

HOUSE BILL NO. HB0167

Wyoming False Claims Act.

Sponsored by: Representative(s) Lubnau, Brown, Iekel and Landon and Senator(s) Burns and Decaria

A BILL

for

1 AN ACT relating to civil actions, creating the Wyoming
2 False Claims Act; authorizing actions by the government or
3 private individuals for false claims filed against
4 governmental entities as specified; specifying procedures;
5 providing for the burden of proof; authorizing settlements;
6 providing penalties; providing for distribution of damages
7 and penalties; providing government employee remedies as
8 specified; conforming provisions; and providing for an
9 effective date.

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11 *Be It Enacted by the Legislature of the State of Wyoming:*

12

13 **Section 1.** W.S. 9-11-201 through 9-11-212 are created
14 to read:

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ARTICLE 2

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WYOMING FALSE CLAIMS ACT

9-11-201. Short title.

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

9-11-202. Definitions.

(a) As used in this act:

(i) "Claim" means any request or demand for money, property or services made to an employee, officer or agent of a governmental entity or to a 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, a governmental entity;

(ii) "Government attorney" means:

(A) The chief attorney for a governmental entity; or

1 (B) The attorney general with respect to
2 the state.

3

4 (iii) "Governmental entity" means:

5

6 (A) The state;

7

8 (B) A city, town, county, school district,
9 tax or assessment district or other political subdivision
10 of the state; or

11

12 (C) The University of Wyoming.

13

14 (iv) "Knowingly" means that a person, with
15 respect to information, does any of the following:

16

17 (A) Has actual knowledge of the
18 information;

19

20 (B) Acts in deliberate ignorance of the
21 truth or falsity of the information; or

22

23 (C) Acts in reckless disregard of the truth
24 or falsity of the information.

1

2 (v) "Person" means as defined in W.S.
3 8-1-102(a)(vi);

4

5 (vi) "This act" means W.S. 9-11-201 through
6 9-11-212.

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8 **9-11-203. False claims, procedures; penalties.**

9

10 (a) A person causing damages in excess of five
11 hundred dollars (\$500.00) to a governmental entity is
12 liable, as provided in W.S. 9-11-210 and 9-11-211, for any
13 of the following acts:

14

15 (i) Knowingly presenting or causing to be
16 presented to an officer or employee of the governmental
17 entity a false claim for payment or approval;

18

19 (ii) Knowingly making, using or causing to be
20 made or used a false record or statement to get a false
21 claim paid or approved by the governmental entity;

22

1 (iii) Conspiring to defraud the governmental
2 entity by getting a false claim allowed or paid by the
3 governmental entity;

4
5 (iv) Having possession, custody or control of
6 public property or money used or to be used by the
7 governmental entity and knowingly delivering or causing to
8 be delivered less property or money than the amount for
9 which the person receives a certificate or receipt;

10
11 (v) Being authorized to make or deliver a
12 document certifying receipt of property used or to be used
13 by the governmental entity and knowingly making or
14 delivering a receipt that falsely represents the property
15 used or to be used;

16
17 (vi) Knowingly buying or receiving as a pledge
18 of an obligation or debt public property of the
19 governmental entity from any person who may not lawfully
20 sell or pledge the property;

21
22 (vii) Knowingly making, using or causing to be
23 made or used a false record or statement to conceal, avoid

1 or decrease an obligation to pay or transmit money or
2 property to the governmental entity or its contractors; or

3

4 (viii) As a beneficiary of an inadvertent
5 submission of a false claim to the governmental entity,
6 subsequently discovering the falsity of the claim and
7 failing to disclose the false claim to the governmental
8 entity within thirty (30) days after discovery of the false
9 claim.

