

SENATE FILE NO. SF0050

Government waste, fraud, abuse and whistleblower protection.

Sponsored by: Senator(s) James, Biteman, Bouchard, French, McKeown and Salazar and Representative(s) Fortner, Laursen and Rodriguez-Williams

A BILL

for

1 AN ACT relating to the administration of government;
2 establishing a reporting system for governmental waste,
3 fraud and abuse; authorizing enforcement actions; imposing
4 employment consequences; amending provisions governing
5 employee protections related to reporting of government
6 waste, fraud and abuse; requiring posted notice of employee
7 protections as specified; requiring reports; specifying
8 applicability; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 9-1-514 is created to read:

13

1 **9-1-514. Waste, fraud and abuse reporting system;**
2 **review and referral system; confidentiality; liability;**
3 **employment consequences; reporting; enforcement;**
4 **definitions.**

5
6 (a) In addition to other duties prescribed under this
7 article, the director of the department of audit or the
8 director's designee shall establish and maintain a system
9 through which persons can report waste, fraud and abuse in
10 the operation of governmental entities. The director shall
11 make available a toll-free telephone number and an online
12 form for persons to report waste, fraud or abuse. The
13 system shall clearly define and provide examples of waste,
14 fraud or abuse in the operation of a governmental entity.
15 The system shall provide resources related to common types
16 of reporting for which the department does not have
17 jurisdiction.

18
19 (b) In all reports of waste, fraud or abuse pursuant
20 to subsection (a) of this section, all reasonable steps
21 shall be taken to protect the identity of the person making
22 the report. In addition, a person making a report may elect
23 to have the person's identity kept confidential and not

1 disclosed to any person not employed by the department of
2 audit. Except when required by law, a department of audit
3 employee who discloses the identity of a person making a
4 report under this section to a person not employed by the
5 department of audit shall be terminated from the department
6 of audit for the unauthorized disclosure.

7

8 (c) The director of the department of audit shall
9 initially review each report submitted through the system
10 established and maintained pursuant to subsection (a) of
11 this section. Upon completion of an initial review, the
12 director shall:

13

14 (i) Analyze and verify the information received;
15 or

16

17 (ii) Refer the information for appropriate
18 action to the governmental entity that is or appears to be
19 the subject of the report or to the attorney general if
20 there is an apparent violation of criminal law. The
21 information referred from the department of audit shall
22 include a statement of the supporting facts and a statement
23 informing the governmental entity subject to the report of

1 the right to a contested case hearing before the director
2 in accordance with the Wyoming Administrative Procedure Act
3 and that failure to timely request a hearing shall result
4 in the facts as reported becoming subject to the posting
5 and reporting requirements under this section.

6

7 (d) A governmental entity that receives information
8 referred to it by the director of the department of audit
9 or the director's designee pursuant to this section shall
10 take adequate and appropriate action to investigate and
11 remedy any waste, fraud or abuse discovered as a result of
12 the referral. The governmental entity shall report in
13 writing to the director concerning the results of its
14 investigation and those measures, if any, taken to correct
15 any waste, fraud or abuse discovered as a result of the
16 referral. The governmental entity may timely request a
17 contested hearing before the director of the department of
18 audit in accordance with the Wyoming Administrative
19 Procedure Act. If, after a reasonable period, and after
20 conclusion of a contested hearing if a hearing was
21 requested, the director determines that the governmental
22 entity to which information was referred has not taken
23 adequate and appropriate action to remedy any waste, fraud

1 or abuse that violates law, the director through the
2 attorney general may seek an injunction in a district court
3 to enjoin any person from further causing the waste, fraud
4 or abuse that violates law. If any person violates the
5 injunction and continues to cause the waste, fraud or
6 abuse, the person continuing to cause the waste, fraud or
7 abuse shall be considered to be acting outside of the
8 person's scope of duties, shall not be covered by the
9 Wyoming Governmental Claims Act and shall be personally
10 liable to the applicable governmental entity for the harm
11 inflicted. In coordination with the director, the attorney
12 general may prosecute such actions.

