

AMENDED IN ASSEMBLY APRIL 10, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1270

Introduced by Assembly Member Mark Stone

February 21, 2019

An act to amend Sections 12650, 12651, and 12653 of the Government Code, relating to the False Claims Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 1270, as amended, Mark Stone. False Claims Act.

Existing law, the False Claims Act, provides that any person who commits specified acts, including, but not limited to, knowingly presenting a false or fraudulent claim for payment or approval or knowingly making or using a false record or statement material to a false or fraudulent claim, is liable to the state or to the political subdivision for 3 times the amount of damages that the state or political subdivision sustained because of the act and for the costs of a civil action brought to recover any penalties or damages, and is subject to a civil penalty. That act requires the Attorney General or the prosecuting authority of a political subdivision to diligently investigate violations of those specific acts involving state funds or political subdivision funds, respectively, and authorizes the Attorney General, the prosecuting attorney, or a qui tam plaintiff to bring a civil action against a person who commits those acts.

This bill, with respect to whether a false record or statement is material, would specify that materiality is determined by the potential effect of the false record or statement when it is made, not on the actual effect of the false statement when it is discovered. This bill would

specify that the amount of damages include consequential damages. This bill would state that these changes are declaratory of existing law.

The False Claims Act does not apply to claims, records, or statements made under the Revenue and Taxation Code.

This bill would apply the False Claims Act to apply to claims, records, or statements made on or after January 1, 2020, under the Revenue and Taxation Code if specified conditions are met, including if damages pleaded in an action under the act exceed \$200,000. This bill would require the Attorney General or prosecuting authority *authority, as described*, to consult with the taxing authorities to whom the claim was submitted prior to filing or intervening in any action under the act that is based on the filing of false claims, records, or statements made under the Revenue and Taxation Code. ~~The bill would require, if the Attorney General or prosecuting authority declines to intervene in such an action, the qui tam plaintiff to obtain approval from the Attorney General or prosecuting authority before making any motion to compel the taxing authority to disclose tax records. The bill would authorize the Attorney General or the prosecuting authority, but not the qui tam plaintiff, to obtain otherwise confidential records relating to taxes, fees, or other obligations under the Revenue and Taxation Code. The bill would prohibit the disclosure of federal tax information to the Attorney General or the prosecuting authority without authorization from the Internal Revenue Service. The bill would require that any such information obtained be kept confidential, except as necessary to investigate and prosecute violations of these provisions.~~

Under the False Claims Act, an employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under the act or other efforts to stop one or more violations of the act.

This bill would expand that relief to any current or former employee, contractor, or agent who meets those conditions and also if that current or former employee, contractor, or agent is otherwise harmed or penalized by an employer because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under the act or other efforts to stop one or more violations of the act. This bill would define lawful acts to include specified acts.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12650 of the Government Code is
2 amended to read:
3 12650. (a) This article shall be known and may be cited as the
4 False Claims Act.
5 (b) For purposes of this article:
6 (1) “Claim” means any request or demand, whether under a
7 contract or otherwise, for money, property, or services, and whether
8 or not the state or a political subdivision has title to the money,
9 property, or services that meets either of the following conditions:
10 (A) Is presented to an officer, employee, or agent of the state
11 or of a political subdivision.
12 (B) Is made to a contractor, grantee, or other recipient, if the
13 money, property, or service is to be spent or used on a state or any
14 political subdivision’s behalf or to advance a state or political
15 subdivision’s program or interest, and if the state or political
16 subdivision meets either of the following conditions:
17 (i) Provides or has provided any portion of the money, property,
18 or service requested or demanded.
19 (ii) Reimburses the contractor, grantee, or other recipient for
20 any portion of the money, property, or service that is requested or
21 demanded.
22 (2) “Claim” does not include requests or demands for money,
23 property, or services that the state or a political subdivision has
24 paid to an individual as compensation for employment with the
25 state or political subdivision or as an income subsidy with no
26 restrictions on that individual’s use of the money, property, or
27 services.
28 (3) “Knowing” and “knowingly” mean that a person, with
29 respect to information, does any of the following:
30 (A) Has actual knowledge of the information.
31 (B) Acts in deliberate ignorance of the truth or falsity of the
32 information.
33 (C) Acts in reckless disregard of the truth or falsity of the
34 information.
35 Proof of specific intent to defraud is not required.

1 (4) “Material” means having a natural tendency to influence,
 2 or be capable of influencing, the payment or receipt of money,
 3 property, or services. Materiality is determined by the potential
 4 effect of the false record or statement when it is made, not on the
 5 actual effect of the false record or statement when it is discovered.

6 (5) “Obligation” means an established duty, whether or not
 7 fixed, arising from an express or implied contractual,
 8 grantor-grantee, or licensor-licensee relationship, from a fee-based
 9 or similar relationship, from statute or regulation, or from the
 10 retention of any overpayment.

11 (6) “Political subdivision” includes any city, city and county,
 12 county, tax or assessment district, or other legally authorized local
 13 governmental entity with jurisdictional boundaries.

