

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1437

By: Kerr

AS INTRODUCED

An Act relating to public finance; creating the Oklahoma False Claims Act; providing short title; defining terms; providing that person committing enumerated acts be liable to state or political subdivision for certain damages; specifying circumstances where certain provisions not applicable; allowing court or jury to assess certain damages upon certain finding; providing that liability be joint and several for certain act; specifying certain duties and authority of Attorney General or prosecuting authority; requiring certain notification; authorizing certain civil actions; providing procedures related thereto; requiring certain notice and service; allowing certain interventions and extensions; specifying time for response by defendant; barring certain actions; limiting jurisdiction of courts; authorizing settlement with respect to certain actions; specifying apportionment of certain proceeds of action or claim settlement; providing for payment of certain costs and expenses; providing for stay of discovery under certain circumstances; allowing court to impose limitations on participation by certain persons; creating Oklahoma False Claims Act Fund; providing for deposit thereto and expenditure therefrom; specifying burden of proof; specifying certain consequences of guilty verdict, plea of nolo contendere or civil judgment; providing for nonexclusivity of certain provisions; providing severability; providing for liberal construction and application; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 375 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma False Claims Act".

B. For purposes of this act:

1. "Claim" includes:

- a. any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state, hereinafter referred to as "state funds", or by any political subdivision thereof, hereinafter referred to as "political subdivision funds", and
- b. any report of an obligation to pay and transmit money or property to the state or to any political subdivision;

2. "Knowing" and "knowingly" mean that a person, with respect to information:

- a. has actual knowledge of the information,
- b. acts in deliberate ignorance of the truth or falsity of the information, or
- c. acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required;

3. "Political subdivision" includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries;

4. "Prosecuting authority" refers to the county counsel, city attorney, or other state, county, city or local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of the state or any particular political subdivision, other than the Attorney General;

5. "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, trust or any other entity; and

6. "State" includes the State of Oklahoma or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of the State.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 376 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three times the amount of damages which the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall also be liable for additional damages to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, including but not limited to the attorneys' fees set forth in Section 3 of this act, expert witness fees and other litigation costs, and may be liable to the state or political subdivision for a civil penalty of up to Ten Thousand dollars (\$10,000.00) for each false claim:

1. Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment, approval or acceptance;

2. Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid, approved, or accepted by the state or by any political subdivision;

3. Conspires to defraud the state or any political subdivision by getting a false claim allowed, paid, or accepted by the state or by any political subdivision;

4. Has possession, custody, or control of property or money used by, or to be used by, or owed to, or should be delivered to the state or any political subdivision and knowingly delivers or causes to be delivered less money or property than the amount for which the person is required to deliver;

5. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision, or certifying the amount of proceeds to be delivered to the state or to any political subdivision, and knowingly makes or delivers a document that falsely represents the property used, to be used, or owed;

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. Knowingly makes, uses, or causes to be 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; or

8. Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time, but in no event more than thirty (30) days after discovery of the false claim.

Notwithstanding anything to the contrary contained herein, this act shall not apply to the reporting or payment of state income taxes.

B. Notwithstanding the provisions of subsection A of this section, the court, or jury if so requested, may assess not less than two times and not more than three times the amount of damages which the state or the political subdivision sustains because of the act of the person described in subsection A of this section, and no civil penalty, if the court, or jury if so requested, finds all of the following:

1. The person committing the violation furnished officials of the state or of the political subdivision responsible for investigating false claims violations with all information known to

that person about the violation within thirty (30) days after the date on which the person first obtained the information;

2. The person fully cooperated with any investigation by the state or a political subdivision of the violation; and

3. At the time the person furnished the state or the political subdivision 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. Liability under this section shall be joint and several for any act committed by two or more persons or for acts committed which would create joint and several liability under other theories of law.

D. This section does not apply to any controversy involving an amount of less than Five Hundred Dollars (\$500.00) in value. For purposes of this subsection, "controversy" means the aggregate of all false claims submitted by the same person in violation of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 377 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. 1. The Attorney General shall diligently investigate violations under Section 2 of this act involving state funds. If the Attorney General finds that a person has violated or is violating the provisions of Section 2 of this act, the Attorney General may bring a civil action under this section against that person.

