

3 Senate Bill No. 699

4 SENATE BILL NO. 699 - By: Crain of the Senate and Cox of the House.

5 An Act relating to the Oklahoma Medicaid False Claims Act;
6 amending Sections 5 and 6, Chapter 137, O.S.L. 2007 (63 O.S.
7 Supp. 2008, Sections 5053.4 and 5053.5), which relate to
8 actions brought by individuals; removing limitation on
9 reduction of certain proceeds; updating statutory reference;
10 removing prohibition of action brought by certain
11 individuals; and providing an effective date.

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

13 SECTION 1. AMENDATORY Section 5, Chapter 137, O.S.L.
14 2007 (63 O.S. Supp. 2008, Section 5053.4), is amended to read as
15 follows:

16 Section 5053.4 A. 1. If the state proceeds with an action
17 brought by a person under subsection B of Section ~~3~~ 5053.2 of this
18 ~~act~~ title, the person shall, subject to paragraph 2 of this
19 subsection, receive at least fifteen percent (15%) but not more than
20 twenty-five percent (25%) of the proceeds of the action or
21 settlement of the claim, depending upon the extent to which the
22 person substantially contributed to the prosecution of the action.

23 2. Where the action is one which the court finds to be based
24 primarily on disclosures of specific information other than
25 information provided by the person bringing the action relating to
26 allegations or transactions in a criminal, civil, or administrative

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1 hearing, in a Congressional, legislative, administrative, or State
2 Auditor and Inspector report, hearing, audit, or investigation, or
3 from the news media, the court may award such sums as it considers
4 appropriate, but in no case more than ten percent (10%) of the
5 proceeds, taking into account the significance of the information
6 and the role of the person bringing the action in advancing the case
7 to litigation.

8 3. Any payment to a person under paragraph 1 or 2 of this
9 subsection shall be made from the proceeds. Any such person shall
10 also receive an amount for reasonable expenses which the court finds
11 to have been necessarily incurred, plus reasonable attorney fees and
12 costs. All such expenses, fees, and costs shall be awarded against
13 the defendant.

14 B. If the state does not proceed with an action under this
15 section, the person bringing the action or settling the claim shall
16 receive an amount which the court decides is reasonable for
17 collecting the civil penalty and damages. The amount shall be not
18 less than twenty-five percent (25%) and not more than thirty percent
19 (30%) of the proceeds of the action or settlement and shall be paid
20 out of the proceeds. The person shall also receive an amount for
21 reasonable expenses which the court finds to have been necessarily
22 incurred, plus reasonable attorney fees and costs. All such
23 expenses, fees, and costs shall be awarded against the defendant.

1 C. Whether or not the state proceeds with the action, if the
2 court finds that the action was brought by a person who planned,
3 initiated, or participated in the violation of the Oklahoma Medicaid
4 False Claims Act upon which the action was brought, then the court
5 may, to the extent the court considers appropriate, reduce the share
6 of the proceeds of the action which the person would otherwise
7 receive under subsection A or B of this section ~~to no more than ten~~
8 ~~percent (10%),~~ taking into account the role of that person in
9 advancing the case to litigation and any relevant circumstances
10 pertaining to the violation. If the person bringing the action is
11 convicted of criminal conduct arising from his or her role in the
12 violation of the Oklahoma Medicaid False Claims Act, that person
13 shall be dismissed from the civil action and shall not receive any
14 share of the proceeds of the action. The dismissal shall not
15 prejudice the right of this state to continue the action,
16 represented by the Office of the Attorney General or its assigns.

17 D. ~~The court shall reduce the share of the proceeds of the~~
18 ~~action which the person would otherwise receive to no more than ten~~
19 ~~percent (10%) of the proceeds of the action if:~~

20 ~~1. An action brought under subsection B of Section 3 of this~~
21 ~~act is based upon allegations or transactions of which the person~~
22 ~~bringing the action became aware while employed by, or under~~
23 ~~contract to, or serving as an agent for a defendant; and~~

1 ~~2. The person bringing the action failed to make an effective~~
2 ~~disclosure of those allegations or transactions under the corporate~~
3 ~~compliance plan of that defendant.~~

4 ~~E.~~ If the state does not proceed with the action and the person
5 bringing the action conducts the action, the court may award to the
6 defendant its reasonable attorney fees and expenses if the defendant
7 prevails in the action and the court finds that the claim of the
8 person bringing the action was clearly frivolous, clearly vexatious,
9 or brought primarily for purposes of harassment.

10 SECTION 2. AMENDATORY Section 6, Chapter 137, O.S.L.
11 2007 (63 O.S. Supp. 2008, Section 5053.5), is amended to read as
12 follows:

13 Section 5053.5 A. In no event may a person bring an action
14 under subsection B of Section ~~3~~ 5053.2 of this ~~act~~ title which is
15 based upon allegations or transactions which are the subject of a
16 civil suit or an administrative civil money penalty proceeding in
17 which the state is already a party.

18 B. No court shall have jurisdiction over an action under this
19 section based upon the public disclosure of allegations or
20 transactions in a criminal, civil, or administrative hearing, in a
21 Congressional, legislative, administrative, or State Auditor and
22 Inspector report, hearing, audit, or investigation, or from the news
23 media, unless the action is brought by the Attorney General or the

1 person bringing the action is an original source of the information.
2 For purposes of this subsection, "original source" means an
3 individual who has direct and independent knowledge of the
4 information on which the allegations are based and has voluntarily
5 provided the information to the state before filing an action under
6 this section which is based on the information.

7 ~~C. In no event may a person bring an action under subsection B~~
8 ~~of Section 3 of this act that is based on allegations or~~
9 ~~transactions that the person knew or had reason to know were known~~
10 ~~to the Attorney General or the other law enforcement officials of~~
11 ~~the state prior to that person filing the action or serving the~~
12 ~~disclosure of the material evidence.~~

13 ~~D.~~ The state is not liable for expenses which a person incurs
14 in bringing an action under this section.

15 ~~E.~~ D. In civil actions brought under this section by this
16 state, the provisions of Title 28 of the Oklahoma Statutes shall
17 apply.

18 ~~F.~~ E. Any employee who is discharged, demoted, suspended,
19 threatened, harassed, or in any other manner discriminated against
20 in the terms and conditions of employment by his or her employer
21 because of lawful acts done by the employee on behalf of the
22 employee or others in furtherance of an action under this act,
23 including investigation for, initiation of, testimony for, or

1 assistance in an action filed or to be filed, shall be entitled to
2 all relief necessary to make the employee whole. Such relief shall
3 include reinstatement with the same seniority status such employee
4 would have had but for the discrimination, two times the amount of
5 back pay, interest on the back pay, and compensation for any special
6 damages sustained as a result of the discrimination, including
7 litigation costs and reasonable attorney fees. An employee may
8 bring an action in the appropriate district court of the State of
9 Oklahoma for the relief provided in this subsection.

10 SECTION 3. This act shall become effective November 1, 2009.

11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-10-09 - DO
12 PASS, As Coauthored.