

HOUSE BILL No. 2682

By Committee on Appropriations

2-13

1 AN ACT concerning the Kansas false claims act; relating to private
2 plaintiffs maintaining actions; amending K.S.A. 75-7502, 75-7503, 75-
3 7504, 75-7505, 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, the action may be dismissed only for
15 good cause shown with written consent of the court and the attorney
16 general. The court and the attorney general shall take into account the
17 public purposes of this act and the best interests of the parties in
18 dismissing the action or consenting to the dismissal and provide the
19 reasons for 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, other than the state may bring another action pursuant to this act
22 based on the same 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 of
27 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) (1) A complaint filed pursuant to this section shall be placed
34 under seal for at least 60 days and shall remain under seal until the
35 attorney general has elected whether to intervene. No service may be made
36 upon the defendant until the complaint is unsealed. The defendant shall

1 respond within 20 days after a complaint is unsealed and served upon the
2 defendant pursuant to this act.

3 (2) The state may, for good cause shown, move the court for
4 extensions of the time during which the complaint remains under seal
5 pursuant to paragraph (1). Any such motion may be supported by affidavits
6 or other submissions in camera. The defendant shall not be required to
7 respond to any complaint filed under this section until 20 days after the
8 complaint is unsealed and served upon the defendant.

9 (3) Prior to the expiration of the 60-day period or any extensions
10 obtained under paragraph (2), the state shall proceed with the action, in
11 which case the action shall be conducted by the state or notify the court
12 that it declines to take over the action, in which case the person bringing
13 the action shall have the right to conduct the action.

14 (e) On the date the private plaintiff files a complaint, such private
15 plaintiff shall send a copy of the complaint to the attorney general by mail
16 with return receipt requested. Such private plaintiff shall send with each
17 copy of the complaint a written disclosure of substantially all material
18 evidence and information such plaintiff possesses.

19 (f) The state is not liable for expenses that a person incurs in bringing
20 an action pursuant to this section.

21 (g) Unless the action is brought by the attorney general or the private
22 plaintiff is an original source of the information, the court shall dismiss an
23 action or claim under this section, unless opposed by the state, if
24 substantially the same allegations or transactions as alleged in the action or
25 claim were publicly disclosed:

26 (1) In a criminal, civil or administrative hearing in which the state is a
27 party;

28 (2) in a legislative or other state governmental report, hearing, audit
29 or investigation; or

30 (3) by the news media.

31 (h) (1) The attorney general may intervene in an action by a private
32 plaintiff. Within 60 days after receiving a complaint and disclosure, the
33 attorney general may intervene and proceed with the action or, for good
34 cause shown, file a motion for an extension of time to determine whether
35 or not to intervene in such action. Such motion may be supported by
36 affidavits or other submissions. If the attorney general does not intervene,
37 the private plaintiff may proceed with the action.

38 (2) If the attorney general intervenes in an action by a private
39 plaintiff, the attorney general shall have the primary responsibility for
40 prosecuting the action, shall not be bound by an act of the person bringing
41 the action and may file a complaint or amend the complaint filed by the
42 private plaintiff who brought the action pursuant to this act. Any such
43 pleading relates back to the filing date of the complaint of the private

1 plaintiff for statute of limitations purposes to the extent that any claim
2 made by the attorney general arises out of the conduct, transactions or
3 occurrences set forth or attempted to be set forth in the complaint made by
4 the private plaintiff.

5 (3) (A) If the attorney general intervenes in an action by a private
6 plaintiff, the private plaintiff remains a party to the action.

7 (B) The attorney general may move to dismiss the action for good
8 cause shown. The private plaintiff shall be notified of the filing of such
9 motion to dismiss and may oppose such motion and present evidence at
10 the hearing.

11 (C) Except as otherwise provided in this subsection, the attorney
12 general may settle the action. The attorney general shall notify the private
13 plaintiff of an intent to settle the action. The attorney general may settle
14 the action notwithstanding the objections of the private plaintiff initiating
15 the action if the court determines, after a hearing, that the proposed
16 settlement is fair, adequate and reasonable under all circumstances. Upon a
17 showing of good cause, the court may hear the proposed settlement in
18 camera.