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14 (e) No person convicted of a crime that constitutes
15 waste, fraud or abuse shall be employed by a governmental
16 entity.

17

18 (f) Consistent with the limitations on the disclosure
19 of information imposed by this section, the director or the
20 director's designee, not less than quarterly, shall post to
21 the department's website in a conspicuous location the
22 results of finalized reviews, verifications and referrals
23 conducted pursuant to this section, only after conclusion

1 of a contested hearing if a hearing was requested, and any
2 corrective action taken as a result. The homepage of the
3 department's website shall contain a link to this
4 information. These posts shall include:

5

6 (i) The name, position and governmental entity
7 of any person who has engaged in waste, fraud or abuse in
8 the operation of a governmental entity;

9

10 (ii) The type of violation perpetrated,
11 including the direct cost to the taxpayers of the waste,
12 fraud or abuse;

13

14 (iii) Penalties imposed or other corrective
15 action taken; and

16

17 (iv) Governmental resources expended to
18 investigate and remedy the waste, fraud or abuse.

19

20 (g) The director or the director's designee shall, on
21 or before September 1 of each even numbered year, report to
22 the governor and the legislature on the use of the system
23 established and maintained pursuant to subsection (a) of

1 this section, the results of reviews, verifications and
2 referrals conducted pursuant to this section and any
3 corrective action taken as a result.

4

5 (h) The director or the director's designee may
6 employ investigative, administrative and other specialized
7 personnel to carry out the purposes of this section,
8 subject to legislative appropriation.

9

10 (j) All records and information collected and
11 generated pursuant to this section that are not otherwise
12 matters of public record are investigation records and may
13 be withheld from public inspection pursuant to W.S.
14 16-4-203(b)(i).

15

16 (k) As used in this section:

17

18 (i) "Abuse" means excessive or improper use of
19 government property in a manner contrary to its lawful use.
20 "Abuse" can occur in financial or nonfinancial settings.
21 "Abuse" includes an individual working for a governmental
22 entity and in a position of authority directing a

1 subordinate to improperly use government property in a
2 manner contrary to its lawful use;

3

4 (ii) "Fraud" means wrongful or criminal
5 deception intended to result in financial or personal gain.
6 "Fraud" includes false representation of fact, making false
7 statements or concealment of information;

8

9 (iii) "Governmental entity" means:

10

11 (A) The state of Wyoming and any authority,
12 board, commission, department, division, institution or
13 separate operating agency of the executive, legislative or
14 judicial branch of the state of Wyoming;

15

16 (B) Political subdivisions of the state,
17 including the governing body of any county, municipality or
18 special district or a combination thereof, any school
19 district, community college district or municipal
20 corporation or any governmental board, department,
21 commission, council, agency or any member thereof; or

22

1 (C) Any person under a contract with an
2 entity included within subparagraph (A) or (B) of this
3 paragraph for purposes of actions taken pursuant to that
4 contract.

5

6 (iv) "Waste" means the thoughtless or careless
7 expenditure, mismanagement or abuse of resources to the
8 detriment of the governmental entity. "Waste" includes
9 incurring unnecessary costs resulting from inefficient or
10 ineffective practices, systems or controls.

11

12 **Section 2.** W.S. 9-11-101, 9-11-102(a)(i), (iii) and
13 by creating a new paragraph (iv), 9-11-103(a)(intro), (i),
14 (iv), (v), by creating a new paragraph (vi) and (b) through
15 (d) and 42-4-304(e) are amended to read:

16

17 **9-11-101. Short title.**

18

19 This chapter may be cited as the "~~State~~ Government Fraud
20 Reduction Act."

21

22 **9-11-102. Definitions; applicability.**

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1 (a) As used in this chapter:

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3 (i) "Employee" means any person who works an
4 average of twenty (20) hours or more per week during any
5 six (6) month period and who is employed by ~~the state a~~
6 governmental entity performing a service for wages or other
7 remuneration, excluding an independent contractor;

8

9 (iii) "State" means the state of Wyoming and any
10 authority, board, commission, department, division or
11 separate operating agency of the executive, legislative or
12 judicial branch of the state of Wyoming; ~~excluding its~~
13 political subdivisions.