14 (7) “Political subdivision funds” means funds that are the subject
 15 of a claim.

16 (8) “Prosecuting authority” refers to the county counsel, city
 17 attorney, or other local government official charged with
 18 investigating, filing, and conducting civil legal proceedings on
 19 behalf of, or in the name of, a particular political-subdivision.
 20 *subdivision and includes counsel retained by a political subdivision*
 21 *to act on its behalf for these purposes.*

22 (9) “Person” includes any natural person, corporation, firm,
 23 association, organization, partnership, limited liability company,
 24 business, or trust.

25 (10) “State funds” mean funds that are the subject of a claim.

26 SEC. 2. Section 12651 of the Government Code is amended
 27 to read:

28 12651. (a) Any person who commits any of the following
 29 enumerated acts in this subdivision shall have violated this article
 30 and shall be liable to the state or to the political subdivision for
 31 three times the amount of all damages, including consequential
 32 damages, that the state or political subdivision sustains because
 33 of the act of that person. A person who commits any of the
 34 following enumerated acts shall also be liable to the state or to the
 35 political subdivision for the costs of a civil action brought to
 36 recover any of those penalties or damages, and shall be liable to
 37 the state or political subdivision for a civil penalty of not less than
 38 five thousand five hundred dollars (\$5,500) and not more than
 39 eleven thousand dollars (\$11,000) for each violation, as adjusted
 40 by the Federal Civil Penalties Inflation Adjustment Act of 1990,

1 Public Law ~~101-410~~ *101-410* Section 5, 104 Stat. 891, note
2 following 28 U.S.C. Section 2461.

3 (1) Knowingly presents or causes to be presented a false or
4 fraudulent claim for payment or approval.

5 (2) Knowingly makes, uses, or causes to be made or used a false
6 record or statement material to a false or fraudulent claim.

7 (3) Conspires to commit a violation of this subdivision.

8 (4) Has possession, custody, or control of public property or
9 money used or to be used by the state or by any political
10 subdivision and knowingly delivers or causes to be delivered less
11 than all of that property.

12 (5) Is authorized to make or deliver a document certifying receipt
13 of property used or to be used by the state or by any political
14 subdivision and knowingly makes or delivers a receipt that falsely
15 represents the property used or to be used.

16 (6) Knowingly buys, or receives as a pledge of an obligation or
17 debt, public property from any person who lawfully may not sell
18 or pledge the property.

19 (7) Knowingly makes, uses, or causes to be made or used a false
20 record or statement material to an obligation to pay or transmit
21 money or property to the state or to any political subdivision, or
22 knowingly conceals or knowingly and improperly avoids, or
23 decreases an obligation to pay or transmit money or property to
24 the state or to any political subdivision.

25 (8) Is a beneficiary of an inadvertent submission of a false claim,
26 subsequently discovers the falsity of the claim, and fails to disclose
27 the false claim to the state or the political subdivision within a
28 reasonable time after discovery of the false claim.

29 (b) Notwithstanding subdivision (a), the court may assess not
30 less than two times and not more than three times the amount of
31 damages which the state or the political subdivision sustains
32 because of the act of the person described in that subdivision, and
33 no civil penalty, if the court finds all of the following:

34 (1) The person committing the violation furnished officials of
35 the state or of the political subdivision responsible for investigating
36 false claims violations with all information known to that person
37 about the violation within 30 days after the date on which the
38 person first obtained the information.

39 (2) The person fully cooperated with any investigation by the
40 state or a political subdivision of the violation.

1 (3) At the time the person furnished the state or the political
 2 subdivision with information about the violation, no criminal
 3 prosecution, civil action, or administrative action had commenced
 4 with respect to the violation, and the person did not have actual
 5 knowledge of the existence of an investigation into the violation.

6 (c) Liability under this section shall be joint and several for
 7 any act committed by two or more persons.

8 (d) This section does not apply to any controversy involving an
 9 amount of less than five hundred dollars (\$500) in value. For
 10 purposes of this subdivision, “controversy” means any one or more
 11 false claims submitted by the same person in violation of this
 12 article.

13 (e) This section does not apply to claims, records, or statements
 14 made pursuant to Division 3.6 (commencing with Section 810) of
 15 Title 1 or to workers’ compensation claims filed pursuant to
 16 Division 4 (commencing with Section 3200) of the Labor Code.

