

1 **SENATE FLOOR VERSION**

2 February 28, 2011

3 As Amended

4 SENATE BILL NO. 331

5 By: Johnson (Rob) of the Senate

6 and

7 Jordan of the House

8 An Act relating to fraudulent claims; amending 62
9 O.S. 2001, Sections 372, as amended by Section 8,
10 Chapter 367, O.S.L. 2008, and 373 (62 O.S. Supp.
11 2010, Section 372), which relate to liability of
12 public officers and taxpayer instituted lawsuits;
13 modifying certain liability; modifying number of
14 persons required to institute certain action;
15 deleting certain penalty; providing for return of
16 certain property under specified circumstances;
17 providing for payment of certain fees and costs; and
18 providing an effective date.

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

20 SECTION 1. AMENDATORY 62 O.S. 2001, Section 372, as
21 amended by Section 8, Chapter 367, O.S.L. 2008 (62 O.S. Supp. 2010,
22 Section 372), is amended to read as follows:

23 Section 372. Every officer of the state and of any county,
24 ~~township,~~ city, town or school district, who shall hereafter order
or direct the payment of any money or transfer of any property
belonging to the state or to such county, city, town or school
district, in settlement of any claim or in pursuance of any

1 unauthorized, unlawful or fraudulent contract or agreement made ~~or~~
2 ~~attempted to be made~~, for the state or any such county, city, town
3 or school district, by any officer thereof, known to such officer to
4 be fraudulent or void, and every person, having notice of the facts,
5 with whom such unauthorized, unlawful or fraudulent contract shall
6 have been made, or to whom, or for whose benefit such money shall be
7 paid or such transfer of property shall be made, ~~shall be jointly~~
8 ~~and severally liable in damage to all innocent persons in any manner~~
9 ~~injured thereby, and shall be furthermore~~ jointly and severally
10 liable to the state, county, city, town or school district affected,
11 for triple the amount of all such sums of money so paid, ~~and~~ or
12 triple the value of property so transferred, as a penalty, to be
13 recovered at the suit of the proper officers of the state or such
14 county, city, town or school district, or of any resident taxpayer
15 thereof, pursuant to Section 373 of this title; provided, however,
16 no action for personal liability shall lie against any such officer
17 for a transaction approved in good-faith reliance on advice of legal
18 counsel for the public entity authorizing the transaction or which
19 has been submitted to a court of competent jurisdiction for
20 determination of legality.

21 SECTION 2. AMENDATORY 62 O.S. 2001, Section 373, is
22 amended to read as follows:

23 Section 373. Upon the refusal, failure, or neglect of the
24 proper officers of the state or of any county, ~~township,~~ city, town,

1 or school district, after written demand signed, verified and served
2 upon them by ~~ten resident taxpayers~~ a number of registered voters of
3 the state or such county, ~~township,~~ city, town, or school district
4 equal to one hundred (100), or **two and one-half percent (2 1/2%)** of
5 the registered voters living within the state or such county, city,
6 town or school district, whichever is less, to institute or
7 diligently prosecute proper proceedings at law or in equity for the
8 recovery of any money or property belonging to the state, or such
9 county, ~~township,~~ city, town, or school district, paid out or
10 transferred by any officer thereof in pursuance of any unauthorized,
11 unlawful, fraudulent, or void contract made, or attempted to be
12 made, by any of its officers for the state or any such county,
13 ~~township,~~ city, town, or school district, ~~or for the penalty~~
14 ~~provided in the preceding section,~~ any resident taxpayer of the
15 state or such county, ~~township,~~ city, town, or school district
16 affected by such payment or transfer after serving the notice
17 aforesaid and after giving security for cost, may in the name of the
18 State of Oklahoma as plaintiff, institute and maintain any proper
19 action which the proper officers of the state, county, ~~township,~~
20 city, town, or school district might institute and maintain for the
21 recovery of such property, ~~or for said penalty;~~ and the state or
22 such municipality county, city, town or school district shall in
23 such event be made defendant, ~~and one-half (1/2) the amount of money~~
24 ~~and one-half (1/2) the value of the property recovered in any action~~

1 ~~maintained at the expense of a resident taxpayer under this section,~~
2 ~~shall be paid to such resident taxpayer as a reward. If a court of~~
3 ~~competent jurisdiction determines the claims to be meritorious, the~~
4 ~~contract shall be deemed void and the money or property, if~~
5 ~~previously transferred, shall be returned to the state, county,~~
6 ~~city, town or school district. The state, county, city, town or~~
7 ~~school district shall be liable to the resident taxpayer or~~
8 ~~taxpayers for reasonable attorney fees and court costs incurred in~~
9 ~~the prosecution of the action.~~ If all claims stated by the resident
10 taxpayers in the written demand are determined in a court of
11 competent jurisdiction to be frivolous, the resident taxpayers who
12 signed such demand and who are parties to the lawsuit in which such
13 claims are determined to be frivolous shall be jointly and severally
14 liable for all reasonable attorney fees and court costs incurred by
15 any public officer or officers or any other person alleged in such
16 demand to have paid out, transferred, or received any money or
17 property belonging to the state, or such county, ~~township,~~ city,
18 town or school district in pursuance of any alleged unauthorized,
19 unlawful, fraudulent, or void claim paid or contract or conveyance
20 made, or attempted to be made, by such officer or officers.

21 SECTION 3. This act shall become effective November 1, 2011.

22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-11 - DO
23 PASS, As Amended and Coauthored.

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