

STATE OF MARYLAND



**OFFICE OF
THE ATTORNEY GENERAL**

MSAR #11923

MARYLAND FALSE CLAIMS ACT

Annual Report

Fiscal Year 2023

Submitted to the General Assembly

The False Claims Act of 2015 prohibits any person from submitting false or fraudulent claims for payment to a government entity. The Act originally defined a government entity as the State and counties (including Baltimore City). It was amended in 2017 to expand the definition of government entities to include municipal corporations.

The Act authorizes a government entity to file suit on its own behalf to recover damages and civil penalties for violations of the Act. Private citizens may also file suit on the government's behalf, after which the government must decide whether to intervene and pursue the action or to decline to intervene, which results in the dismissal of the action. The Act originally allowed a private citizen to collect attorney's fees in the event of a successful lawsuit, but did not allow the government, which is the real party in interest and required to take primary responsibility for any litigation, to recover its attorney's fees. In 2022, the Act was amended to allow the government to collect attorney's fees in a successful false claims action effective October 1, 2022. At the State level, the attorney's fees received are designated to a special fund to be used for future investigative and prosecution needs.

Prior to fiscal year 2019, the Act required the Office of the Attorney General, each county, and each municipal corporation to report annually, on or before October 1, regarding False Claims Act litigation for the prior fiscal year. Beginning on October 1, 2019, the Act requires the Office of the Attorney General to report on behalf of all government entities. Accordingly, the Office of the Attorney General sent a letter to each county and municipality in the State. Responses were received from sixty-eight of the State's counties and municipal corporations. This report incorporates information provided by the cities and counties that responded to the request for information.

False Claims Litigation Generally and the Maryland False Claims Act

False claims litigation dates back to the Civil War, when companies that contracted to supply goods to the Union Army sometimes cheated the government and did not supply the products for which they were paid. This resulted in the enactment of the federal False Claims Act, 31 U.S.C. §§ 3729-3733. The False Claims Act allows the government to recover treble damages and additional penalties from anyone found to have submitted a false or fraudulent claim to the federal government.

The federal False Claims Act also contains provisions that allow a private citizen who knows that false or fraudulent claims have been submitted to the government to file suit on the government's behalf. These lawsuits, generally known as *qui tam* lawsuits, allow the government to recover monies in cases that might not otherwise have come to the government's attention. The person who files the lawsuit, known as the relator, receives a portion of the proceeds in exchange for his or her services in bringing the fraud to light. More than half of the States have enacted false claims statutes that allow a relator to file suit on the state's behalf. The government plaintiffs then investigate the allegations and choose either to intervene in the lawsuit or to decline the lawsuit. If a government entity intervenes, it usually files its own complaint, in which it may adopt some, all, or none of the relator's original allegations; the government may also include additional allegations based on information learned during its investigation. Under the federal False Claims Act and most state laws, if the government declines to intervene, the relator may continue to pursue the case on the government's behalf. Both the Maryland False Health Claims Act and the Maryland False Claims Act, however, require that the case be dismissed if the government declines to intervene in the action.

The Maryland False Claims Act

The False Claims Act states that a person may not

- (1) knowingly present or cause to be presented a false or fraudulent claim for payment or approval;
- (2) knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;
- (3) conspire to commit a violation under this subtitle;
- (4) have possession, custody, or control of money or other property used by or on behalf of a governmental entity and knowingly deliver or cause to be delivered to the State less than all of that money or other property;
- (5) (i) be authorized to make or deliver a receipt or other document certifying receipt of money or other property used or to be used by a governmental entity; and (ii) intending to defraud the governmental entity make or deliver a receipt or document knowing that the information contained in the receipt or document is not true;
- (6) knowingly buy or receive as a pledge of an obligation or debt publicly owned property from an officer, employee, or agent of a governmental entity who lawfully may not sell or pledge the property;
- (7) knowingly make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or other property to a governmental entity;
- (8) knowingly conceal, or knowingly and improperly avoid or decrease, an obligation to pay or transmit money or other property to a governmental entity, including misrepresenting the time at which a trade was made to make the transaction appear less favorable; or
- (9) knowingly make any other false or fraudulent claim against a governmental entity.

When a person submits a false claim in violation of the Act, the government may recover up to three times the amount of the damages sustained and up to \$10,000 per violation of the Act. The claim does not have to be submitted directly to a government entity, but includes indirect payments, such as a subcontractor submitting a false claim to a prime contractor or contractors submitting claims to non-governmental agencies that receive government funds.

Pending Actions and Investigations

Three actions were brought pursuant to the provisions of the False Claims Act in Fiscal Year 2023, all which were *qui tam* actions filed on the State's behalf by private persons and all of which are still under investigation.

In Fiscal Year 2023, the Office of the Attorney General also opened investigations into four additional matters, based on information received from sources other than a *qui tam* relator, in which litigation has not been commenced. A total of twenty-three matters are currently open for investigation, including matters opened in previous fiscal years that have carried over into the current year.

In Fiscal Year 2023, the government resolved one matter arising under the False Claims Act: *Auto Barn, Inc. v. Mayor and City Council of Baltimore*, Case No. 24-C-21-005916 (Circuit Court for Baltimore City). The city alleged that Auto Barn, which had a contract with the City to provide towing services, submitted false or fraudulent claims. The case was resolved with a settlement agreement under which Auto Barn paid the City \$28,247.56, agreed not bid on any City contracts for a three-year period, and agreed that Auto Barn and its owner are deemed non-responsible bidders for a three-year period.

Conclusion

Although the lack of investigative and auditing staff and delays caused by inadequate resources to engage in electronic discovery hamper efforts to investigate and pursue claims under the False Claims Act, the Office of the Attorney General believes that the False Claims Act is a valuable tool to fight fraud against the government. It will allow the State and local governments to recoup funds that would otherwise be lost to unscrupulous conduct and serve as an effective deterrent to future misconduct. The Office of the Attorney General looks forward to continuing to collaborate with local jurisdictions as they pursue false claims actions that affect local governments.



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