

HOUSE BILL No. 2375

By Committee on Appropriations

2-19

1 AN ACT concerning the Kansas false claims act; relating to private
2 plaintiffs maintaining actions; amending K.S.A. 2018 Supp. 75-7502,
3 75-7503, 75-7504, 75-7506, 75-7507 and 75-7508 and repealing the
4 existing sections.
5

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

7 New Section 1. (a) Except as otherwise provided in this section, a
8 private plaintiff may maintain an action pursuant to this act on such
9 plaintiff's own account and that of the state, if money, property or services
10 provided by the state are involved, or on such plaintiff's own account and
11 that of a political subdivision, if money, property or services provided by
12 the political subdivision, are involved, or on such plaintiff's own account
13 and that of both the state and a political subdivision if both are involved.
14 After such an action is commenced, it may be dismissed only for good
15 cause shown with written consent of the court and the attorney general.
16 The court and the attorney general shall take into account the public
17 purposes of this act and the best interests of the parties in dismissing the
18 action or consenting to the dismissal and provide the reasons for
19 dismissing the action or consenting to the dismissal.

20 (b) If a private plaintiff brings an action pursuant to this act, no other
21 person may bring another action pursuant to this act based on the same
22 facts and claims.

23 (c) An action may not be maintained by a private plaintiff pursuant to
24 this act:

25 (1) Against a member of the legislature or the judiciary, an elected
26 officer of the executive department of the state government, or a member
27 of the governing body of a political subdivision, if the action is based upon
28 evidence or information known to the state or political subdivision at the
29 time the action was brought; or

30 (2) if the action is based upon allegations or transactions that are the
31 subject of a civil action or an administrative proceeding for a monetary
32 penalty to which the state or political subdivision is already a party.

33 (d) A complaint filed pursuant to this section shall be placed under
34 seal for at least 60 days and shall remain until the attorney general has
35 elected whether to intervene. No service may be made upon the defendant
36 until the complaint is unsealed. The defendant shall respond within 20

1 days after a complaint is filed and served upon the defendant pursuant to
2 this act.

3 (e) On the date the private plaintiff files a complaint, such private
4 plaintiff shall send a copy of the complaint to the attorney general by mail
5 with return receipt requested. Such private plaintiff shall send with each
6 copy of the complaint a written disclosure of substantially all material
7 evidence and information such plaintiff possesses.

8 (f) The state is not liable for expenses which a person incurs in
9 bringing an action pursuant to this section.

10 (g) No action may be maintained pursuant to this section that is based
11 upon information discovered by a present or former employee of the state
12 or a political subdivision during such employee's employment, unless such
13 employee first in good faith exhausted internal procedures for reporting
14 and seeking recovery of the proceeds of the fraudulent activity through
15 official channels and the state or political subdivision failed to act on the
16 information provided for not less than six months.

17 (h) No action may be maintained pursuant to this section that is based
18 upon the public disclosure of allegations or transactions in a criminal, civil
19 or administrative hearing, in an investigation, report, hearing or audit
20 conducted by, or at the request of, a house of the legislature, an auditor or
21 the governing body of a political subdivision, or from the news media,
22 unless the action is brought by the attorney general or an original source of
23 information.

24 (i) (1) The attorney general may intervene in an action by a private
25 plaintiff. Within 60 days after receiving a complaint and disclosure, the
26 attorney general may intervene and proceed with the action or, for good
27 cause shown, file a motion for an extension of time to determine whether
28 or not to intervene in such action. Such motion may be supported by
29 affidavits or other submissions. If the attorney general does not intervene,
30 the private plaintiff may proceed with the action.

31 (2) If the attorney general intervenes in an action by a private
32 plaintiff, the attorney general may file a complaint or amend the complaint
33 filed by the private plaintiff who brought the action pursuant to this act.
34 Any such pleading relates back to the filing date of the complaint of the
35 private plaintiff for statute of limitations purposes to the extent that any
36 claim made by the attorney general arises out of the conduct, transactions
37 or occurrences set forth or attempted to be set forth in the complaint made
38 by the private plaintiff.

39 (3) If the attorney general intervenes in an action by a private
40 plaintiff, the private plaintiff remains a party to the action. (A) The
41 attorney general may move to dismiss the action for good cause shown.
42 The private plaintiff shall be notified of the filing of such motion to
43 dismiss and may oppose such motion and present evidence at the hearing.