10

11 (b) In a civil action brought under W.S. 9-11-205 or
12 9-11-206, a court shall impose a civil penalty of not less
13 than five thousand dollars (\$5,000.00), nor more than ten
14 thousand dollars (\$10,000.00) for each act and shall assess
15 three (3) times the amount of damages that a governmental
16 entity sustains because of the person's act, along with
17 costs and attorney fees. The court may assess a civil
18 penalty of two (2) times the amount of damages that a
19 governmental entity sustains because of the person's act,
20 along with costs and attorney fees, if the person who
21 violated W.S. 9-11-203 complies with all of the following:

22

23 (i) The person committing the act furnished the
24 government attorney with all information known to that

1 person about the act within thirty (30) days after the date
2 on which the person first obtained the information;

3

4 (ii) The person fully cooperated with any
5 investigation of the act by the government attorney;

6

7 (iii) At the time that the person furnished the
8 government attorney with information about the act, a
9 criminal prosecution, civil action or administrative action
10 had not been commenced with respect to the act and the
11 person did not have actual knowledge of the existence of an
12 investigation into the act.

13

14 (c) Liability under this section is joint and several
15 for any act committed by two (2) or more persons.

16

17 (d) This section does not apply to claims, records or
18 statements made in relation to claims filed under the
19 Wyoming Employment Security Law or the Wyoming Worker's
20 Compensation Act under title 27 of the Wyoming statutes, or
21 to claims, records, payments or statements made under the
22 tax laws contained in title 39 of the Wyoming statutes, or
23 to fraudulent or substantial misrepresentation in obtaining
24 a license under title 23 of the Wyoming statutes.

1

2 (e) A private citizen may not file a complaint or
3 civil action under this act:

4

5 (i) Against a governmental entity or an officer
6 or employee of a governmental entity arising from conduct
7 by the officer or employee within the scope of the
8 officer's or employee's duties to the governmental entity;

9

10 (ii) That is based upon allegations or
11 transactions that are the subject of a civil suit or an
12 administrative civil penalty proceeding in which an agency
13 of the governmental entity is already a party;

14

15 (iii) That is based upon the public disclosure
16 of allegations or transactions in a criminal, civil or
17 administrative hearing or in an investigation, report,
18 hearing or audit conducted by or at the request of the
19 legislature, the state auditor, the auditor or legislative
20 body of a political subdivision or the news media, unless
21 the private citizen has direct and independent knowledge of
22 the information on which the allegations are based and,
23 before filing the complaint or civil action, voluntarily
24 provided the information to the agency of the governmental

1 entity that is involved with the claim that is the basis
2 for the complaint or civil action and unless the
3 information provided the basis or catalyst for the
4 investigation, report, hearing or audit that led to the
5 public disclosure; or

6
7 (iv) That is based upon information discovered
8 by a present or former employee of the governmental entity
9 during the course of employment unless the employee first,
10 in good faith, exhausted existing internal procedures for
11 reporting and seeking recovery of the falsely claimed sums
12 through official channels and the governmental entity
13 failed to act on the information provided within a
14 reasonable period of time.

15

16 **9-11-204. Limitation of actions.**

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18 A complaint or civil action may not be filed under W.S.
19 9-11-205 or 9-11-206 more than three (3) years after the
20 date on which an official of the governmental entity
21 charged with responsibility to act in the circumstances
22 discovers the act or more than ten (10) years after the
23 date on which the act occurred, whichever occurs first.

24

1 **9-11-205. Investigation and civil action by**
2 **government attorney.**

3

4 A government attorney may investigate an alleged violation
5 of W.S. 9-11-203 and file a civil action for that
6 violation.

7

8 **9-11-206. Complaint by private citizen; civil action.**

9

10 (a) Except as provided in W.S. 9-11-203(e), a private
11 citizen may file with the government attorney a notice
12 alleging a violation of W.S. 9-11-203 against a
13 governmental entity of which the private citizen is a
14 resident. If the private citizen files a complaint with
15 the court alleging violations of W.S. 9-11-203, the private
16 citizen shall serve notice of the complaint as provided in
17 the Wyoming Rules of Civil Procedure with the government
18 attorney that includes a written disclosure of material
19 evidence and information alleging violations of W.S.
20 9-11-203. The complaint shall be filed in camera, shall
21 remain under seal for at least sixty (60) days and shall
22 not be served on the defendant until the court so orders.

23

1 (b) Within sixty (60) days after receiving a notice
2 and complaint under subsection (a) of this section, the
3 government attorney shall elect whether to file a civil
4 action and may, for good cause shown, move the court for
5 extensions of the time for filing an action.

