

2013 -- H 5493 AS AMENDED

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - THE STATE FALSE CLAIM ACT

Introduced By: Representatives Hearn, Marcello, Tanzi, Ruggiero, and Craven

Date Introduced: February 14, 2013

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 9-1.1-3, 9-1.1-4 and 9-1.1-5 of the General Laws in Chapter 9-1.1  
2 entitled "The State False Claim Act" are hereby amended to read as follows:

3           **9-1.1-3. Liability for certain acts.** -- (a) Any person who:

4           (1) Knowingly presents, or causes to be presented, ~~to an officer or employee of the state~~  
5 ~~or a member of the guard~~ a false or fraudulent claim for payment or approval;

6           (2) Knowingly makes, uses, or causes to be made or used, a false record or statement ~~to~~  
7 ~~get a~~ material to a false or fraudulent claim ~~paid or approved by the state;~~

8           (3) Conspires to ~~defraud the state by getting a false or fraudulent claim allowed or paid~~  
9 commit a violation of subdivisions 9-1.1-3 (1), (2), (3), (4), (5), (6) or (7);

10           (4) Has possession, custody, or control of property or money used, or to be used, by the  
11 state and, ~~intending to defraud the state or willfully to conceal the property,~~ knowingly delivers,  
12 or causes to be delivered, less property than all of that money or property ~~the amount for which~~  
13 ~~the person receives a certificate or receipt;~~

14           (5) ~~Is Authorized~~ authorized to make or deliver a document certifying receipt of property  
15 used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt  
16 without completely knowing that the information on the receipt is true;

17           (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property  
18 from an officer or employee of the state, or a member of the guard, who lawfully may not sell or  
19 pledge the property; or

1 (7) Knowingly makes, uses, or causes to be made or used, a false record or statement  
2 material to ~~conceal, avoid or decrease~~ an obligation to pay or transmit money or property to the  
3 state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to  
4 pay or transmit money or property to the state; is liable to the state for a civil penalty of not less  
5 than ~~five thousand dollars (\$5,000)~~ five thousand five hundred dollars (\$5,500) and not more  
6 than ~~ten thousand dollars (\$10,000)~~ eleven thousand dollars (\$11,000), plus three (3) times the  
7 amount of damages which the state sustains because of the act of that person. A person violating  
8 this subsection (a) shall also be liable to the state for the costs of a civil action brought to recover  
9 any such penalty or damages.

10 ~~(b) Knowing and knowingly defined. As used in this section, the terms "knowing" and~~  
11 ~~"knowingly" mean that a person, with respect to information:~~

12 (b) Definitions. – For purposes of this section:

13 (1) "Knowing" and "knowingly" means that a person with respect to information:

14 (i)(1) Has actual knowledge of the information;

15 (ii)(2) Acts in deliberate ignorance of the truth or falsity of the information; or

16 (iii)(3) Acts in reckless disregard of the truth or falsity of the information; and no proof of  
17 ~~specific intent to defraud is required.~~

18 (iv) Requires no proof of specific intent to defraud.

19 ~~(c) Claim defined. As used in this section, "claim" includes any request or demand,~~  
20 ~~whether under a contract or otherwise, for money or property which is made to a contractor,~~  
21 ~~grantee, or other recipient if the state provides any portion of the money or property which is~~  
22 ~~requested or demanded, or if the state will reimburse such contractor, grantee, or other recipient~~  
23 ~~for any portion of the money or property which is requested or demanded.~~

24 (2) "Claim" means any request or demand, whether under a contract or otherwise, for  
25 money or property and whether or not the state has title to the money or property, that:

26 (i) Is presented to an officer, employee, or agent of the state; or

27 (ii) Is made to a contractor, grantee, or other recipient, if the money or property is to be  
28 spent or used on the state's behalf or advance a state program or interest, and if the state:

29 (A) Provides or has provided any portion of the money or property requested or  
30 demand; or

31 (B) Will reimburse such contractor, grantee, or other recipient for any portion of the  
32 money or property which is requested or demanded; and

33 (iii) Does not include requests or demands for money or property that the state has paid to  
34 an individual as compensation for state employment or as an income subsidy with no restrictions

1 on that individual's use of the money or property:

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

5 (4) "Material" means having a natural tendency to influence, or be capable of  
6 influencing, the payment or receipt of money or property.

