

SENATE BILL No. 44

AN ACT concerning civil procedure; relating to civil actions and civil penalties; submission of false or fraudulent claims to or the performance of fraudulent acts upon the state or a political subdivision thereof; rules of evidence; admissibility of prior acts or offenses; habeas corpus; infectious disease; amending K.S.A. 60-455 and 60-1505 and repealing the existing sections.

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

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

New Sec. 2. For purposes of this act:

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

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

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

(d) “Person” includes any natural person, corporation, firm, association, organization, partnership, business or trust.

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

(1) Has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

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

New Sec. 3. (a) A person who commits any of the following acts shall be liable to the state or any affected political subdivision thereof, for three times the amount of damages which the state or such political subdivision sustains because of the act of that person and shall be liable to the state for a civil penalty of not less than \$1,000 and not more than \$11,000 for each violation. A person found to have committed any of the following acts shall be liable to the state or such affected political subdivision for all reasonable costs and attorney fees incurred in a civil action brought to recover any of those penalties or damages. The following acts constitute violations for which civil penalties, costs and attorney fees may be recovered by a civil action under this act:

(1) Knowingly presents or causes to be presented to any employee, officer or agent of the state or political subdivision thereof or to any contractor, grantee or other recipient of state funds or funds of any political subdivision thereof, 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 to get a false or fraudulent claim paid or approved;

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

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

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

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

(7) is a beneficiary of an inadvertent submission of a false claim to any employee, officer or agent of the state or political subdivision thereof,

or to any contractor, grantee or other recipient of state funds or funds of any political subdivision thereof, who subsequently discovers the falsity of the claim and fails to disclose the false claim and make satisfactory arrangements for repayment to the state or affected political subdivision thereof within a reasonable time after discovery of the false claim;

(8) conspires to commit any violation set forth in paragraphs (1) through (7), above.

(b) Notwithstanding the provisions of subsection (a), the court may assess not more than two times the amount of damages which the state or any political subdivision thereof sustains because of the act of the person in violation of paragraphs (1) through (8) of subsection (a) and no civil penalty shall be imposed, if the court finds all of the following:

(1) The person committing the violation furnished officials of the state who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;

(2) the person fully cooperated with any investigation by the state; and

(3) at the time the person furnished the state with information about the violation, no criminal prosecution, civil action or administrative action had commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) In a civil action brought pursuant to subsection (a), proof of specific intent to defraud is not required. An innocent mistake shall be a defense to an action under this act.

(d) This section does not apply to claims, records or statements related to state taxation law made pursuant to chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 4. (a) The attorney general shall diligently investigate a violation under section 3, and amendments thereto. If the attorney general finds that a person has violated or is violating section 3, and amendments thereto, the attorney general may bring a civil action under this section against that person. Further, the attorney general may utilize the assistance of city and county attorneys in cases involving their respective political subdivisions or may utilize funds available pursuant to section 8, and amendments thereto, to engage the services of private attorneys to assist in carrying out the purposes of this act, or both, at times when the attorney general determines the need exists. All local prosecutors and private attorneys shall only participate at the request, and under the direction of, the attorney general.

(b) Except as provided in section 6, and amendments thereto, nothing in this act shall be construed to create a private cause of action.

New Sec. 5. (a) A civil action under section 3, and amendments thereto, may not be brought: (1) More than 6 years after the date on which the violation was committed; or

(2) more than 3 years after the date on which the violation was discovered or reasonably should have been discovered, but in no event more than 10 years after the date on which the violation was committed, whichever occurs last.

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

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

(d) Notwithstanding any other provision of law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under section 3, and amendments thereto.

New Sec. 6. Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner retaliated against in the terms and conditions of employment by such employee's employer because of lawful acts undertaken in good faith by the employee on behalf of the employee or others, in furtherance of an action under this act,

including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this act, shall be entitled to all relief necessary to make the employee whole. An employee may bring an action in the appropriate district court for the relief provided in this section. This section shall not be construed to create any private cause of action for violations of this act and is limited to the remedies expressly created by this section related to employment retaliation.

New Sec. 7. (a) The provisions of this act are not exclusive and the remedies provided for in this act shall be in addition to any other remedies provided for in any other law or available under common law.

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

New Sec. 8. (a) Proceeds recovered as a result of an action filed pursuant to this act shall be distributed in the following order:

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

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

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

(c) That portion of any recovery remitted to the state treasurer pursuant to subsection (a) shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state general fund and, subject to any relevant guidelines of the federal department of health and human services' office of inspector general regarding repayment of fees or recoveries, shall credit 10% of such remittance to the false claims litigation revolving fund, which is hereby established in the state treasury. Moneys in the false claims litigation revolving fund may be expended by the attorney general for the purpose of hiring necessary staff and to defray the costs of investigating and litigating ongoing false claims cases and may be shared at the direction of the attorney general with the Kansas medicaid fraud control unit, Kansas bureau of investigation or any county, city or private attorneys who may be utilized or contracted with pursuant to section 4, and amendments thereto, in carrying out the purposes of this act and any other operating expenses incurred in administering the Kansas false claims act. All expenditures from the false claims litigation revolving fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee.

New Sec. 9. Liability pursuant to this act is joint and several for any violation done by two or more persons.

New Sec. 10. Any action under this act may be brought in the district court of any county in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides or transacts business or in which any act prohibited by section 3, and amendments thereto, occurred.

New Sec. 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 12. K.S.A. 60-455 is hereby amended to read as follows: 60-455.