19 (4) If the attorney general does not intervene in an action by a private
20 plaintiff, the private plaintiff has the same rights in conducting the action
21 as the attorney general would have had if the attorney general had
22 intervened. A copy of each pleading or document filed in the action and
23 the transcript of each deposition taken shall be provided to the attorney
24 general, if the attorney general requests such pleadings, documents or
25 transcript. The attorney general shall pay the costs of providing such
26 information.

27 (5) For good cause shown, the attorney general may intervene in an
28 action in which the attorney general previously declined to intervene. If
29 the attorney general intervenes pursuant to this paragraph, the private
30 plaintiff retains primary responsibility for conducting the action, and any
31 recovery shall be apportioned as though the attorney general had not
32 intervened.

33 (6) The court may limit the participation of a private plaintiff, if the
34 attorney general shows that unrestricted participation by a private plaintiff
35 would interfere with or unduly delay the conduct of an action or that such
36 participation would be repetitious, irrelevant or solely for the purpose of
37 harassment. The court may limit, in addition to other items:

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

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

40 (C) the cross-examination of witnesses.

41 (i) The attorney general may elect to pursue a claim through an
42 alternate remedy, including an administrative proceeding, to determine a
43 civil penalty. The private plaintiff shall have the same rights in such

1 proceeding as the private plaintiff would have, if the action which they had
2 already commenced had continued under this section, instead of under an
3 administrative remedy, separate statute or common law. Any finding of
4 fact or conclusion of law made in any administrative proceeding that has
5 become final shall be conclusive on all parties to an action pursuant to this
6 section. A finding of fact or conclusion of law is final if it has been finally
7 determined on appeal to the court of proper jurisdiction, if the time for
8 filing such appeal has expired or if such finding or conclusion is not
9 subject to judicial review.

10 (j) The court may stay discovery by a private plaintiff for up to 60
11 days, if the attorney general shows that the proposed discovery would
12 interfere with the investigation or prosecution of a civil or criminal matter
13 arising out of the same facts, regardless of whether the attorney general
14 participates in the action. The court may extend the stay upon a further
15 showing that the attorney general has pursued the civil or criminal
16 investigation or proceeding with reasonable diligence, and the proposed
17 discovery would interfere with the continuation of the investigation or
18 proceeding. Discovery may not be stayed for more than six months
19 without consent of the private plaintiff, except for good cause shown by
20 the attorney general. The court shall conduct a hearing on a motion filed
21 pursuant to this subsection in camera.

22 (k) This section shall be a part of and supplemental to the Kansas
23 false claims act.

24 Sec. 2. K.S.A. 75-7502 is hereby amended to read as follows: 75-
25 7502. For purposes of this act:

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

27 (b) ~~(1) "Claim" includes any request or demand, whether under~~
28 ~~contract or otherwise, for money, property or services made to any~~
29 ~~employee, officer or agent of the state or any political subdivision thereof~~
30 ~~or made to any contractor, grantee or other recipient if the state or any~~
31 ~~political subdivision thereof provides any portion of the money, property~~
32 ~~or services which is requested or demanded, or if the state will reimburse~~
33 ~~such contractor, grantee or other recipient for any portion of the money or~~
34 ~~property which is requested or demanded means any request or demand,~~
35 ~~whether under a contract or otherwise, for money or property and whether~~
36 ~~or not the state has title to the money or property, that is:~~

37 (A) *Presented to an officer, employee or agency of the state; or*

38 (B) *made to a contractor, grantee or other recipient, if the money or*
39 *property is to be spent or used on the state's behalf or to advance a state*
40 *program or interest, and if the state:*

41 (i) *Provides or has provided any portion of the money or property*
42 *requested or demanded; or*

43 (ii) *will reimburse such contractor, grantee or other recipient for any*

1 *portion of the money or property that is requested or demanded.*

2 (2) "Claim" does not include requests or demands for money or
3 property that the state has paid to an individual as compensation for state
4 employment or as an income subsidy with no restrictions on that
5 individual's use of the money or property.

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

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

14 (e) (1) "Knowing" and "knowingly" mean that a person, with respect
15 to information, does any of the following:

16 (⊕) (A) Has actual knowledge of the information;

17 (⊖) (B) acts in deliberate ignorance of the truth or falsity of the
18 information; or

19 (⊗) (C) acts in reckless disregard of the truth or falsity of the
20 information.