1 (B) Except as otherwise provided in this subsection, the attorney
2 general may settle the action. The attorney general shall notify the private
3 plaintiff of an intent to settle the action. Upon request of a private plaintiff,
4 the court shall determine, after a hearing, whether the proposed settlement
5 is fair, adequate and reasonable under all circumstances. Upon a showing
6 of good cause, the court may hear the proposed settlement in camera.

7 (4) If the attorney general does not intervene in an action by a private
8 plaintiff, the private plaintiff has the same rights in conducting the action
9 as the attorney general would have had if the attorney general had
10 intervened. A copy of each pleading or document filed in the action and
11 the transcript of each deposition taken shall be provided to the attorney
12 general, if the attorney general requests such pleadings, documents or
13 transcript, and the attorney general shall pay the costs of providing such
14 information.

15 (5) For good cause shown, the attorney general may intervene in an
16 action in which the attorney general previously declined to intervene, if the
17 interest of the state or political subdivision in recovery is not being
18 adequately represented by the private plaintiff. If, the attorney general
19 intervenes pursuant to this subparagraph, the private plaintiff retains
20 primary responsibility for conducting the action, and any recovery shall be
21 apportioned as though the attorney general had not intervened.

22 (6) The court may limit the participation of a private plaintiff, if the
23 attorney general shows that unrestricted participation by a private plaintiff
24 would interfere with or unduly delay the conduct of an action, or that such
25 participation would be repetitious, irrelevant or solely for the purpose of
26 harassment. The court may limit, among other things:

27 (A) The number of witnesses the private plaintiff may call;

28 (B) the length of testimony of each witness; or

29 (C) the cross-examination of witnesses.

30 (j) If the attorney general decides to pursue a claim through an
31 alternate remedy, including an administrative proceeding to determine a
32 civil penalty, the private plaintiff shall have the same rights in such
33 proceeding as the private plaintiff would have, if the action which they had
34 already commenced had continued under this section, instead of under an
35 administrative remedy, separate statute or common law. Any finding of
36 fact or conclusion of law made in any administrative proceeding that has
37 become final shall be conclusive on all parties to an action pursuant to this
38 section. A finding of fact or conclusion of law is final if it has been finally
39 determined on appeal to the court of proper jurisdiction, if all time for
40 filing such appeal has expired or if such finding or conclusion is not
41 subject to judicial review.

42 (k) The court may stay discovery by a private plaintiff for up to 60
43 days, if the attorney general shows that the proposed discovery would

1 interfere with the investigation or prosecution of a civil or criminal matter
2 arising out of the same facts, regardless of whether the attorney general
3 participates in the action. The court may extend the stay upon a further
4 showing that the attorney general has pursued the civil or criminal
5 investigation or proceeding with reasonable diligence, and the proposed
6 discovery would interfere with its continuation. Discovery may not be
7 stayed for more than six months without consent of the private plaintiff,
8 except for good cause shown by the attorney general. Such good cause
9 shall be shown in open court.

10 (l) This section shall be a part of and supplemental to the Kansas false
11 claims act.

12 Sec. 2. K.S.A. 2018 Supp. 75-7502 is hereby amended to read as
13 follows: 75-7502. For purposes of this act:

14 (a) "Act" means the Kansas false claims act.

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

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

29 (d) "Person" includes any natural person, corporation, firm,
30 association, organization, partnership, business or trust.

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

33 (1) Has actual knowledge of the information;

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

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

37 (f) "Original source" means a person who:

38 (1) Has voluntarily disclosed to the government, the information on
39 which allegations or transactions upon which a claim is based prior to the
40 public disclosure of such information; or

41 (2) has knowledge that is independent of and materially adds to
42 publicly disclosed allegations or transactions and has voluntarily
43 provided information to the government before filing an action pursuant to

1 *this section.*

2 (g) "Obligation" means an established duty, whether or not fixed,
3 arising from an express or implied contract, grantor-grantee relationship,
4 or licensor-licensee relationship, from a fee-based or similar relationship,
5 from statute or rule and regulation, or from the retention of any
6 overpayment.