2. If the Attorney General brings a civil action under this subsection on a claim involving political subdivision funds as well as state funds, the Attorney General shall, on the same date that the complaint is filed in this action, serve by mail with "return

receipt requested" a copy of the complaint on the appropriate prosecuting authority.

3. The prosecuting authority shall have the right to intervene in an action brought by the Attorney General under this subsection within sixty (60) days after receipt of the complaint pursuant to paragraph 2 of this subsection. The court may permit intervention thereafter upon a showing that all of the requirements of Section 2024 of Title 12 of the Oklahoma Statutes have been met.

B. 1. The prosecuting authority of a political subdivision shall diligently investigate violations under Section 2 of this act involving political subdivision funds. If the prosecuting authority finds that a person has violated or is violating the provisions of Section 2 of this act, the prosecuting authority may bring a civil action under this section against that person.

2. If the prosecuting authority brings a civil action under this section on a claim involving state funds as well as political subdivision funds, the prosecuting authority shall, on the same date that the complaint is filed in this action, serve a copy of the complaint on the Attorney General.

3. Within sixty (60) days after receiving the complaint pursuant to paragraph 2 of this subsection, the Attorney General shall do either of the following:

a. notify the court that it intends to proceed with the action, in which case the Attorney General shall assume primary responsibility for conducting the action and the prosecuting authority shall have the right to continue as a party, or

b. notify the court that it declines to proceed with the action, in which case the prosecuting authority shall have the right to conduct the action.

C. 1. Any person may bring a civil action for a violation of this act for the person and either for this state in the name of the

state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are exclusively involved. Civil actions instituted under this act shall be governed by the Oklahoma Rules of Civil Procedure. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only upon order of the court, taking into account the best interests of the parties involved and the public purposes behind this act.

2. A complaint filed by a private person under this subsection shall be filed in district court in camera and may remain under seal for up to sixty (60) days. No service shall be made on the defendant until after the complaint is unsealed.

3. On the same day as the complaint is filed pursuant to paragraph 2 of this subsection, the qui tam plaintiff shall serve by mail with "return receipt requested" the Attorney General with a copy of the complaint and a written disclosure of material evidence and information the person possesses.

4. Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve state funds, but not political subdivision funds, the Attorney General may elect to intervene and proceed with the action.

5. The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to paragraph 2 of this subsection. The motion may be supported by affidavits or other submissions in camera.

6. Before the expiration of the sixty-day period or any extensions obtained under paragraph 5 of this subsection, the Attorney General shall do either of the following:

- a. notify the court that it intends to proceed with the action, in which case the action shall be conducted by the Attorney General and the seal shall be lifted, or
 - b. notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.
- 7.
- a. Within 15 days after receiving a complaint alleging violations that exclusively involve political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure of material evidence and information to the appropriate prosecuting authority for disposition, and shall notify the qui tam plaintiff of the transfer.
 - b. Within forty-five (45) days after the Attorney General forwards the complaint and written disclosure pursuant to subparagraph a of this paragraph, the prosecuting authority may elect to intervene and proceed with the action.
 - c. The prosecuting authority may, for good cause shown, move for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera.
 - d. Before the expiration of the forty-five-day period or any extensions obtained under subparagraph c of this paragraph, the prosecuting authority shall do either of the following:
 - (1) notify the court that it intends to proceed with the action, in which case the action shall be conducted by the prosecuting authority and the seal shall be lifted, or

(2) notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

8. a. Within fifteen (15) days after receiving a complaint alleging violations that involve both state and political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure to the appropriate prosecuting authority, and shall coordinate its review and investigation with those of the prosecuting authority.
- b. Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve both state and political subdivision funds, the Attorney General or the prosecuting authority, or both, may elect to intervene and proceed with the action.
- c. The Attorney General or the prosecuting authority, or both, may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph 2 of this subsection. The motion may be supported by affidavits or other submissions in camera.
- d. Before the expiration of the sixty-day period or any extensions obtained under subparagraph c of this paragraph, the Attorney General shall do one of the following:
 - (1) notify the court that it intends to proceed with the action, in which case the action shall be conducted by the Attorney General and the seal shall be lifted,