21 (2) "Knowing" and "knowingly" do not require proof of a specific
22 intent to defraud.

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

24 (1) Has voluntarily disclosed to the government the information on
25 which allegations or transactions upon which a claim is based prior to the
26 public disclosure of such information; or

27 (2) has knowledge that is independent of and materially adds to
28 publicly disclosed allegations or transactions and has voluntarily
29 provided information to the government before filing an action pursuant to
30 this section.

31 (g) "Obligation" means an established duty, whether or not fixed,
32 arising from an express or implied contractual relationship, grantor-
33 grantee relationship or licensor-licensee relationship, a fee-based or
34 similar relationship, a statute or rule and regulation or the retention of
35 any overpayment.

36 (h) "Material" means having a natural tendency to influence, or be
37 capable of influencing, the payment or receipt of money or property.

38 Sec. 3. K.S.A. 75-7503 is hereby amended to read as follows: 75-
39 7503. (a) A person who commits any of the following acts shall be liable to
40 the state or any affected political subdivision thereof; for three times the
41 amount of damages—~~which~~ that the state or such political subdivision
42 sustains because of the act of that person and shall be liable to the state for
43 a civil penalty prescribed by the attorney general in rules and regulations

1 of not less than ~~\$1,000~~ and not more than ~~\$11,000~~ for each violation
2 *\$11,181 and that is in accordance with federal law.* A person found to have
3 committed any of the following acts shall be liable to the state or such
4 affected political subdivision *or private plaintiff* for all reasonable costs
5 and attorney fees incurred in a civil action brought to recover any of those
6 penalties or damages. *False claims that are knowingly submitted for*
7 *payment or approval pursuant to this act shall be actionable, regardless of*
8 *whether the state payor is proved to have been misled.* The following acts
9 constitute violations ~~for which civil penalties, costs and attorney fees may~~
10 ~~be recovered by a civil action under this act by any person who:~~

11 (1) ~~Knowingly presents or causes to be presented to any employee,~~
12 ~~officer or agent of the state or political subdivision thereof or to any~~
13 ~~contractor, grantee or other recipient of state funds or funds of any political~~
14 ~~subdivision thereof, a false or fraudulent claim for payment or approval;~~

15 (2) knowingly makes, uses or causes to be made or used, a false
16 record or statement ~~to get a false or fraudulent claim paid or approved that~~
17 ~~is material to a false or fraudulent claim;~~

18 (3) ~~defrauds the state or any political subdivision thereof by getting a~~
19 ~~false claim allowed or paid or by knowingly making, using or causing to~~
20 ~~be made or used, a false record or statement to conceal, avoid or decrease~~
21 ~~an obligation to pay or transmit money or property to the state or to any~~
22 ~~political subdivision thereof knowingly makes, uses or causes to be made~~
23 ~~or used a false record or statement that is material to an obligation to pay~~
24 ~~or transmit money or property to the state, or knowingly conceals or~~
25 ~~knowingly and improperly avoids or decreases an obligation to pay or~~
26 ~~transmit money or property to the state;~~

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

31 (5) is authorized to make or deliver a document certifying receipt of
32 property used or to be used by the state or any political subdivision thereof
33 and knowingly makes or delivers a receipt that falsely represents the
34 property received;

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

38 (7) is a beneficiary of an inadvertent submission of a false claim to
39 any employee, officer or agent of the state or political subdivision thereof,
40 or to any contractor, grantee or other recipient of state funds or funds of
41 any political subdivision thereof, who subsequently discovers the falsity of
42 the claim and fails to disclose the false claim and make satisfactory
43 arrangements for repayment to the state or affected political subdivision

1 thereof within a reasonable time after discovery of the false claim; *or*

2 (8) conspires to commit any violation set forth in paragraphs (1)
3 through (7); ~~above.~~

4 (b) Notwithstanding the provisions of subsection (a), the court may
5 assess not ~~more~~ *less* than two times the amount of damages ~~which~~ *that* the
6 state or any political subdivision thereof sustains because of the act of the
7 person in violation of ~~paragraphs (1) through (8) of subsection (a)(1)~~
8 *through (8)* ~~and no civil penalty shall be imposed~~, if the court finds all of
9 the following:

