False Claims Acts: Federal, State And Municipal *Qui Tam* Laws

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National Whistleblower Center
Washington, D.C.

THE NATIONAL WHISTLEBLOWER CENTER

The National Whistleblower Center (NWC) is a not-for-profit public interest organization. Founded in 1988, the NWC conducts educational programs in order to provide the public with information on the laws governing whistleblower protection. In conjunction with the National Whistleblower Legal Defense and Education Fund (Legal Defense Fund), the NWC sponsors a website which provides information on pending legislation, publications, referrals and employee rights. The Legal Defense Fund sponsors a "Report Fraud" program, which permits employers to confidentially report allegations of fraud and seek legal assistance in retaliation cases. This program can be contacted at www.whistleblower-help.us/html/report_fraud_.html.

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Stephen M. Kohn is the President of the National Whistleblower Center and a partner in the Washington, D.C. law firm of Kohn, Kohn & Colapinto, LLP. He has represented whistleblowers in retaliation, First Amendment, and False Claim/*qui tam* cases for over twenty years. Mr. Kohn is the author or co-author of six books on whistleblower law, including *Whistleblower Law: A Guide to Legal Protections for Corporate Employees* (Praeger, 2004), *Concepts and Procedures in Whistleblower Law* (Greenwood Press, 2001), *The Whistleblower Litigation Handbook: Environmental, Nuclear, Health, and Safety Claims* (John Wiley & Sons: 1991) and *The Labor Lawyers Guide to the Rights and Responsibilities of Employee Whistleblowers* (Quorum Books: 1988). In 1985 Mr. Kohn wrote the first-ever legal treatise on whistleblower law, *Protecting Environmental and Nuclear Whistleblowers: A Litigation Manual* (Washington, D.C., NIRS: 1985). He is also the author of *Jailed for Peace: The History of American Draft Law Violators, 1658-1985* (Greenwood Press, 1986) and *American Political Prisoners: Prosecutions under the Espionage and Sedition Acts* (Praeger, 1994). Prior to joining the National Whistleblower Center in 1988, Mr. Kohn served as the Director of Corporate Litigation for the Government Accountability Project and was an Adjunct Professor and Clinical Supervisor at the Antioch School of Law. In 2006 Mr. Kohn was awarded the Daynard Public Interest Visiting Fellowship by the Northeastern University School of Law.

TABLE OF CONTENTS

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INTRODUCTION

Congress has enacted over 90 laws providing protection for whistleblowers.[1] The most effective such law is the False Claims Act ("FCA").[2] Originally passed during the Civil War at the "behest" of President Abraham Lincoln to "control fraud in defense contracts," it was subsequently the subject of two important amendments, one in 1943 and the second in 1986.[3] Today, the FCA is the most important law utilized to "ferret out fraud against the federal government."

The FCA contains two sections that are relevant to whistleblowers. First, the law contains a *qui tam*[4] provision, which permits whistleblowers (termed "relators") to file suit on behalf of the United States to recover damages incurred by the government as a result of fraud in federal contracting. The second is an anti-retaliation provision, which prohibits employers from firing employees who testify, file or assist in the investigation of a FCA case.[5]

QUI TAM

The *qui tam* provisions of the FCA provide for significant monetary rewards for whistleblowers who qualify under the FCA's complex stipulations. A *qui tam* claim is filed under "seal" and initially is served only on the United States. The government is required to review the claim and determine whether it should in fact be pursued by the United States against the corrupt contractor. If the United States joins the claim, the whistleblower-relator remains a party to the case and can directly assist the United States in the litigation.

If the United States declines to intervene or participate in the case, the FCA permits the whistleblower to pursue the case on his or her

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1. *See,* Stephen M. Kohn, *Concepts and Procedures in Whistleblower Law* (Greenwood Press, 2001); Kohn, *Federal Whistleblower Laws and Regulations* (National Whistleblower Center, 2007).
2. 31 U.S.C. §§ 3729-3733.
3. Senate Report No. 99-345, reprinted in Part III, section 53.1, *supra.*
4. "*Qui tam*" is an abbreviated Latin phrase of "*quit tam pro domino rege quam pro se ipso in hac parte sequitur*," which means "who pursues this action on our Lord the King's behalf as well as his own." *Vermont Agency of Natural Resources v. U.S. ex rel Stevens*, 120 U.S. (2000); *U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 20 F. Supp.2d 1017, 1045 n. 29 (S.D. Tex. 1998). *See also*, "The History and Development of *Qui Tam*," 1972 *Washington U.L.Q.* at 81, 83.
5. 31 U.S.C. § 3730(h).

own, and obtain a judgment against the contractor.