7 ~~(c)~~ Exclusion. - This section does not apply to claims, records, or statements made  
8 under the Rhode Island personal income tax law contained in Rhode Island general laws chapter  
9 44-30.

10 **9-1.1-4. Civil actions for false claims.** -- (a) Responsibilities of the attorney general and  
11 solicitor. - The attorney general or solicitor diligently shall investigate a violation under section 9-  
12 1.1-3 of this section. If under this section the attorney general or solicitor finds that a person has  
13 violated or is violating section 9-1.1-3 the attorney general or solicitor may bring a civil action  
14 under this section against the person.

15 (b) Actions by private persons.

16 (1) A person may bring a civil action for a violation of section 9-1.1-3 for the person and  
17 for the state. The action shall be brought in the name of the state. The action may be dismissed  
18 only if the court and the attorney general give written consent to the dismissal and their reasons  
19 for consenting.

20 (2) A copy of the complaint and written disclosure of substantially all material evidence  
21 and information the person possesses shall be served on the state upon the attorney general. The  
22 complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall  
23 not be served on the defendant until the court so orders. The state may elect to intervene and  
24 proceed with the action within sixty (60) days after it receives both the complaint and the material  
25 evidence and information.

26 (3) The state may, for good cause shown, move the court for extensions of the time  
27 during which the complaint remains under seal under paragraph (2). Any such motions may be  
28 supported by affidavits or other submissions in camera. The defendant shall not be required to  
29 respond to any complaint filed under this section until twenty (20) days after the complaint is  
30 unsealed and served upon the defendant.

31 (4) Before the expiration of the sixty (60) day period or any extensions obtained under  
32 paragraph (3), the state shall:

33 ~~(i)~~ Proceed with the action, in which case the action shall be conducted by the state; or

34 ~~(ii)~~ Notify the court that it declines to take over the action, in which case the person

1 bringing the action shall have the right to conduct the action.

2 (5) When a person brings an action under this subsection (b), no person other than the  
3 state may intervene or bring a related action based on the facts underlying the pending action.

4 (c) Rights of the parties to Qui Tam actions.

5 (1) If the state proceeds with the action, it shall have the primary responsibility for  
6 prosecuting the action, and shall not be bound by an act of the person bringing the action. Such  
7 person shall have the right to continue as a party to the action, subject to the limitations set forth  
8 in paragraph (2).

9 (2) (A) The state may dismiss the action notwithstanding the objections of the person  
10 initiating the action if the person has been notified by the state of the filing of the motion and the  
11 court has provided the person with an opportunity for a hearing on the motion.

12 ~~(i)(B)~~ The state may settle the action with the defendant notwithstanding the objections of  
13 the person initiating the action if the court determines, after a hearing, that the proposed  
14 settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good  
15 cause, such hearing may be held in camera.

16 ~~(ii)(C)~~ Upon a showing by the state that unrestricted participation during the course of the  
17 litigation by the person initiating the action would interfere with or unduly delay the state's  
18 prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the  
19 court may, in its discretion, impose limitations on the person's participation, such as:

20 ~~(A)(i)~~ Limiting the number of witnesses the person may call:

21 ~~(B)(ii)~~ Limiting the length of the testimony of such witnesses;

22 ~~(C)(iii)~~ Limiting the person's cross-examination of witnesses; or

23 ~~(D)(iv)~~ Otherwise limiting the participation by the person in the litigation.

24 ~~(iii)(D)~~ Upon a showing by the defendant that unrestricted participation during the course  
25 of the litigation by the person initiating the action would be for purposes of harassment or would  
26 cause the defendant undue burden or unnecessary expense, the court may limit the participation  
27 by the person in the litigation.

28 (3) If the state elects not to proceed with the action, the person who initiated the action  
29 shall have the right to conduct the action. If the state so requests, it shall be served with copies of  
30 all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at  
31 the state's expense). When a person proceeds with the action, the court, without limiting the status  
32 and rights of the person initiating the action, may nevertheless permit the State to intervene at a  
33 later date upon a showing of good cause.

34 (4) Whether or not the state proceeds with the action, upon a showing by the state that

1 certain actions of discovery by the person initiating the action would interfere with the state's  
2 investigation or prosecution of a criminal or civil matter arising out of the same facts, the court  
3 may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be  
4 conducted in camera. The court may extend the sixty (60) day period upon a further showing in  
5 camera that the state has pursued the criminal or civil investigation or proceedings with  
6 reasonable diligence and any proposed discovery in the civil action will interfere with the  
7 ongoing criminal or civil investigation or proceedings.