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

14 (2) the person fully cooperated with any investigation by the state;
15 and

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

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

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

26 Sec. 4. K.S.A. 75-7504 is hereby amended to read as follows: 75-
27 7504. ~~(a)~~ The attorney general shall diligently investigate a violation under
28 K.S.A. 75-7503, and amendments thereto. If the attorney general finds that
29 a person has violated or is violating K.S.A. 75-7503, and amendments
30 thereto, the attorney general may bring a civil action under this section
31 against that person. ~~Further,~~ The attorney general may utilize the
32 assistance of city and county attorneys in cases involving their respective
33 political subdivisions or may utilize funds available pursuant to K.S.A. 75-
34 7508, and amendments thereto, to engage the services of private attorneys
35 to assist in carrying out the purposes of this act, or both, at times when the
36 attorney general determines the need exists. All local prosecutors and
37 private attorneys shall only participate at the request, and under the
38 direction of, the attorney general.

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

41 Sec. 5. K.S.A. 75-7505 is hereby amended to read as follows: 75-
42 7505. (a) A civil action under K.S.A. 75-7503, and amendments thereto,
43 may not be brought:

1 (1) More than ~~6~~ *six* years after the date on which the violation was
2 committed; or

3 (2) more than ~~3~~ *three* years after the date ~~on which the violation was~~
4 ~~discovered or reasonably should have been discovered~~ *when the facts*
5 *material to the right of action are known or reasonably should have been*
6 *known by the attorney general*, but in no event more than 10 years after the
7 date on which the violation was committed, whichever occurs last.

8 (b) A civil action under K.S.A. 75-7503, and amendments thereto,
9 may be brought for activity prior to the effective date of this act if the
10 limitation period set in subsection (a) has not lapsed.

11 (c) In any action brought under K.S.A. 75-7503, and amendments
12 thereto, the state shall be required to prove all essential elements of the
13 cause of action, including damages, by a preponderance of the evidence.

14 (d) Notwithstanding any other provision of law, a guilty verdict
15 rendered in a criminal proceeding charging false statements or fraud,
16 whether upon a verdict after trial or upon a plea of guilty or nolo
17 contendere, shall estop the defendant from denying the essential elements
18 of the offense in any action which involves the same transaction as in the
19 criminal proceeding and which is brought under K.S.A. 75-7503, and
20 amendments thereto.

21 Sec. 6. K.S.A. 75-7506 is hereby amended to read as follows: 75-
22 7506. ~~Any employee who is discharged, demoted, suspended, threatened,~~
23 ~~harassed or in any other manner retaliated against in the terms and~~
24 ~~conditions of employment by such employee's employer because of lawful~~
25 ~~acts undertaken in good faith by the employee on behalf of the employee~~
26 ~~or others, in furtherance of an action under this act, including investigation~~
27 ~~for, initiation of, testimony for, or assistance in an action filed or to be~~
28 ~~filed under this act, shall be entitled to all relief necessary to make the~~
29 ~~employee whole. An employee may bring an action in the appropriate~~
30 ~~district court for the relief provided in this section. This section shall not~~
31 ~~be construed to create any private cause of action for violations of this act~~
32 ~~and is limited to the remedies expressly created by this section related to~~
33 ~~employment retaliation.~~

34 (a) *An employee, contractor or agent shall be entitled to all relief*
35 *necessary to make such employee, contractor or agent whole, if such*
36 *employee, contractor or agent is discharged, demoted, suspended,*
37 *threatened, harassed or discriminated against, in any manner, in the terms*
38 *and conditions of employment because of lawful acts of the employee,*
39 *contractor, agent or others in furtherance of an action pursuant to this*
40 *section or other efforts to stop a violation of this act.*

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

42 (1) *Reinstatement with the same seniority status the employee,*
43 *contractor or agent would have had if the discrimination had not*

1 occurred;

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

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

6 (4) litigation costs and attorney fees.