6
7 (c) If the government attorney files a civil action,
8 the private citizen may enter the action as a coplaintiff,
9 but the government attorney shall have control of the
10 plaintiffs' strategy, tactics and other decision making.
11 If the government attorney does not file a civil action
12 within the time allowed under subsection (b) of this
13 section, the private citizen may proceed with the civil
14 action under this act.

15
16 (d) The court shall permit the government attorney to
17 intervene in an action that the government attorney
18 declined to file under subsection (b) of this section if
19 the court determines that the interests of the governmental
20 entity are not being adequately represented by the private
21 citizen. If intervention is allowed, the private citizen
22 retains principal responsibility for and control of the
23 action and any damages, civil penalty, costs and attorney

1 fees shall be awarded under W.S. 9-11-210 and 9-11-211 as
2 if the government attorney had not intervened.

3

4 (e) After a private citizen files a civil action, no
5 other private citizen may file a civil action based on the
6 facts underlying the pending action.

7

8 **9-11-207. Dismissal of private citizen's civil**
9 **action.**

10

11 On the motion of a government attorney, the court may
12 dismiss a private citizen's civil action for good cause.
13 If an intervening government attorney seeks dismissal of a
14 private citizen's civil action, the private citizen shall
15 be notified by the government attorney of the filing of the
16 motion to dismiss and shall be given an opportunity to
17 oppose the motion and present evidence at a hearing.

18

19 **9-11-208. Settlement.**

20

21 An action may be settled if the court determines after a
22 hearing that the proposed settlement is fair, adequate and
23 reasonable under all the circumstances. In a private
24 citizen's action in which the government attorney

1 intervened and seeks a settlement, the private citizen may
2 present evidence at the settlement hearing.

3

4 **9-11-209. Burden of proof.**

5

6 (a) The plaintiff in an action filed under W.S.
7 9-11-205 or 9-11-206 shall prove each essential element of
8 the cause of action, including damages, by a preponderance
9 of the evidence.

10

11 (b) A person convicted of or who pleaded guilty or
12 nolo contendere to a criminal offense may not deny the
13 essential elements of the offense in an action filed under
14 W.S. 9-11-205 or 9-11-206 that involves the same event or
15 events as the criminal proceeding.

16

17 **9-11-210. Distribution of damages and civil penalty.**

18

19 (a) If an action under this act is settled or the
20 governmental entity or private citizen prevails in the
21 action:

22

23 (i) If the action was filed by a governmental
24 entity under W.S. 9-11-206(b) and the private citizen

1 elected not to enter the action as a coplaintiff, except as
2 provided in paragraph (iii) of this subsection, the private
3 citizen is entitled to not less than fifteen percent (15%),
4 as determined by the court, of any damages and civil
5 penalty awarded the governmental entity in the settlement
6 or judgment;

7

8 (ii) If the action was filed by a private
9 citizen either as plaintiff or as coplaintiff, except as
10 provided in paragraph (iii) of this subsection, the private
11 citizen is entitled to not less than twenty-five percent
12 (25%), as determined by the court, of any damages and civil
13 penalty awarded the governmental entity in the settlement
14 or judgment; and

15

16 (iii) If a private citizen referred to in
17 paragraph (i) or (ii) of this subsection participated in
18 the act or acts found to be in violation of W.S. 9-11-203,
19 an award of damages and civil penalty to the private
20 citizen are at the discretion of the court.

21

22 (b) The governmental entity is entitled to any
23 damages and civil penalty not awarded to a private citizen
24 and the damages and civil penalty shall be deposited in the

1 general fund of the governmental entity, except that if
2 another fund of the governmental entity suffered a loss as
3 a result of the defendant's actions, the other fund shall
4 first be fully reimbursed for the loss and the remainder of
5 the damages and any civil penalty shall be deposited in the
6 general fund of the governmental entity.

7

8 (c) Unless otherwise provided, the remedies or
9 penalties provided by this act are cumulative to each other
10 and to the remedies or penalties available under all other
11 laws of the state.

