

HOUSE BILL No. 2943

By Committee on Appropriations

2-26

9 AN ACT concerning civil actions and civil penalties; relating to the sub-
10 mission of false or fraudulent claims to or the performance of fraud-
11 ulent acts upon the state or a political subdivision thereof.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. Sections 1 through 11, and amendments thereto, shall be
15 known and may be cited as the “Kansas false claims act.”

16 Sec. 2. For purposes of this act:

17 (a) “Act” means the Kansas false claims act.

18 (b) “Claim” includes any request or demand, whether under contract
19 or otherwise, for money, property or services made to any employee,
20 officer or agent of the state or any political subdivision thereof or made
21 to any contractor, grantee or other recipient if the state or any political
22 subdivision thereof provides any portion of the money, property or serv-
23 ices which is requested or demanded, or if the state will reimburse such
24 contractor, grantee or other recipient for any portion of the money or
25 property which is requested or demanded.

26 (c) “Political subdivision” includes political or taxing subdivisions of
27 the state, including municipal and quasi-municipal corporations, boards,
28 commissions, authorities, councils, committees, subcommittees and other
29 subordinate groups or administrative units thereof, receiving or expend-
30 ing and supported, in whole or in part, by public funds and any munici-
31 pality as defined in K.S.A. 75-1117, and amendments thereto.

32 (d) “Person” includes any natural person, corporation, firm, associa-
33 tion, organization, partnership, business or trust.

34 (e) “Knowing” and “knowingly” mean that a person, with respect to
35 information, does any of the following:

36 (1) Has actual knowledge of the information;

37 (2) acts in deliberate ignorance of the truth or falsity of the infor-
38 mation; and

39 (3) acts in reckless disregard of the truth or falsity of the information.

40 Sec. 3. (a) A person who commits any of the following acts shall be
41 liable to the state or any affected political subdivision thereof, for three
42 times the amount of damages which the state or such political subdivision
43 sustains because of the act of that person and shall be liable to the state

1 for a civil penalty of not less than \$5,500 and not more than \$11,000 for
2 each violation. A person found to have committed any of the following
3 acts shall be liable to the state or such affected political subdivision for
4 all reasonable costs and attorney fees incurred in a civil action brought to
5 recover any of those penalties or damages. The following acts constitute
6 violations for which civil penalties, costs and attorney fees may be recov-
7 ered by a civil action under this act:

8 (1) Knowingly presents or causes to be presented to any employee,
9 officer or agent of the state or political subdivision thereof or to any
10 contractor, grantee or other recipient of state funds or funds of any po-
11 litical subdivision thereof, a false or fraudulent claim for payment or
12 approval;

13 (2) knowingly makes, uses or causes to be made or used, a false record
14 or statement to get a false or fraudulent claim paid or approved;

15 (3) defrauds the state or any political subdivision thereof by getting
16 a false claim allowed or paid or by knowingly making, using or causing to
17 be made or used, a false record or statement to conceal, avoid or decrease
18 an obligation to pay or transmit money or property to the state or to any
19 political subdivision thereof;

20 (4) has possession, custody or control of public property or money
21 used or to be used by the state or any political subdivision thereof and
22 knowingly delivers or causes to be delivered less property or money than
23 the amount for which the person receives a certificate or receipt;

24 (5) is authorized to make or deliver a document certifying receipt of
25 property used or to be used by the state or any political subdivision
26 thereof and knowingly makes or delivers a receipt that falsely represents
27 the property received;

28 (6) knowingly buys or receives as a pledge of an obligation or debt,
29 public property from any person who lawfully may not sell or pledge the
30 property;

31 (7) is a beneficiary of an inadvertent submission of a false claim to
32 any employee, officer or agent of the state or political subdivision thereof,
33 or to any contractor, grantee or other recipient of state funds or funds of
34 any political subdivision thereof, who subsequently discovers the falsity
35 of the claim and fails to disclose the false claim and make satisfactory
36 arrangements for repayment to the state or affected political subdivision
37 thereof within a reasonable time after discovery of the false claim;

38 (8) obtains unlawful remuneration through any violation of federal or
39 state anti-kickback provisions contained in 42 U.S.C. 1320(a)-7b; 41
40 U.S.C. 51-54; and K.S.A. 21-3487, and amendments thereto, where kick-
41 back leads to the defrauding of any publicly funded Kansas healthcare
42 plan;