(a) Subject to K.S.A. 60-447, *and amendments thereto*, evidence that a person committed a crime or civil wrong on a specified occasion, is inadmissible to prove ~~his or her~~ *such person's* disposition to commit crime or civil wrong as the basis for an inference that the person committed another crime or civil wrong on another specified occasion ~~but~~.

(b) Subject to K.S.A. 60-445 and 60-448, *and amendments thereto*, such evidence is admissible when relevant to prove some other material

fact including motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

(c) *Subject to K.S.A. 60-445 and 60-448, and amendments thereto, in any criminal action other than a criminal action in which the defendant is accused of a sex offense under articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, such evidence is admissible to show the modus operandi or general method used by a defendant to perpetrate similar but totally unrelated crimes when the method of committing the prior acts is so similar to that utilized in the current case before the court that it is reasonable to conclude the same individual committed both acts.*

(d) *Except as provided in K.S.A. 60-445, and amendments thereto, in a criminal action in which the defendant is accused of a sex offense under articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, evidence of the defendant's commission of another act or offense of sexual misconduct is admissible, and may be considered for its bearing on any matter to which it is relevant and probative.*

(e) *In a criminal action in which the prosecution intends to offer evidence under this rule, the prosecuting attorney shall disclose the evidence to the defendant, including statements of witnesses, at least 10 days before the scheduled date of trial or at such later time as the court may allow for good cause.*

(f) *This rule shall not be construed to limit the admission or consideration of evidence under any other rule or to limit the admissibility of the evidence of other crimes or civil wrongs in a criminal action under a criminal statute other than in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.*

(g) *As used in this section, an "act or offense of sexual misconduct" includes:*

(1) *Any conduct proscribed by article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto;*

(2) *the sexual gratification component of aggravated trafficking, as described in subsection (a)(1)(B) and (a)(2) of K.S.A. 21-3447, and amendments thereto;*

(3) *exposing another to a life threatening communicable disease, as described in subsection (a)(1) of K.S.A. 21-3435, and amendments thereto;*

(4) *incest, as described in K.S.A. 21-3602, and amendments thereto;*

(5) *aggravated incest, as described in K.S.A. 21-3603, and amendments thereto;*

(6) *contact, without consent, between any part of the defendant's body or an object and the genitals, mouth or anus of the victim;*

(7) *contact, without consent, between the genitals, mouth or anus of the defendant and any part of the victim's body;*

(8) *deriving sexual pleasure or gratification from the infliction of death, bodily injury or physical pain to the victim;*

(9) *an attempt, solicitation or conspiracy to engage in conduct described in paragraphs (1) through (8); or*

(10) *any federal or other state conviction of an offense, or any violation of a city ordinance or county resolution, that would constitute an offense under article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, the sexual gratification component of aggravated trafficking, as described in subsection (a)(1)(B) and (a)(2) of K.S.A. 21-3447, and amendments thereto; incest, as described in K.S.A. 21-3602, and amendments thereto; or aggravated incest, as described in K.S.A. 21-3603, and amendments thereto, or involved conduct described in paragraphs (6) through (9).*

(h) *If any provisions of this section or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or application. To this end the provisions of this section are severable.*

Sec. 13. K.S.A. 60-1505 is hereby amended to read as follows: 60-1505. (a) *Summary proceedings.* The judge shall proceed in a summary way to hear and determine the cause and may do so regardless of whether the person restrained is present. If the plaintiff is an inmate in the custody of the secretary of corrections and the motion and the files and records

of the case conclusively show that the inmate is entitled to no relief, the writ shall be dissolved at the cost of the inmate.

(b) *Infectious diseases.* When any person is restrained because of an alleged infectious or communicable disease, the judge ~~shall appoint a board of not less than two competent physicians to make an examination of such person and report their findings to the judge.~~ *may appoint at least one competent physician to make an examination of such person and report findings to the judge.*

(c) *Temporary orders.* The judge may make an order for the temporary custody of the party and any other temporary orders during the pendency of the proceeding that justice may require.

(d) *Judgment.* If the court determines that the restraint is not wrongful, the writ shall be dissolved at the cost of the plaintiff. If the restraint is found to be wrongful, the judgment shall be either that the person shall be released, or that custody shall be transferred to some other person rightfully entitled thereto, and the court may make such other orders as justice and equity or the welfare of a minor physically present in the state may require. In cases in which the person restrained is a minor, or other incompetent or incapacitated, at the time of rendering judgment at the request of any person adversely affected thereby, the judge shall stay the enforcement of the judgment for a period of not to exceed 48 hours to permit the filing of an appeal, and the judge may provide for the temporary custody of the person during such stay in such manner as the judge sees fit. Enforcement of the judgment after the taking of any appeal may be stayed on such terms and conditions, including such provisions for custody during pendency of the appeal, as the judge shall prescribe. If the state, in open court, announces its intention to appeal from an order discharging a prisoner, the judge shall stay the enforcement of the judgment for a period not more than 24 hours to permit the filing of an appeal.

(e) (1) *The Record.* In habeas corpus proceedings involving extradition to another state, when written notice of appeal from a judgment or an order is filed, the transcript shall be prepared within 20 days after the notice of appeal is filed and sent to the appellate court for review. The appellate court may shorten or extend the time for filing the record if there is a reasonable explanation for the need for such action. When the record is received by the appellate court, the court shall set the time for filing of briefs, if briefs are desired, and shall set the appeal for submission.

(2) *Hearing.* Such cases, taken to the court of appeals by appeal, shall be heard at the earliest practicable time. The appellant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court shall be reviewed.

(3) *Orders on Appeal.* In such cases, the appellate court shall render such judgment and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no cost at all.

Sec. 14. K.S.A. 60-455 and 60-1505 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.