Damages in *qui tam* cases can be very high, and sometimes are in the hundreds of millions of dollars. The formula for calculating the damages is as follows: a contractor is liable for three-times the amount of any fraud committed against the United States, and must also pay a penalty of up to $10,000 for each violation.

Although the United States collects the majority of all damages obtained under the FCA, whistleblowers are entitled to a share of the proceeds collected on behalf of American taxpayers. The whistleblower's share is based on a number of factors, and ranges from 15 to 30% of the monies collected by the United States.

The following hypothetical example illustrates the amount of compensation a whistleblower can receive under the FCA. Assume that a whistleblower works for a federal contractor and discovers that the contractor has mischarged the federal government 25 million dollars on a large defense contract. If a whistleblower files a FCA/*qui tam* suit, and the court finds that the contractor defrauded the government out of the 25 million dollars, that amount of fraud would be tripled, and the contractor would have to pay the United States 75 million dollars in damages.

Depending on a variety of factors, including whether the United States intervened in the case or whether the whistleblower had to pursue the case on his or her own, the whistleblower would be entitled to an award of 15-30% of the monies collected by the United States. Assuming that the court set the amount at 20%, the whistleblower would obtain a 15 million dollar reward.

These financial incentives make the FCA the most effective whistleblower law ever enacted by Congress. The financial penalties are designed to both deter contractors from stealing from taxpayers, and encourage employees with knowledge of contract fraud to risk their jobs in exposing the illegal conduct. No other federal law contains such powerful incentives.

The FCA imposes on the *qui tam* relator a number of technical and complex substantive and procedural requirements. The failure to meet these requirements can (and often does) result in a "jurisdictional bar" prohibiting the *qui tam* claim from going forward with a claim, or a court order requiring a mandatory dismissal of a claim, with prejudice. Contractors accused of fraud under the FCA have aggressively utilized these procedural and jurisdictional "bars" to defeat claims, and they have been very successful at obtaining a wide variety of court rulings limiting

the effectiveness of the FCA. It is absolutely imperative for any employees filing a *qui tam* case to fully understand these jurisdictional prohibitions and technical pitfalls - some of which are applicable even before a formal FCA case is filed in court.

Despite these judicial set-backs and legalistic traps, the FCA has worked for many employees. The United States is annually collecting over 1 billion dollars in damages under the law, and whistleblowers are obtaining their fair share of the proceeds.[6] In 2006, based on the success of the FCA, Congress passed two additional *qui tam* related laws. The first was an amendment to the Internal Revenue Code to permit whistleblowers to file *qui tam* related tax claims. Under the new law, the Internal Revenue Service is required to review these whistleblower claims, and in cases of major tax fraud (frauds exceeding 2 million dollars), the whistleblower is now entitled to a reward in the range of 15-30%.

Congress also enacted a budget law designed to encourage states to pass their own versions of the FCA. Although some states had enacted FCAs prior to 2006, the new law has (and will continue to) encourage states to pass *qui tam* laws modeled on the federal FCA. To date, at least 21 states and the District of Columbia have passed local versions of the FCA. These laws are substantially identical to the federal law, and permit employees to obtain rewards for exposing fraud in state and local contracting.

ANTI-RETALIATION

The second provision of the FCA, which is of particular interest to whistleblowers, is the law's anti-retaliation provision. This provision prohibits the discharge or harassment of a whistleblower that makes FCA-protected disclosures, files a *qui tam* suit or assists in *qui tam* investigations.[7] Unlike the *qui tam* provisions, which allow the whistleblower to obtain a portion of the recovery obtained by the United States due to a violation of the FCA, the anti-retaliation provision was modeled after other federal whistleblower laws and operates under the basic principles underlying employment discrimination laws. Claims

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6. Between 1987-2005, the U.S. Treasury recovered $9.6 billion as a result of the FCA claims filed by whistleblowers. The whistleblowers received 1.6 billion in recoveries. The average relator share averaged between 1.7 million (mean share) and $123, 885 (or median share). (Government Accounting Office, Information on the FCA Litigation, Brief for *Congressional Requester*, Per. 15, 2005, pg. 5 & 32).
7. 31 U.S.C. 3730 (h).

may be filed in federal court, and if an employee prevails they are entitled to reinstatement, double-back pay, special damages (which includes loss of reputation and emotional distress), and attorney fees and costs.