8 (5) Notwithstanding subsection (b), the state may elect to pursue its claim through any  
9 alternate remedy available to the state, including any administrative proceeding to determine a  
10 civil money penalty. If any such alternate remedy is pursued in another proceeding, the person  
11 initiating the action shall have the same rights in such proceeding as such person would have had  
12 if the action had continued under this section. Any finding of fact or conclusion of law made in  
13 such other proceeding that has become final shall be conclusive on all parties to an action under  
14 this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been  
15 finally determined on appeal to the appropriate court, if all time for filing such an appeal with  
16 respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to  
17 judicial review.

18 (d) Award to Qui Tam plaintiff.

19 (1) If the State proceeds with an action brought by a person under subsection 9-1.1-4(b),  
20 such person shall, subject to the second sentence of this paragraph, receive at least fifteen percent  
21 (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of  
22 the claim, depending upon the extent to which the person substantially contributed to the  
23 prosecution of the action. Where the action is one which the court finds to be based primarily on  
24 disclosures of specific information (other than information provided by the person bringing the  
25 action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a  
26 legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from  
27 the news media, the court may award such sums as it considers appropriate, but in no case more  
28 than ten percent (10%) of the proceeds, taking into account the significance of the information  
29 and the role of the person bringing the action in advancing the case to litigation. Any payment to  
30 a person under the first or second sentence of this paragraph (1) shall be made from the proceeds.  
31 Any such person shall also receive an amount for reasonable expenses which the court finds to  
32 have been necessarily incurred, plus reasonable attorneys' fees and costs. The state shall also  
33 receive an amount for reasonable expenses which the court finds to have been necessarily  
34 incurred by the attorney general, including reasonable attorneys' fees and costs, and the amount

1 received shall be deposited in the false claims act fund created under this chapter. All such  
2 expenses, fees, and costs shall be awarded against the defendant.

3 (2) If the state does not proceed with an action under this section, the person bringing the  
4 action or settling the claim shall receive an amount which the court decides is reasonable for  
5 collecting the civil penalty and damages. The amount shall be not less than twenty-five percent  
6 (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall  
7 be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses  
8 which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs.  
9 All such expenses, fees, and costs shall be awarded against the defendant.

10 (3) Whether or not the state proceeds with the action, if the court finds that the action was  
11 brought by a person who planned and initiated the violation of section 9-1.1-3 upon which the  
12 action was brought, then the court may, to the extent the court considers appropriate, reduce the  
13 share of the proceeds of the action which the person would otherwise receive under paragraph (1)  
14 or (2) of this subsection (d), taking into account the role of that person in advancing the case to  
15 litigation and any relevant circumstances pertaining to the violation. If the person bringing the  
16 action is convicted of criminal conduct arising from his or her role in the violation of section 9-  
17 1.1-3, that person shall be dismissed from the civil action and shall not receive any share of the  
18 proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the  
19 action.

20 (4) If the state does not proceed with the action and the person bringing the action  
21 conducts the action, the court may award to the defendant its reasonable attorneys' fees and  
22 expenses if the defendant prevails in the action and the court finds that the claim of the person  
23 bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of  
24 harassment.

25 (e) Certain actions barred.

26 (1) No court shall have jurisdiction over an action brought by a former or present member  
27 of the guard under subsection 9-1.1-4(b) (actions by private persons) against a member of the  
28 guard arising out of such person's service in the guard.

29 (2) No court shall have jurisdiction over an action brought pursuant to subsection 9-1.1-  
30 4(b) (actions by private persons) against the governor, lieutenant governor, the attorney general,  
31 members of the general assembly, a member of the judiciary, the treasurer, secretary of state, the  
32 auditor general, any director of a state agency, and any other individual appointed to office by the  
33 governor if the action is based on evidence or information known to the state when the action was  
34 brought.

1 (3) In no event may a person bring an action under subsection 9-1.1-4(b) which is based  
2 upon allegations or transactions which are the subject of a civil suit or an administrative civil  
3 money penalty proceeding in which the state is already a party.