7 Sec. 3. K.S.A. 2018 Supp. 75-7503 is hereby amended to read as
8 follows: 75-7503. (a) A person who commits any of the following acts
9 shall be liable to the state or any affected political subdivision thereof, for
10 three times the amount of damages which the state or such political
11 subdivision sustains because of the act of that person and shall be liable to
12 the state for a civil penalty of not less than ~~\$1,000~~ \$5,500 and not more
13 than \$11,000 for each violation. *A civil penalty imposed pursuant to this*
14 *subsection shall correspond to any adjustments in the monetary amount of*
15 *a civil penalty for a violation of the federal false claims act, 31 U.S.C. §*
16 *3729(a), as such section exists on March 1, 2019, made by the attorney*
17 *general of the United States in accordance with the federal civil penalties*
18 *inflation adjustment act of 1990, public law 101-40, as such section exists*
19 *on March 1, 2019. A person found to have committed any of the following*
20 *acts shall also be liable to the state or such affected political subdivision*
21 *or private plaintiff for all reasonable costs and attorney fees incurred in a*
22 *civil action brought to recover any of those penalties or damages. False*
23 *claims that are knowingly submitted for payment or approval pursuant to*
24 *this act shall be actionable, regardless of whether the state payor is*
25 *proved to have been misled. The following acts constitute violations ~~for~~*
26 *which civil penalties, costs and attorney fees may be recovered by a civil*
27 *action under this act by any person who:*

28 (1) Knowingly presents or causes to be presented to any employee,
29 officer or agent of the state or political subdivision thereof or to any
30 contractor, grantee or other recipient of state funds or funds of any political
31 subdivision thereof, a false or fraudulent claim for payment or approval;

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

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

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

43 (5) is authorized to make or deliver a document certifying receipt of

1 property used or to be used by the state or any political subdivision thereof
 2 and knowingly makes or delivers a receipt that falsely represents the
 3 property received;

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

7 (7) is a beneficiary of an inadvertent submission of a false claim to
 8 any employee, officer or agent of the state or political subdivision thereof,
 9 or to any contractor, grantee or other recipient of state funds or funds of
 10 any political subdivision thereof, who subsequently discovers the falsity of
 11 the claim and fails to disclose the false claim and make satisfactory
 12 arrangements for repayment to the state or affected political subdivision
 13 thereof within a reasonable time after discovery of the false claim;

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

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

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

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

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

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

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

38 Sec. 4. K.S.A. 2018 Supp. 75-7504 is hereby amended to read as
 39 follows: 75-7504. ~~(a)~~ The attorney general shall diligently investigate a
 40 violation under K.S.A. 2018 Supp. 75-7503, and amendments thereto. If
 41 the attorney general finds that a person has violated or is violating K.S.A.
 42 2018 Supp. 75-7503, and amendments thereto, the attorney general may
 43 bring a civil action under this section against that person. Further, the

1 attorney general may utilize the assistance of city and county attorneys in
2 cases involving their respective political subdivisions or may utilize funds
3 available pursuant to K.S.A. 2018 Supp. 75-7508, and amendments
4 thereto, to engage the services of private attorneys to assist in carrying out
5 the purposes of this act, or both, at times when the attorney general
6 determines the need exists. All local prosecutors and private attorneys shall
7 only participate at the request, and under the direction of, the attorney
8 general.

9 ~~(b) Except as provided in K.S.A. 2018 Supp. 75-7506, and~~
10 ~~amendments thereto, nothing in this act shall be construed to create a~~
11 ~~private cause of action.~~

12 Sec. 5. K.S.A. 2018 Supp. 75-7506 is hereby amended to read as
13 follows: ~~75-7506. Any employee who is discharged, demoted, suspended,~~
14 ~~threatened, harassed or in any other manner retaliated against in the terms~~
15 ~~and conditions of employment by such employee's employer because of~~
16 ~~lawful acts undertaken in good faith by the employee on behalf of the~~
17 ~~employee or others, in furtherance of an action under this act, including~~
18 ~~investigation for, initiation of, testimony for, or assistance in an action~~
19 ~~filed or to be filed under this act, shall be entitled to all relief necessary to~~
20 ~~make the employee whole. An employee may bring an action in the~~
21 ~~appropriate district court for the relief provided in this section. This section~~
22 ~~shall not be construed to create any private cause of action for violations of~~
23 ~~this act and is limited to the remedies expressly created by this section~~
24 ~~related to employment retaliation.~~

25 *(a) An employee, contractor or agent shall be entitled to all relief*
26 *necessary to make such employee, contractor or agent whole, if such*
27 *employee, contractor or agent is discharged, demoted, suspended,*
28 *threatened, harassed or discriminated against, in any manner, in the terms*
29 *and conditions of employment because of lawful acts of the employee,*
30 *contractor, agent or others in furtherance of an action pursuant to this*
31 *section or other efforts to stop a violation of this act.*