HOW TO REPORT FRAUD

There are numerous programs in existence which encourage employees to report fraud. For example, under the Sarbanes Oxley Act, all publicly traded corporations must have an internal "Audit Committee" which can receive employee allegations which relate to corporate misconduct.[8] Additionally, most federal agencies have hotlines operated by the Office of Inspector General that are designed to accept fraud reports. Unfortunately, given the complex filing requirements of the FCA, if an employee simply files a fraud report with an Audit Committee or with an Inspector General, they are not entitled to the compensation set forth in the FCA – even if the United States were to recover millions of dollars in contract-fraud reimbursements based solely on the employee's disclosure(s).

Because the FCA provides such strong protections for whistleblowers, both in terms of anti-retaliation provisions and reward-compensation provisions, employees who uncover fraud in federal or state contracts should take steps to ensure that they are protected under the federal FCA or, if applicable, a state FCA. One very effective program that assists employees in determining whether their claim is covered under the FCA and also provides attorney referrals, as appropriate, is managed by the National Whistleblower Legal Defense and Education Fund (Legal Defense Fund). The program provides for an initial confidential review of employee allegations and, if appropriate, a referral to counsel with expertise in this area of law. The "Report Fraud Now" program can be contacted at www.whistleblowers.org.

One of the major advantages of contacting programs such as Legal Defense Fund is to report fraud service and ensure that employees who choose to blow the whistle obtain the maximum legal protection. Even if an employee's allegations are not covered under the FCA, there are other state and federal laws which may provide protection. For example, there are numerous federal and state laws protecting employees who disclose violations of environmental laws, public safety threats, fraud on stockholders, airline and transportation safety violations.[9]

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8. Kohn, *Whistleblower Law: A Guide for Legal Protection for Corporate Employers*, pg. 143-156, (Praeger, 2004).
9. Among other issues.

RESOURCES

Qui Tam and False Claim Acts: Federal, State and Municipal Laws is the second volume in a series of books published by the National Whistleblower Center designed to provide employees and their legal advocates ready-access to the numerous federal and state laws designed to protect whistleblowers. Unlike other areas of employment discrimination, Congress has not passed a uniform or comprehensive national whistleblower protection act. Consequently, one of the most difficult tasks in protecting employee whistleblowers is to determine which laws (federal or state) provide the best protection for an employee. This analysis can only be conducted on a case-by-case basis.[10]

10. *Concepts and Procedures in Whistleblower Law* (Greenwood Press, 2001) and *Whistleblower Law: A Guide to Legal Protections for Corporate Employees* (Praeger, 2004), which set forth a comprehensive legal analysis of these statutory and regulatory provisions.

FEDERAL FALSE CLAIMS ACT

False Claims Act
31 U.S.C. § § 3729-3732

§ 3729. False claims

(a) Liability for Certain Acts. Any person who—
(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States 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;
(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
(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 willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
(5) 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, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—
(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
(B) such person fully cooperated with any Government investigation of such violation; and
(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation; the court may assess not less than

2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.
b) Knowing and Knowingly Defined. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information—
(1) has actual knowledge of the information;
(2) acts in deliberate ignorance of the truth or falsity of the information; or
(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.
(c) Claim Defined. For purposes of this section, "claim" 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 if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
(d) Exemption From Disclosure. Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.
(e) Exclusion. This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

§ 3730. Civil actions for false claims

(a) Responsibilities of the Attorney General. The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.
(b) Actions by Private Persons.
(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.
(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.
(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the

complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.
(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—
(A) proceed with the action, in which case the action shall be conducted by the Government; or
(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.
(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.
(c) Rights of the Parties to Qui Tam Actions. **(1)** If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).
(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.
(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—
(i) limiting the number of witnesses the person may call; **(ii)** limiting the length of the testimony of such witnesses; **(iii)** limiting the person's cross-examination of witnesses; or **(iv)** otherwise limiting the participation by the person in the litigation.
(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.
(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.
(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's

investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam Plaintiff.