4 (4) (A) ~~No~~ The court shall ~~have jurisdiction over~~ dismiss an action or claim under this  
5 section, unless opposed by the state, if substantially the same allegations or transactions as  
6 alleged in the action or claim where publically disclosed: ~~based upon the public disclosure of~~  
7 ~~allegations or transactions~~

8 (i) ~~in~~ In a state criminal, civil, or administrative hearing, in which the state or its agents is  
9 a party;

10 (ii) ~~in~~ In a legislative, ~~administrative,~~ or auditor general's or other state of Rhode Island  
11 report, hearing, audit, or investigation; or

12 (iii) ~~from~~ From the news media, unless the action is brought by the attorney general or  
13 the person bringing the action is an original source of the information.

14 (B) For purposes of this ~~exclusion paragraph,~~ "original source" means an individual who  
15 either: (i) Prior to the public disclosure under subparagraph 9-1.4-4(e)(4)(A), has voluntarily  
16 disclosed to the state ~~has direct and independent knowledge of~~ the information on which the  
17 allegations or transactions in a claim are based; or (ii) Who has knowledge that is independent of  
18 and materially adds to the publicly disclosed allegations or transaction, and who has voluntarily  
19 provided the information to the state before filing an action under this section ~~which is based on~~  
20 ~~the information.~~

21 (f) State not liable for certain expenses. - The state is not liable for expenses which a  
22 person incurs in bringing an action under this section.

23 (g) Any employee, contractor, agent, or associated others who is discharged, demoted,  
24 suspended, threatened, harassed, or in any other manner discriminated against in the terms and  
25 conditions of employment ~~by his or her employer~~ because of lawful acts done by the employee,  
26 contractor, agent or associated others ~~on behalf of the employee or others~~ in furtherance of an  
27 action under this section, or other efforts to stop one or more violations of this subsection  
28 including investigation for, initiation of, testimony for, or assistance in an action filed or to be  
29 filed under this section, shall be entitled to all relief necessary to make the employee, contractor,  
30 agent or associated others whole. Such relief shall include reinstatement with the same seniority  
31 status such employee, contractor, agent or associated others would have had but for the  
32 discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation  
33 for any special damages sustained as a result of the discrimination, including litigation costs and  
34 reasonable attorneys' fees. An employee, contractor, agent or associated others may bring an

1 action in the appropriate superior court for the relief provided in this subsection 9-1.1-4(g).

2 (h) Limitation on bringing civil action.- A civil action under subsection (g) may not be  
3 brought more than three (3) years after the date when the retaliation occurred.

4 **9-1.1-5. False claims procedure. --** (a) A subpoena requiring the attendance of a witness  
5 at a trial or hearing conducted under section 9-1.1-4, may be served at any place in the state.

6 (b) A civil action under section 9-1.1-4 may not be brought:

7 (1) More than 6 years after the date on which the violation of section 9-1.1-3 is  
8 committed, or

9 (2) More than three (3) years after the date when facts material to the right of action are  
10 known or reasonably should have been known by the official of the state charged with  
11 responsibility to act in the circumstances, but in no event more than ten (10) years after the date  
12 on which the violation is committed, whichever occurs last.

13 (c) If the state elects to intervene and proceed with an action brought under subsection 9-  
14 1.1-4(i), the state may file its own complaint or amend the complaint of a person who has brought  
15 an action under section 9-1.1-4 to clarify or add detail to the claims in which the state is  
16 intervening and to add any additional claims with respect to which the state contends it is entitled  
17 to relief. For statute of limitations purposes, any such state pleading shall relate back to the filing  
18 date of the complaint of the person who originally brought the action, to the extent that the claim  
19 of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set  
20 forth, in the prior complaint of that person.

21 (d)(e) In any action brought under section 9-1.1-4, the state shall be required to prove all  
22 essential elements of the cause of action, including damages, by a preponderance of the evidence.

23 (e)(d) Notwithstanding any other provision of law, a final judgment rendered in favor of  
24 the state in any criminal proceeding charging fraud or false statements, whether upon a verdict  
25 after trial or upon a plea of guilty or nolo contendere, shall stop the defendant from denying the  
26 essential elements of the offense in any action which involves the same transaction as in the  
27 criminal proceeding and which is brought under subsections 9-1.1-4(a) or 9-1.1-4(b).

28 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO COURTS AND CIVIL PROCEDURE - THE STATE FALSE CLAIM ACT

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1           This act would make amendments to the false claim act that is required by the federal  
2 government in order for the state to retain federal funding.

3           This act would take effect upon passage.

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