14

15 (iv) "Governmental entity" means as defined in
16 W.S. 9-1-514(k)(iii).

17

18 **9-11-103. Discrimination against certain employees**
19 **prohibited; civil action against employer.**

20

21 (a) No ~~state~~ governmental entity employer may
22 discharge, discipline, intimidate, harass or retaliate
23 against an employee by unreasonably altering the terms,

1 location or conditions of employment because the employee
2 acting in good faith and within the scope of duties of
3 employment:

4

5 (i) Reports in writing to the employer what the
6 employee has reasonable cause to believe is a demonstration
7 of fraud, waste or gross mismanagement in ~~state government~~
8 office—a governmental entity;

9

10 (iv) Participates or is requested to participate
11 in any investigation, hearing or inquiry;~~or~~

12

13 (v) Has refused to carry out a directive which
14 is beyond the scope, terms and conditions of his employment
15 that would expose the employee or any individual to a
16 condition likely to result in serious injury or death,
17 after having sought and been unable to obtain a correction
18 of the dangerous condition from the employer;~~i~~ or

19

20 (vi) Submits a report to the department of
21 audit's reporting system, operated pursuant to W.S.
22 9-1-514. No employee submitting a report to the reporting
23 system shall be required to comply with the provisions of

1 subsection (b) of this section as a condition of receiving
2 the protections provided by this subsection.

3
4 (b) Except as provided by paragraph (a)(vi) of this
5 section, subsection (a) of this section does not apply to
6 an employee who has reported or caused to be reported a
7 violation or unsafe condition or practice, unless the
8 employee has first brought the alleged violation, condition
9 or practice to the attention of a person having supervisory
10 authority over the employee and has allowed the ~~state~~
11 governmental entity employer a reasonable opportunity to
12 correct that violation, condition or practice. Prior notice
13 to a person having supervisory authority is not required if
14 the employee reasonably believes that the report may not
15 result in prompt correction of the violation, condition or
16 practice. In such cases, the employee shall report the
17 violation, condition or practice to the ~~department or~~
18 ~~agency director~~ administrative head of the ~~state~~
19 governmental entity with which ~~he~~ the employee is employed
20 or, if a state employee, to the office of the governor. In
21 the event the alleged violation, condition or practice
22 occurred within the office of the governor, the employee

1 may report the violation, condition or practice to the
2 office of the secretary of state.

3

4 (c) Any employee who is discharged, disciplined or
5 otherwise penalized by a ~~state~~governmental entity employer
6 in violation of this section may after exhausting all
7 available administrative remedies, bring a civil action
8 within ninety (90) days after the date of the final
9 administrative determination or within ninety (90) days
10 after the violation, whichever is later, in the district
11 court for the judicial district in which the violation is
12 alleged to have occurred or where the ~~state~~ employer has
13 its principal office. An employee's recovery from any
14 action under this section shall be limited to reinstatement
15 of ~~his~~the employee's previous job, payment of back wages
16 and re-establishment of employee benefits to which ~~he~~the
17 employee would have otherwise been entitled if the
18 violation had not occurred. In addition, the court may
19 allow the prevailing party his costs together with
20 reasonable attorney's fees to be taxed by the court. Any
21 employee found to have knowingly made a false report shall
22 be subject to disciplinary action by ~~his~~the employer up to
23 and including dismissal.

1

2 (d) A ~~state~~governmental entity employer shall ensure
3 that its employees are aware of their rights under this
4 chapter. Each employer shall post and maintain in each of
5 the employer's establishments in a conspicuous location a
6 notice explaining its employees' rights under this chapter.
7 If possible, the notice shall be posted in a public
8 location.

9

10 **42-4-304. Investigations and prosecutions; powers of**
11 **prosecuting authority; remedies for retaliation; venue; no**
12 **private right of action.**

13

14 (e) The remedies provided in this act are separate
15 from and additional to any remedies available under the
16 ~~State~~ Government Fraud Reduction Act.

17

18 **Section 3.** This act shall not apply to any actions
19 taken pursuant to any contract entered into before the
20 effective date of this act.