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [sic] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.
(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.
(e) Certain Actions Barred.
(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.
(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.
(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).
(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.
(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [sic] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.
(B) For purposes of this paragraph, "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 Government before filing an action under this section which is based on the information.
(f) Government Not Liable for Certain Expenses. The Government is not liable for expenses which a person incurs in bringing an action under this section.
(g) Fees and Expenses to Prevailing Defendant. In civil actions brought

under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.
(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, 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 district court of the United States for the relief provided in this subsection.

§ 3731. False claims procedure

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.
(b) A civil action under section 3730 may not be brought—
(1) more than 6 years after the date on which the violation of section 3729 is committed, or
(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.
(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.
(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

§ 3732. False claims jurisdiction.

(a) Actions Under Section 3730. Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) Claims Under State Law. The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

Deficit Reduction Act of 2005
Employee Education about False Claims Act Recovery
Public Law 109-171
42 U.S.C. 1396a(a)(68)

(a) Contents
A State plan for medical assistance must—

* * *
(68) provide that any entity that receives or makes annual payments under the State plan of at least $5,000,000, as a condition of receiving such payments, shall--
(A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));
(B) include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and
(C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse."
State false claims act requirements for increased state share of recoveries

Deficit Reduction Act of 2005
Encouraging the Enactment of State False Claims Acts
Public Law 109-171, Section 6031
42 U.S.C. 1396h

§ 1909.
(a) In General.--Notwithstanding section 1905(b), if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law, shall be decreased by 10 percentage points.
(b) Requirements.--For purposes of subsection **(a)**, the requirements of this subsection are that the Inspector General of the Department of Health and Human Services, in consultation with the Attorney General,

determines that the State has in effect a law that meets the following requirements:
(1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to any expenditure described in section 1903(a).
(2) The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31, United States Code.
(3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General.
(4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31, United States Code.
(c) Deemed Compliance.--A State that, as of January 1, 2007, has a law in effect that meets the requirements of subsection (b) shall be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements.
(d) No Preclusion of Broader Laws.--Nothing in this section shall be construed as prohibiting a State that has in effect a law that establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to programs in addition to the State program under this title, or with respect to expenditures in addition to expenditures described in section 1903(a), from being considered to be in compliance with the requirements of subsection (a) so long as the law meets such requirements.".

Major Frauds Act
18 U.S.C. § 1031

(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent –
(1) to defraud the United States; or
(2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises, in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of the contract, subcontract, or any constituent part thereof, for such property or services is $1,000,000 or more shall, subject to the applicability of subsection (c) of this section, be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.
(b) The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed $5,000,000 and
(1) the gross loss to the Government or the gross gain to a defendant is $500,000 or greater; or
(2) the offense involves a conscious or reckless risk of serious personal injury.
(c) The maximum fine imposed upon a defendant for a prosecution including a prosecution with multiple counts under this section shall not exceed $10,000,000.

(d) Nothing in this section shall preclude a court from imposing any other sentences available under this title, including without limitation a fine up to twice the amount of the gross loss or gross gain involved in the offense pursuant to 18 U.S.C. section 3571(d).
(e) In determining the amount of the fine, the court shall consider the factors set forth in 18 U.S.C. sections 3553 and 3572, and the factors set forth in the guidelines and policy statements of the United States Sentencing Commission, including –
(1) the need to reflect the seriousness of the offense, including the harm or loss to the victim and the gain to the defendant;
(2) whether the defendant previously has been fined for a similar offense; and
(3) any other pertinent equitable considerations.
(f) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed, plus any additional time otherwise allowed by law.
(g) (1) In special circumstances and in his or her sole discretion, the Attorney General is authorized to make payments from funds appropriated to the Department of Justice to persons who furnish information relating to a possible prosecution under this section. The amount of such payment shall not exceed $250,000. Upon application by the Attorney General, the court may order that the Department shall be reimbursed for a payment from a criminal fine imposed under this section.
(2) An individual is not eligible for such a payment if -
(A) that individual is an officer or employee of a Government agency who furnishes information or renders service in the performance of official duties;
(B) that individual failed to furnish the information to the individual's employer prior to furnishing it to law enforcement authorities, unless the court determines the individual has justifiable reasons for that failure;
(C) the furnished information is based upon public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or GAO report, hearing, audit or investigation, or from the news media unless the person is the original source of the information. For the 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 Government; or
(D) that individual participated in the violation of this section with respect to which such payment would be made.
(3) The failure of the Attorney General to authorize a payment shall not be subject to judicial review.
(h) Any individual who -
(1) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), and
(2) was not a participant in the unlawful activity that is the subject of said

prosecution, may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual 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 attorney's fees.