17 (f) (1) This section shall apply to claims, records, or statements
 18 made on or after January 1, 2020, under the Revenue and Taxation
 19 Code only if ~~both of the following are true:~~ *the damages pleaded*
 20 *in such action exceed two hundred thousand dollars (\$200,000)*
 21 *and any of the following equals or exceeds five hundred thousand*
 22 *dollars (\$500,000) for any taxable year subject to any action*
 23 *brought pursuant to this article:*

24 ~~(A) The net income or sales of the person against whom the~~
 25 ~~action is brought equals or exceeds five hundred thousand dollars~~
 26 ~~(\$500,000) for any taxable year subject to any action brought~~
 27 ~~pursuant to this article.~~

28 ~~(B) The damages pleaded in such action exceed two hundred~~
 29 ~~thousand dollars (\$200,000).~~

30 *(A) The taxable income of any person other than a corporation*
 31 *against whom the action is brought, under Part 10 (commencing*
 32 *with Section 17001) of Division 2 of the Revenue and Taxation*
 33 *Code.*

34 *(B) The net income of any corporation or other person other*
 35 *than an individual against whom the action is brought, under Part*
 36 *11 (commencing with Section 23001) of Division 2 of the Revenue*
 37 *and Taxation Code.*

38 *(C) The sales of any person against whom the action is brought,*
 39 *under Part 1 (commencing with Section 6001) of Division 2 of the*
 40 *Revenue and Taxation Code.*

1 (2) *For purposes of this subdivision only, “person” shall have*
2 *the meaning ascribed to it in Revenue and Taxation Code Section*
3 *17007.*

4 ~~(2)~~

5 (3) *The Attorney General or prosecuting authority shall consult*
6 *with the taxing authorities to whom the ~~claim~~ claim, record or*
7 *statement was submitted prior to filing or intervening in any action*
8 *under this article that is based on the filing of false claims, records,*
9 *or statements made under the Revenue and Taxation Code. ~~If the~~*
10 *Attorney General or prosecuting authority declines to intervene in*
11 *such an action pursuant to Section 12652, the qui tam plaintiff*
12 *shall obtain approval from the Attorney General or prosecuting*
13 *authority before making any motion to compel the taxing authority*
14 *to disclose tax records.*

15 (4) *Notwithstanding any other law, the Attorney General or*
16 *prosecuting authority, but not the qui tam plaintiff, is hereby*
17 *authorized to obtain otherwise confidential records relating to*
18 *taxes, fees, surcharges, or other obligations under the Revenue*
19 *and Taxation Code needed to investigate or prosecute suspected*
20 *violations of this subdivision from state and local taxing and other*
21 *governmental authorities in possession of such information and*
22 *records, and such authorities are hereby authorized to make those*
23 *disclosures. The taxing and other governmental authorities shall*
24 *not provide federal tax information without authorization from*
25 *the Internal Revenue Service.*

26 (5) *Any information received pursuant to paragraph (3) shall*
27 *be kept confidential except as necessary to investigate and*
28 *prosecute suspected violations of this subdivision.*

29 (g) *This section does not apply to claims, records, or statements*
30 *for the assets of a person that have been transferred to the*
31 *Commissioner of Insurance, pursuant to Section 1011 of the*
32 *Insurance Code.*

33 SEC. 3. *Section 12653 of the Government Code is amended*
34 *to read:*

35 12653. (a) (1) *Any current or former employee, contractor,*
36 *or agent shall be entitled to all relief necessary to make that*
37 *employee, contractor, or agent whole, if that employee, contractor,*
38 *or agent is discharged, demoted, suspended, threatened, harassed,*
39 *or in any other manner discriminated against in the terms and*
40 *conditions of their employment or otherwise harmed or penalized*

1 by an employer because of lawful acts done by the employee,
2 contractor, agent, or associated others in furtherance of an action
3 under this section or other efforts to stop one or more violations
4 of this article.

5 (2) For purposes of this section, a “lawful act” shall include,
6 but not be limited to, obtaining or transmitting to the state, a
7 political subdivision, a qui tam plaintiff, or private counsel
8 employed to investigate, potentially file, or file a cause of action
9 under this article, documents, data, correspondence, electronic
10 mail, or any other information, even though that act may violate
11 a contract, employment term, or duty owed to the employer or
12 contractor.

13 (3) Nothing in this subdivision shall be interpreted to prevent
14 any law enforcement authority from bringing a civil or criminal
15 action against any person for violating any provision of law.

16 (b) Relief under this section shall include reinstatement with
17 the same seniority status that the employee, contractor, or agent
18 would have had but for the discrimination, two times the amount
19 of back pay, interest on the back pay, and compensation for any
20 special damages sustained as a result of the discrimination, and
21 where appropriate, punitive damages. The defendant shall also be
22 required to pay litigation costs and reasonable ~~attorneys’~~ *attorney’s*
23 fees. An action under this section may be brought in the appropriate
24 superior court of the state.

25 (c) A civil action under this section shall not be brought more
26 than three years after the date when the retaliation occurred.

27 SEC. 4. (a) The amendment of paragraph (4) of subdivision
28 (b) of Section 12650 of the Government Code made by this act
29 does not constitute a change in, but is declaratory of, existing law.

30 (b) The amendment of subdivision (a) of Section 12651 of the
31 Government Code made by this act does not constitute a change
32 in, but is declaratory of, existing law.

33 ~~SEC. 5. It is the intent of the Legislature to enact legislation~~
34 ~~as may be necessary to allow the sharing of confidential tax~~
35 ~~information with the Attorney General or other parties for the~~
36 ~~purposes of this act.~~