7 (c) An action pursuant to this section shall be brought in the district
8 court in the county in which: The plaintiff resides; the defendant can be
9 located, resides or transacts business; or any of the alleged violations of
10 K.S.A. 75-7506, and amendments thereto, occurred. Such action shall not
11 be brought more than three years after the date the conduct described in
12 subsection (a) occurred. The time limitation on such action in this
13 subsection shall apply retroactively.

14 Sec. 7. K.S.A. 75-7507 is hereby amended to read as follows: 75-
15 7507. (a) The provisions of this act are not exclusive and the remedies
16 provided for in this act shall be in addition to any other remedies provided
17 for in any other law or available under common law.

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

20 Sec. 8. K.S.A. 75-7508 is hereby amended to read as follows: 75-
21 7508. (a) (1) If an action is brought by a private plaintiff pursuant to
22 section 1, and amendments thereto, proceeds recovered as a result of an
23 action filed pursuant to the Kansas false claims act shall be distributed in
24 the following ~~order~~ manner:

25 (A) If the attorney general intervenes in the beginning of the action
26 by a private plaintiff pursuant to section 1, and amendments thereto, the
27 private plaintiff is entitled to receive:

28 (i) Not less than 15% nor more than 25% of any recovery, in
29 accordance with the private plaintiff's contribution to the action and
30 recovery, as the court determines to be reasonable; or

31 (ii) if the court finds the action to be based primarily on disclosure of
32 specific information, other than information provided by the person
33 bringing the action, relating to allegations or transactions in a criminal,
34 civil or administrative hearing, a state governmental hearing, audit or
35 investigation, or the news media, the court may award an amount to the
36 private plaintiff, but in no case shall that amount be more than 10% of the
37 proceeds, taking into account the significance of the information and the
38 role of the private plaintiff in advancing the action;

39 (B) if the attorney general does not intervene at the beginning of the
40 action by a private plaintiff pursuant to this act, the private plaintiff is
41 entitled to receive not less than 25% nor more than 30% of any recovery,
42 as the court determines to be reasonable;

43 (C) to refund moneys falsely obtained from the federal government,

1 *state government or political subdivision thereof pursuant to subsection*
2 *(c); and*

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

5 *(2) Any payment made to a private plaintiff shall be made from the*
6 *proceeds. A private plaintiff shall also receive an amount for reasonable*
7 *expenses that the court finds to have been necessarily incurred, plus*
8 *reasonable attorney fees and costs. All such expenses, fees and costs shall*
9 *be assessed against the defendant.*

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

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

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

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

24 ~~(e)(d)~~ *That portion of any recovery remitted to the state treasurer*
25 *pursuant to subsection (a) shall be remitted to the state treasurer in*
26 *accordance with the provisions of K.S.A. 75-4215, and amendments*
27 *thereto. Upon receipt of such remittance, the state treasurer shall deposit*
28 *the entire amount in the state general fund and, ~~subject to any relevant~~*
29 ~~*guidelines of the federal department of health and human services' office*~~
30 ~~*of inspector general regarding repayment of fees or recoveries,*~~ *shall credit*
31 *10% of such remittance to the false claims litigation revolving fund, which*
32 *is hereby established in the state treasury. Moneys in the false claims*
33 *litigation revolving fund may be expended by the attorney general for the*
34 *purpose of hiring necessary staff and to defray the costs of investigating*
35 *and litigating ongoing false claims cases and may be shared at the*
36 *direction of the attorney general with the Kansas medicaid fraud and abuse*
37 *division, the inspector general, the Kansas bureau of investigation or any*
38 *county, city or private attorneys who may be utilized or contracted with*
39 *pursuant to K.S.A. 75-7504, and amendments thereto, in carrying out the*
40 *purposes of this act and any other operating expenses incurred in*
41 *administering the Kansas false claims act. All expenditures from the false*
42 *claims litigation revolving fund shall be made in accordance with*
43 *appropriation acts upon warrants of the director of accounts and reports*

1 issued pursuant to vouchers approved by the attorney general or the
2 attorney general's designee.

3 Sec. 9. K.S.A. 75-7502, 75-7503, 75-7504, 75-7505, 75-7506, 75-
4 7507 and 75-7508 are hereby repealed.

5 Sec. 10. This act shall take effect and be in force from and after its
6 publication in the statute book.