (a) shall also be liable to the state for the costs of a civil action brought to recover any
9 such penalty or damages.

10 ~~(b) Knowing and knowingly defined. As used in this section, the terms "knowing" and~~
11 ~~"knowingly" mean that a person, with respect to information:~~

12 (b) Definitions. -- For purposes of this section:

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

14 ~~(1)~~(i) Has actual knowledge of the information;

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

16 ~~(3)~~(iii) Acts in reckless disregard of the truth or falsity of the information; ~~and no proof~~
17 ~~of specific intent to defraud is required.~~

18 ~~(c) Claim defined. -- As used in this section, "claim" includes any request or demand,~~
19 ~~whether under a contract or otherwise, for money or property which is made to a contractor,~~
20 ~~grantee, or other recipient if the state provides any portion of the money or property which is~~
21 ~~requested or demanded, or if the state will reimburse such contractor, grantee, or other recipient~~
22 ~~for any portion of the money or property which is requested or demanded.~~

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

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

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

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

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

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

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

4 (4) “Material” means having a natural tendency to influence, or be capable of
5 influencing, the payment or receipt of money or property.

6 ~~(d)~~(c) Exclusion. - This section does not apply to claims, records, or statements made
7 under the Rhode Island personal income tax law contained in Rhode Island general laws chapter
8 44-30.

9 **9-1.1-4. Civil actions for false claims. --** (a) Responsibilities of the attorney general. -
10 The attorney general diligently shall investigate a violation under section 9-1.1-3 of this section.
11 If under this section the attorney general finds that a person has violated or is violating section 9-
12 1.1-3 the attorney general may bring a civil action under this section against the person.

13 (b) Actions by private persons.

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

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

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

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

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

32 (B) Notify the court that it declines to take over the action, in which case the person
33 bringing the action shall have the right to conduct the action.

34 (5) When a person brings an action under this subsection (b), no person other than the

1 state may intervene or bring a related action based on the facts underlying the pending action.

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

3 (1) If the state proceeds with the action, it shall have the primary responsibility for
4 prosecuting the action, and shall not be bound by an act of the person bringing the action. Such
5 person shall have the right to continue as a party to the action, subject to the limitations set forth
6 in paragraph (2).

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

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

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

- 18 (i) Limiting the number of witnesses the person may call;
- 19 (ii) Limiting the length of the testimony of such witnesses;
- 20 (iii) Limiting the person's cross-examination of witnesses; or
- 21 (iv) Otherwise limiting the participation by the person in the litigation.

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

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

32 (4) Whether or not the state proceeds with the action, upon a showing by the state that
33 certain actions of discovery by the person initiating the action would interfere with the state's
34 investigation or prosecution of a criminal or civil matter arising out of the same facts, the court

1 may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be
2 conducted in camera. The court may extend the sixty (60) day period upon a further showing in
3 camera that the state has pursued the criminal or civil investigation or proceedings with
4 reasonable diligence and any proposed discovery in the civil action will interfere with the
5 ongoing criminal or civil investigation or proceedings.

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

16 (d) Award to Qui Tam plaintiff.

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

1 (2) If the state does not proceed with an action under this section, the person bringing the
2 action or settling the claim shall receive an amount which the court decides is reasonable for
3 collecting the civil penalty and damages. The amount shall be not less than twenty-five percent
4 (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall
5 be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses
6 which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs.
7 All such expenses, fees, and costs shall be awarded against the defendant.

8 (3) Whether or not the state proceeds with the action, if the court finds that the action
9 was brought by a person who planned and initiated the violation of section 9-1.1-3 upon which
10 the action was brought, then the court may, to the extent the court considers appropriate, reduce
11 the share of the proceeds of the action which the person would otherwise receive under paragraph
12 (1) or (2) of this subsection (d), taking into account the role of that person in advancing the case
13 to litigation and any relevant circumstances pertaining to the violation. If the person bringing the
14 action is convicted of criminal conduct arising from his or her role in the violation of section 9-
15 1.1-3, that person shall be dismissed from the civil action and shall not receive any share of the
16 proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the
17 action.

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

23 (e) Certain actions barred.

24 (1) No court shall have jurisdiction over an action brought by a former or present
25 member of the guard under subsection 9-1.1-4(b) (actions by private persons) against a member
26 of the guard arising out of such person's service in the guard.

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

33 (3) In no event may a person bring an action under subsection 9-1.1-4(b) which is based
34 upon allegations or transactions which are the subject of a civil suit or an administrative civil

1 money penalty proceeding in which the state is already a party.

2 (4) (A) ~~No~~ The court shall dismiss ~~have jurisdiction over~~ an action or claim under this
3 section, unless opposed by the state, if substantially the same allegations as alleged in the action
4 or claim where publicly disclosed. ~~based upon the public disclosure of allegations or transactions~~

5 (i) ~~in~~ In a state criminal, civil, or administrative hearing, in which the state or it's agent is
6 a party.

7 (ii) ~~in~~ In a legislative, ~~administrative,~~ or auditor general's or other state of Rhode Island
8 report, hearing, audit, or investigation, or

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

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

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

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

32 (h) Limitation on bringing Civil Action. – A civil action under this subsection may not be
33 brought more than three (3) years after the date when the retaliation occurred.

34 **9-1.1-5. False claims procedure. --** (a) A subpoena requiring the attendance of a witness

1 at a trial or hearing conducted under section 9-1.1-4, may be served at any place in the state.

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

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

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

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

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

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

24 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 - THE STATE FALSE CLAIM ACT

1 This act would make amendments to the false claim act that is required by the federal
2 government in order for the state to obtain federal funding.

3 This act would take effect upon passage.

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