- (2) notify the court that it declines to proceed with the action but that the prosecuting authority of the political subdivision involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the prosecuting authority, or
- (3) notify the court that both it and the prosecuting authority decline to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

e. If the Attorney General proceeds with the action pursuant to division (1) of subparagraph d of this paragraph, the prosecuting authority of the political subdivision shall be permitted to intervene in the action within sixty (60) days after the Attorney General notifies the court of its intentions. The court may authorize intervention thereafter upon a showing that all the requirements of Section 2024 of Title 12 of the Oklahoma Statutes have been met.

9. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant pursuant to the provisions of Section 2004 of Title 12 of the Oklahoma Statutes.

10. When a person brings an action under this subsection and the action is still pending, no other person, including the state or political subdivision, may bring a related action based on the facts underlying the pending action. In the event that a person, the state or a political subdivision, files a related action based on the facts underlying the pending action, the court in the subsequent action shall dismiss the action without prejudice upon disclosure of the prior pending action.

D. 1. No court shall have jurisdiction over an action brought under subsection C of this section against a member of the State Senate or House of Representatives, a member of the state judiciary, an elected official in the executive branch of the state, or a member of the governing body of any political subdivision if the action is based on evidence or information known to the state or political subdivision when the action was brought.

2. A person may not bring an action under subsection C of this section that is based upon allegations or transactions that are the subject of a pending civil suit or an administrative civil money penalty proceeding in which the state or political subdivision is already a party.

3. No court shall have jurisdiction over an action brought under subsection C of this section based upon information discovered by a present or former employee of the state or a political subdivision during the course of his or her employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the state or political subdivision failed to act on the information provided within a reasonable period of time.

E. 1. If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

2. a. Notwithstanding the provisions of paragraph 10 of subsection C of this section, the state or political subdivision may seek to dismiss the action for good cause, notwithstanding the objections of the qui tam plaintiff, if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam

plaintiff with an opportunity to oppose the motion and present evidence at a hearing. The burden to establish good cause shall be borne by the state or political subdivision.

- b. The state or political subdivision may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

F. 1. If the state or political subdivision elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the Attorney General or prosecuting authority would have had if it had chosen to proceed under subsection C of this section. If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

2. a. Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

- b. If the state or political subdivision is allowed to intervene under subparagraph a of this paragraph, the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

- G. 1. a. If the Attorney General initiates an action pursuant to subsection A of this section or assumes control of an action initiated by a prosecuting authority pursuant to subparagraph a of paragraph 3 of subsection B of this section, the office of the Attorney General shall receive a fixed thirty-five percent (35%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.
- b. If a prosecuting authority initiates and conducts an action pursuant to subsection B of this section, the office of the prosecuting authority shall receive a fixed thirty-five percent (35%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.
- c. If a prosecuting authority intervenes in an action initiated by the Attorney General pursuant to paragraph 3 of subsection A of this section or remains a party to an action assumed by the Attorney General pursuant to subparagraph a of paragraph 3 of subsection B of this section, the court may award the office of the prosecuting authority a portion of the Attorney General's fixed thirty-five percent (35%) of the recovery under subparagraph a of this paragraph, taking into account the prosecuting authority's role in investigating and conducting the action.

2. If the state or political subdivision proceeds with an action brought by a qui tam plaintiff under subsection C of this section, the qui tam plaintiff shall, subject to paragraphs 4 and 5 of this subsection, receive at least fifteen percent (15%) but not

more than thirty-five percent (35%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action filed by a qui tam plaintiff, the Attorney General's office or the office of the prosecuting authority of the political subdivision shall receive at least fifteen percent (15%), but not more than thirty-five percent (35%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims made against the state or political subdivision. When both the Attorney General and a prosecuting authority are involved in a qui tam action pursuant to subparagraph c of paragraph 6 of subsection C of this section, the court at its discretion may award the prosecuting authority a portion of the Attorney General's percent of the recovery, taking into account the prosecuting authority's contribution to investigating and conducting the action. In no event shall the total percentage of the proceeds of the action or settlement of the claim awarded to the qui tam plaintiff, the Attorney General and the prosecuting authority be greater than fifty percent (50%) of the total proceeds of the action or settlement of the claim.