12

13 **9-11-211. Costs and attorney fees.**

14

15 A governmental entity in an action in which its government
16 attorney filed a civil action under this act or intervened
17 is entitled to its reasonable costs and attorney fees if
18 the action is settled favorably for the governmental entity
19 or the governmental entity prevails. In an action in which
20 outside counsel represents a governmental entity, the costs
21 and attorney fees awarded a governmental entity shall equal
22 the outside counsel's charges reasonably incurred by the
23 governmental entity for costs and attorney fees in
24 prosecuting the action. In any other actions under this

1 act in which costs and attorney fees are awarded a
2 governmental entity, they shall be calculated by reference
3 to the hourly rate charged by the office of the attorney
4 general for the provision of legal services to state
5 agencies, multiplied by the number of attorney hours
6 devoted to the prosecution of the action, plus the actual
7 cost of any expenses reasonably incurred in the prosecution
8 of the action. A private citizen who is a plaintiff or
9 coplaintiff is entitled to reasonable costs and attorney
10 fees if the action is settled favorably for the
11 governmental entity or the governmental entity prevails in
12 the action. A person who is the subject of a civil action
13 and who prevails in an action that is not settled and that
14 the court finds was clearly frivolous or brought solely for
15 harassment purposes is entitled to his reasonable costs and
16 attorney fees, which shall be equitably apportioned against
17 all plaintiffs in the action.

18

19 **9-11-212. Prohibition on employers; employee**
20 **remedies.**

21

22 (a) A governmental entity may not adopt or enforce a
23 rule, regulation or policy preventing an employee from
24 disclosing information to a government or law enforcement

1 agency with regard to or from acting in furtherance of an
2 investigation of a violation of W.S. 9-11-203 or an action
3 brought pursuant to W.S. 9-11-205 or 9-11-206.

4

5 (b) A governmental entity may not discharge, demote,
6 suspend, threaten, harass or deny promotion to or in any
7 other manner discriminate against an employee in the terms
8 and conditions of employment because of the employee's
9 disclosure of information to a government or law
10 enforcement agency pertaining to a violation of W.S.
11 9-11-203.

12

13 (c) A governmental entity that violates the
14 provisions of subsection (b) of this section is liable for:

15

16 (i) Reinstatement to the same position with the
17 same seniority status, salary, benefits and other
18 conditions of employment that the employee would have had
19 but for the discrimination;

20

21 (ii) Back pay that the employee would have had
22 but for the discrimination;

23

1 (iii) Compensation for any special damages
2 sustained by the employee as a result of the
3 discrimination; and

4
5 (iv) Reasonable court or administrative
6 proceeding costs and reasonable attorney fees incurred by
7 the employee as a result of the discrimination.

8
9 (d) An employee may file an action for the relief
10 provided in subsection (c) of this section.

11

12 **Section 2.** W.S. 6-5-303(b), 9-11-101 and
13 9-11-102(a) (intro) are amended to read:

14

15 **6-5-303. False swearing in nonjudicial or**
16 **nonadministrative proceeding; false claims or vouchers;**
17 **penalties.**

18

19 (b) A person is guilty of a felony punishable by
20 imprisonment for not more than two (2) years, a fine of not
21 more than two thousand dollars (\$2,000.00), or both, if he
22 knowingly submits a false claim or voucher with intent to
23 defraud. A person who submits a false claim or voucher as

24 provided in the Wyoming False Claims Act shall be subject

1 to the provisions of W.S. 9-11-201 et seq. and shall not be
2 prosecuted under this subsection.

3

4

ARTICLE 1

5

STATE GOVERNMENT FRAUD REDUCTION ACT

6

7

9-11-101. Short title.

8

9 This ~~chapter~~article may be cited as the "State Government
10 Fraud Reduction Act."

11

12

9-11-102. Definitions; applicability.

13

14

(a) As used in this ~~chapter~~article:

15

16

17

Section 3. This act applies to all causes of action
if the act giving rise to the cause of action occurred on
18 or after July 1, 2007.

19

20

Section 4. This act is effective July 1, 2007.

21

22

(END)