43 (9) knowingly sells to any publicly funded Kansas healthcare plan any

- 1 expired or adulterated medicine or defunct medical equipment;
- 2 (10) knowingly sells to any publicly funded Kansas healthcare plan
- 3 any restocked or re-shelved medicine or medical equipment without hav-
- 4 ing first fully reimbursed the first purchaser and fully disclosed the mer-
- 5 chandise status to the new government purchasing agent;
- 6 (11) promotes or markets any prescription drug, dosage or medical
- 7 device in a way or for a purpose that is not approved by the federal food
- 8 and drug administration and thereby, in any way wrongfully obtains re-
- 9 munerations from any publicly funded Kansas healthcare plan; or
- 10 (12) conspires to commit any violation set forth in paragraphs (1)
- 11 through (11), above.
- 12 (b) Notwithstanding the provisions of subsection (a), the court may
- 13 assess not less than two times the amount of damages which the state or
- 14 any political subdivision thereof sustains because of the act of the person
- 15 in violation of paragraphs (1) through (12) of subsection (a) and no civil
- 16 penalty shall be imposed, if the court finds all of the following:
- 17 (1) The person committing the violation furnished officials of the
- 18 state who are responsible for investigating false claims violations with all
- 19 information known to that person about the violation with 30 days after
- 20 the date on which the person first obtained the information;
- 21 (2) the person fully cooperated with any investigation by the state;
- 22 and
- 23 (3) at the time the person furnished the state with information about
- 24 the violation, no criminal prosecution, civil action or administrative action
- 25 had commenced with respect to the violation and the person did not have
- 26 actual knowledge of the existence of an investigation into the violation.
- 27 (c) In a civil action brought pursuant to subsection (a), proof of spe-
- 28 cific intent to defraud is not required.
- 29 (d) This section does not apply to claims, records or statements made
- 30 under the state revenue and taxation code.
- 31 Sec. 4. (a) The attorney general shall diligently investigate a violation
- 32 under section 3, and amendments thereto. If the attorney general finds
- 33 that a person has violated or is violating section 3, and amendments
- 34 thereto, the attorney general may bring a civil action under this section
- 35 against that person. Further, the attorney general may utilize the assis-
- 36 tance of city and county attorneys in cases involving their respective po-
- 37 litical subdivisions or may utilize funds available pursuant to section 8,
- 38 and amendments thereto, to engage the services of private attorneys to
- 39 assist in carrying out the purposes of this act, or both, at times when the
- 40 attorney general determines the need exists. All local prosecutors and
- 41 private attorneys shall only participate at the request, and under the di-
- 42 rection of, the attorney general.
- 43 (b) Nothing in this act shall be construed to create a private cause of

1 action.

2 Sec. 5. (a) A civil action under section 3, and amendments thereto,
3 may not be brought more than 10 years after the date on which the
4 violation was committed.

5 (b) A civil action under section 3, and amendments thereto, may be
6 brought for activity prior to the effective date of this act if the limitation
7 period set in subsection (a) has not lapsed.

8 (c) In any action brought under section 3, and amendments thereto,
9 the state shall be required to prove all essential elements of the cause of
10 action, including damages, by a preponderance of the evidence.

11 (d) Notwithstanding any other provision of law, a guilty verdict ren-
12 dered in a criminal proceeding charging false statements or fraud,
13 whether upon a verdict after trial or upon a plea of guilty or nolo con-
14 tendere, shall estop the defendant from denying the essential elements
15 of the offense in any action which involves the same transaction as in the
16 criminal proceeding and which is brought under section 3, and amend-
17 ments thereto.

18 Sec. 6. (a) The provisions of this act are not exclusive and the rem-
19 edies provided for in this act shall be in addition to any other remedies
20 provided for in any other law or available under common law.

21 (b) This act shall be liberally construed and applied to promote the
22 public interest.

23 Sec. 7. (a) Proceeds recovered as a result of an action filed pursuant
24 to this act shall be distributed in the following order:

25 (1) To refund moneys falsely obtained from the federal government,
26 state government or political subdivision thereof pursuant to subsection
27 (b); and

28 (2) to the state treasurer for deposit in the state general fund pursuant
29 to subsection (c).

30 (b) A portion of the recovery equal to the amount of moneys falsely
31 obtained from the federal government, state government, affected polit-
32 ical subdivision thereof or state agencies, or a combination thereof, shall
33 be remitted to the appropriate entity shown to be defrauded, subject to
34 any further requirements established by federal or state law.

35 (c) That portion of any recovery remitted to the state treasurer pur-
36 suant to subsection (a) shall be remitted to the state treasurer in accord-
37 ance with the provisions of K.S.A. 75-4215, and amendments thereto.
38 Upon receipt of such remittance, the state treasurer shall deposit the
39 entire amount in the state general fund and, subject to any relevant guide-
40 lines of the federal department of health and human services' office of
41 inspector general regarding repayment of fees or recoveries, shall credit
42 10% of such remittance to the false claims litigation revolving fund, which
43 is hereby established in the state treasury. Moneys in the false claims

1 litigation revolving fund may be expended by the attorney general for the
2 purpose of hiring necessary staff and to defray the costs of investigating
3 and litigating ongoing false claims cases and may be shared at the direc-
4 tion of the attorney general with the Kansas medicaid fraud control unit,
5 Kansas bureau of investigation or any county, city or private attorneys
6 who may be utilized or contracted with pursuant to section 4, and amend-
7 ments thereto, in carrying out the purposes of this act and any other
8 operating expenses incurred in administering the Kansas false claims act.
9 All expenditures from the false claims litigation revolving fund shall be
10 made in accordance with appropriation acts upon warrants of the director
11 of accounts and reports issued pursuant to vouchers approved by the
12 attorney general or the attorney general's designee.

13 Sec. 8. Liability pursuant to this act is joint and several for any vio-
14 lation done by two or more persons.

15 Sec. 9. Any action under this act may be brought in any county or
16 district court in which the defendant or, in the case of multiple defen-
17 dants, any one defendant can be found, resides or transacts business or
18 in which any act prohibited by section 3, and amendments thereto,
19 occurred.

20 Sec. 10. If any provision of this act or the application thereof to any
21 person or circumstance is held invalid, the invalidity shall not affect other
22 provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are severable.

25 Sec. 11. This act shall take effect and be in force from and after its
26 publication in the Kansas register.