3. If the state or political subdivision does not proceed with an action under subsection C of this section, the qui tam plaintiff shall, subject to paragraphs 4 and 5 of this subsection, receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government. The amount shall be not less than thirty-five percent (35%) and not more than fifty percent (50%) of the proceeds of the action or settlement and shall be paid out of these proceeds.

4. If the action is one provided for under paragraph 3 of subsection D of this section, the present or former employee of the state or political subdivision is not entitled to any minimum

guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff those sums from the proceeds as it considers appropriate, but in no case more than thirty-five percent (35%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

5. If the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff any sums from the proceeds that it considers appropriate, but in no case more than thirty-five percent (35%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

6. The portion of the recovery not distributed pursuant to paragraphs 1 through 5 of this subsection shall revert to the state if the underlying false claims involved state funds exclusively and to the political subdivision if the underlying false claims involved political subdivision funds exclusively. If the violation involved both state and political subdivision funds, the court shall make an apportionment between the state and political subdivision based on their relative share of the funds falsely claimed.

7. For purposes of this section, "proceeds" include civil penalties as well as double or treble damages as provided in Section 2 of this act.

8. If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subsection C of this section, the qui tam plaintiff shall receive an amount for reasonable costs and expenses, including expert witness fees, that the court finds to have been necessarily incurred. The qui tam plaintiff shall also be entitled to a reasonable attorney's fee of no less than thirty-five percent (35%) and not more than fifty percent (50%) of the proceeds of the action or settlement. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

9. If the state, a political subdivision, or the qui tam plaintiff proceeds with the action, the court may award to the defendant its reasonable attorney's fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought solely for purposes of harassment.

H. The court may stay an act of discovery of the person initiating the action for a period of not more than sixty (60) days if the Attorney General or local prosecuting authority show that the act of discovery would interfere with an investigation or a prosecution of a criminal or civil matter arising out of the same facts, regardless of whether the Attorney General or local prosecuting authority proceeds with the action. This showing shall be conducted in camera.

The court may extend the sixty-day period upon a further showing in camera that the Attorney General or local prosecuting authority has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action

will interfere with the ongoing criminal or civil investigation or proceedings.

I. Upon a showing by the Attorney General or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's or local prosecuting authority'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, including the following:

1. Limiting the number of witnesses the person may call;
2. Limiting the length of the testimony of the witnesses;
3. Limiting the person's cross-examination of witnesses; or
4. Otherwise limiting the participation by the person in the litigation.

J. The Oklahoma False Claims Act Fund is hereby created in the State Treasury. Proceeds from the action or settlement of the claim by the Attorney General pursuant to this act shall be deposited into this fund. Monies in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support the ongoing investigation and prosecution of false claims in furtherance of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 378 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. In any action brought under Section 3 of this act, the state, the political subdivision, or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence, unless the burden is placed upon the defendant by other statutes or applicable case law.

B. 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 subsection A, B or C of Section 3 of this act.

C. Notwithstanding any other provision of law, a judgment upon a jury verdict rendered in a civil proceeding against a defendant shall estop the defendant from denying the essential elements of the jury's verdict in any action which involves the same or similar transaction as in the prior civil proceeding and which is brought under subsection A, B or C of Section 3 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 379 of Title 62, unless there is created a duplication in numbering, reads as follows:

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. If any provision of this act or the application thereof to any person or circumstance is held to be unconstitutional, the remainder of the act and the application of the provision to other persons or circumstances shall not be affected thereby.

C. This act shall be liberally construed and applied to promote the public interest.

D. This act shall apply to any circumstance described in Section 2 of this act which has not been remedied as of, or which occurs after, the effective date of this act.

SECTION 6. This act shall become effective November 1, 2002.

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