32 *(b) Relief pursuant to subsection (a) shall include:*

33 *(1) Reinstatement with the same status the employee, contractor or*
34 *agent would have had if the discrimination had not occurred;*

35 *(2) twice the amount of back pay owed to the employee, contractor or*
36 *agent, plus interest;*

37 *(3) compensation for any special damages, including, but not limited*
38 *to, mental anguish sustained as a result of the discrimination; and*

39 *(4) litigation costs and attorney fees.*

40 *(c) An action pursuant to this section shall be brought in the district*
41 *court in the county in which: The plaintiff resides; the defendant can be*
42 *located, resides or transacts business; or any of the alleged violations of*
43 *K.S.A. 75-7506, and amendments thereto, occurred. Such action shall not*

1 *be brought more than three years after the date the conduct described in*
 2 *subsection (a) occurred. The time limitation on such action in this*
 3 *subsection shall apply retroactively.*

4 Sec. 6. K.S.A. 2018 Supp. 75-7507 is hereby amended to read as
 5 follows: 75-7507. (a) The provisions of this act are not exclusive and the
 6 remedies provided for in this act shall be in addition to any other remedies
 7 provided for in any other law or available under common law.

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

10 Sec. 7. K.S.A. 2018 Supp. 75-7508 is hereby amended to read as
 11 follows: 75-7508. (a) *If an action is brought by a private plaintiff pursuant*
 12 *to section 1, and amendments thereto, proceeds recovered as a result of an*
 13 *action filed pursuant to the Kansas false claims act shall be distributed in*
 14 *the following order manner:*

15 (1) *If the attorney general intervenes in the beginning of the action by*
 16 *a private plaintiff pursuant to section 1, and amendments thereto, the*
 17 *private plaintiff is entitled to receive not less than 15% nor more than 25%*
 18 *of any recovery, in accordance with the private plaintiff's contribution to*
 19 *the action and recovery, as the court determines to be reasonable;*

20 (2) *if the attorney general does not intervene at the beginning of the*
 21 *action by a private plaintiff pursuant to this act, the private plaintiff is*
 22 *entitled to receive not less than 25% nor more than 30% of any recovery*
 23 *as the court determines to be reasonable;*

24 (3) *to refund moneys falsely obtained from the federal government,*
 25 *state government or political subdivision thereof pursuant to subsection*
 26 *(c); and*

27 (4) *to the state treasurer for deposit in the state general fund*
 28 *pursuant to subsection (d).*

29 (b) *If an action is brought pursuant to this act that does not involve a*
 30 *private plaintiff, proceeds recovered as a result of an action filed pursuant*
 31 *to the Kansas false claims act shall be distributed in the following*
 32 *manner:*

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

36 (2) *to the state treasurer for deposit in the state general fund pursuant*
 37 *to subsection*~~(e)~~*(d).*

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

43 ~~(e)~~*(d)* *That portion of any recovery remitted to the state treasurer*

1 pursuant to subsection (a) shall be remitted to the state treasurer in
2 accordance with the provisions of K.S.A. 75-4215, and amendments
3 thereto. Upon receipt of such remittance, the state treasurer shall deposit
4 the entire amount in the state general fund and, subject to any relevant
5 guidelines of the federal department of health and human services' office
6 of inspector general regarding repayment of fees or recoveries, shall credit
7 10% of such remittance to the false claims litigation revolving fund, which
8 is hereby established in the state treasury. Moneys in the false claims
9 litigation revolving fund may be expended by the attorney general for the
10 purpose of hiring necessary staff and to defray the costs of investigating
11 and litigating ongoing false claims cases and may be shared at the
12 direction of the attorney general with the Kansas medicaid fraud and abuse
13 division, *the inspector general*, the Kansas bureau of investigation or any
14 county, city or private attorneys who may be utilized or contracted with
15 pursuant to K.S.A. 2018 Supp. 75-7504, and amendments thereto, in
16 carrying out the purposes of this act and any other operating expenses
17 incurred in administering the Kansas false claims act. All expenditures
18 from the false claims litigation revolving fund shall be made in accordance
19 with appropriation acts upon warrants of the director of accounts and
20 reports issued pursuant to vouchers approved by the attorney general or the
21 attorney general's designee.

22 Sec. 8. K.S.A. 2018 Supp. 75-7502, 75-7503, 75-7504, 75-7506, 75-
23 7507 and 75-7508 are hereby repealed.

24 Sec. 9. This act shall take effect and be in force from and after its
25 publication in the statute book.