

AMENDED IN SENATE AUGUST 13, 2019

AMENDED IN SENATE JUNE 24, 2019

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 require that the materiality test focus on 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 under the Revenue and Taxation Code if specified conditions are met, including if damages pleaded in an action under the act exceed ~~\$200,000~~ *\$200,000 and that the claim, record, or statement was made on or after January 1, 2020*. This bill would require the Attorney General or prosecuting 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 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 who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment for engaging in lawful acts, as specified, or other efforts to stop violations of the act, is entitled to all relief necessary to make them whole.

This bill would specify that the relief described above applies to any current or former employee, contractor, or agent. The bill would extend this relief if these parties are otherwise harmed or penalized by an employer. This bill would define lawful acts to include specified acts that may violate a contract, employment term, or duty owed to an employer or contractor.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the

interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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.

1 (C) Acts in reckless disregard of the truth or falsity of the
2 information.

3 Proof of specific intent to defraud is not required.

4 (4) “Material” means having a natural tendency to influence,
5 or be capable of influencing, the payment or receipt of money,
6 property, or services. The materiality test shall focus on the
7 potential effect of the false record or statement when it is made,
8 not on the actual effect of the false record or statement when it is
9 discovered.

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

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

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

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

26 (9) “Person” includes any natural person, corporation, firm,
27 association, organization, partnership, limited liability company,
28 business, or trust.

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

30 SEC. 2. Section 12651 of the Government Code is amended
31 to read:

32 12651. (a) Any person who commits any of the following
33 enumerated acts in this subdivision shall have violated this article
34 and shall be liable to the state or to the political subdivision for
35 three times the amount of all damages, including consequential
36 damages, that the state or political subdivision sustains because
37 of the act of that person. A person who commits any of the
38 following enumerated acts shall also be liable to the state or to the
39 political subdivision for the costs of a civil action brought to
40 recover any of those penalties or damages, and shall be liable to

1 the state or political subdivision for a civil penalty of not less than
2 five thousand five hundred dollars (\$5,500) and not more than
3 eleven thousand dollars (\$11,000) for each violation, as adjusted
4 by the Federal Civil Penalties Inflation Adjustment Act of 1990,
5 Public Law 101-410 Section 5, 104 Stat. 891, note following 28
6 U.S.C. Section 2461.

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

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

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

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

16 (5) Is authorized to make or deliver a document certifying receipt
17 of property used or to be used by the state or by any political
18 subdivision and knowingly makes or delivers a receipt that falsely
19 represents the property used or to be used.

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

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

29 (8) Is a beneficiary of an inadvertent submission of a false claim,
30 subsequently discovers the falsity of the claim, and fails to disclose
31 the false claim to the state or the political subdivision within a
32 reasonable time after discovery of the false claim.

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

38 (1) The person committing the violation furnished officials of
39 the state or of the political subdivision responsible for investigating
40 false claims violations with all information known to that person

1 about the violation within 30 days after the date on which the
2 person first obtained the information.

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

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

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

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

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

21 (f) (1) This section shall apply to claims, records, or statements
22 made under the Revenue and Taxation Code only if the damages
23 pleaded in such action exceed two hundred thousand dollars
24 (\$200,000) and any of the following equals or exceeds five hundred
25 thousand dollars (\$500,000) for any taxable year subject to any
26 action brought pursuant to this article:

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

31 (B) ~~The net income~~ *gross receipts, as defined in Section 25120*
32 *of the Revenue and Taxation Code, less returns and allowances*
33 of any corporation or other person other than an individual against
34 whom the action is brought, under Part 11 (commencing with
35 Section 23001) of Division 2 of the Revenue and Taxation Code.

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

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

4 (3) The Attorney General or prosecuting authority shall consult
5 with the taxing authorities to whom the claim, record, or statement
6 was submitted prior to filing or intervening in any action under
7 this article that is based on the filing of false claims, records, or
8 statements made under the Revenue and Taxation Code.

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

20 (5) Any information received pursuant to paragraphs (3) and
21 (4) shall be kept confidential except as necessary to investigate
22 and prosecute suspected violations of this subdivision.

23 (6) *This subdivision does not and shall not be construed to have*
24 *retroactive application to any claims, records, or statements made*
25 *under the Revenue and Taxation Code before January 1, 2020.*

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

30 SEC. 3. Section 12653 of the Government Code is amended
31 to read:

32 12653. (a) (1) Any current or former employee, contractor,
33 or agent shall be entitled to all relief necessary to make that
34 employee, contractor, or agent whole, if that employee, contractor,
35 or agent is discharged, demoted, suspended, threatened, harassed,
36 or in any other manner discriminated against in the terms and
37 conditions of their employment or otherwise harmed or penalized
38 by an employer or contractor because of lawful acts done by the
39 employee, contractor, agent, or associated others in furtherance of

1 an action under this section or other efforts to stop one or more
2 violations of this article.

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

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

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

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

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

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

31 SEC. 5. The Legislature finds and declares that Section 2 of
32 this act, which amends Section 12651 of the Government Code,
33 imposes a limitation on the public’s right of access to the meetings
34 of public bodies or the writings of public officials and agencies
35 within the meaning of Section 3 of Article I of the California
36 Constitution. Pursuant to that constitutional provision, the
37 Legislature makes the following findings to demonstrate the interest
38 protected by this limitation and the need for protecting that interest:

- 1 In order to protect the existing confidentiality of tax records, it
- 2 is necessary to limit the public's access to these documents.

O