

CHAPTER 141  
FORMERLY  
SENATE BILL NO. 144  
AS AMENDED BY  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE FALSE CLAIMS AND REPORTING ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 12, Title 6 of the Delaware Code by making insertions as shown by underlining and deletions shown as strike through as follows:

§ 1201. Liability for certain acts.

(a) Any person who:

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

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

(3) Conspires to ~~defraud the Government by getting a false or fraudulent claim allowed or paid~~ commit a violation of subsection (1), (2), (4), (5), (6) or (7);

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

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

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government who may not lawfully sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases ~~to conceal, avoid, or decrease~~ an obligation to pay or transmit money or property to the Government.

§ 1202. Definitions.

As used in this chapter:

(1) "Claim" means includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee or other recipient where the Government provides any portion of the money or property which is requested or demanded, or where the Government will reimburse such contractor, grantee or other recipient for any portion of the money or property which is requested or demanded.— any request or demand, whether under a contract or otherwise, for money or property and whether or not the Government has title to the money or property, that: (a) is presented to an officer, employee, or agent of the Government; or (b) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the Government (i) provides or has provided any portion of the money or property requested or demanded; or (ii) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded. "Claim" does not include requests or demands for money or property that the Government has paid to an individual as compensation for employment with the Government or as an income subsidy with no restrictions on that individual's use of the money or property.

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

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

§ 1203. Civil actions for false claims.

(b) Private actions. --

~~(5) When a party brings an action under this subsection, under the federal False Claims Act (31 U.S.C. § 3729 et seq.), or under any similar provision of the law of any other state, no party other than the Department of Justice may intervene or bring a related action based on the facts underlying the pending action.~~

§ 1206. Certain actions barred.

~~(a) No court shall have jurisdiction of an action brought pursuant to this chapter against a State Government official if the action is substantially based on evidence or information known to the Government when the action was brought.~~

~~(b) In no event may a party bring an action under this chapter which is substantially based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the Government is already a party.~~

~~(c) No court shall have jurisdiction over an action under this chapter based upon the public disclosure of allegations or actions in a criminal civil or administrative hearing, or from the news media, unless the action is brought by the Attorney General or the party bringing the action is an original source of this information.~~

~~For purposes of this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Attorney General before filing an action under this chapter that is based on the information.~~

(a) In no event may a person bring an action under this Chapter which is based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the Government is already a party.

(b) (1) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(i) in any criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in any Government-generated report, hearing, audit, or investigation; or

(iii) from the news media.

The requirement to dismiss actions or claims as set forth in this subsection shall not apply to actions brought by the Attorney General or where the person bringing the action is an original source of the information.

(c) For purposes of this section, "original source" means an individual who either (i) prior to a public disclosure under subsection (b)(1) herein, has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (ii) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

§ 1208. Employee protection.

~~(a) Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by that employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this chapter, including investigation for, initiation of, testimony for or assistance in an action filed or to be filed under this chapter, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court of the State for the relief provided in this subsection.~~

Any employee, contractor, or agent shall be 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 employment because of lawful

acts done by the employee, contractor, agent or associated others in furtherance of an action under this Chapter or other efforts to stop 1 or more violations of this Chapter.

Such relief shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

An action under this subsection may be brought in the Superior Court of the State of Delaware in and for the County where the violation is alleged to have occurred. A civil action under this subsection may not be brought more than 3 years after the date when the alleged retaliation occurred.

§ 1209. False claims and reporting procedure.

(e) For statute of limitations purposes, any Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

Approved July 24, 2013