Federal Acquisition Regulations
Whistleblower Rules
48 CFR Subpart 3.9

§ 3.900 Scope of subpart.
This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, et seq., as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

§ 3.901 Definitions.
Authorized official of an agency means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract. Authorized official of the Department of Justice means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.
Inspector General means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DOD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.
§ 3.902 Applicability.
This subpart applies to all Government contracts.

§ 3.903 Policy.
Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

§ 3.904 Procedures for filing complaints.
(a) Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the

policy in 3.903 may file a complaint with the Inspector General of the agency that awarded the contract.
(b) The complaint shall be signed and shall contain--
(1) The name of the contractor;
(2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
(3) The substantial violation of law giving rise to the disclosure;
(4) The nature of the disclosure giving rise to the discriminatory act; and
(5) The specific nature and date of the reprisal.

§ 3.905 Procedures for investigating complaints.
(a) Upon receipt of a complaint, the Inspector General shall conduct an initial inquiry. If the Inspector General determines that the complaint is frivolous or for other reasons does not merit further investigation, the Inspector General shall advise the complainant that no further action on the complaint will be taken.
(b) If the Inspector General determines that the complaint merits further investigation, the Inspector General shall notify the complainant, contractor, and head of the contracting activity. The Inspector General shall conduct an investigation and provide a written report of findings to the head of the agency or designee.
(c) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to--
(1) The complainant and any person acting on the complainant's behalf;
(2) The contractor alleged to have committed the violation; and
(3) The head of the contracting activity.
(d) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.
(e) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

§ 3.906 Remedies.
(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:
(1) Order the contractor to take affirmative action to abate the reprisal.
(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding

the reprisal.
(b) Whenever a contractor fails to comply with an order, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.
(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code.

Office of Inspector General Guidelines for Evaluating State False Claims Acts:

Under section 1909 of the Social Security Act (the Act), 42 U.S.C. 1396h, the Inspector General of the Department of Health and Human Services is required to determine, in consultation with the Attorney General, whether a State has in effect a law relating to false or fraudulent claims submitted to a State Medicaid program that meets certain enumerated requirements. If the Inspector General determines that a State law meets these requirements, the State medical assistance percentage, with respect to any amounts recovered under a State action brought under such a law, shall be increased by 10 percentage points. This notice sets forth the Inspector General's guidelines for evaluating whether a State law meets the requirements of section 1909 of the Act.

Effective Date*:* These guidelines are effective on August 21, 2006.

FOR FURTHER INFORMATION CONTACT:
Roderick T. Chen, Office of Counsel to the Inspector General, (202) 401–4134, or Joel Schaer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION:
I. Background: Section 1909 of the Act, added by section 6031 of the Deficit Reduction Act of 2005 (Pub. L. 109–171), creates a financial incentive for States to enact legislation that establishes liability to the State for individuals or entities that submit false or fraudulent claims to the State Medicaid program. This incentive takes the form of an increase in the State's share of any amounts recovered from a State action brought under a qualifying law.1 In order for a State to qualify for this incentive, the State law must meet certain enumerated requirements, as determined by the Inspector General of the Department of Health and Human Services in consultation with the Attorney General.

Medicaid, authorized under Title XIX of the Act, 42 U.S.C. 1396–1396v, is a joint Federal and State program that pays for medical and other related benefits provided to needy beneficiaries. States that participate in Medicaid administer their own programs within broad Federal guidelines and receive matching funds from the Federal government. The Federal share generally varies between 50 percent and 83 percent, depending on the State per capita income. False or fraudulent claims presented to State Medicaid programs by participating providers and others may give rise to civil liability under the Federal False Claims Act (FCA), 31 U.S.C. 3729–3733. Under the FCA, any person who knowingly submits a false or fraudulent claim to a State Medicaid program is liable to the Federal Government for three times the amount of the Federal Government's damages plus penalties of $5,000 to $10,000 for each false or fraudulent claim. Any recovery of damages to the State Medicaid program will be shared with the State in the same proportion as the State's share of the costs of the Medicaid program. For example, if a State's Medicaid share is 40 percent, then the State would be entitled to receive 40 percent of the damages and the Federal Government would retain 60 percent of the damages. Under the *qui tam* provisions of the FCA, private persons (known as relators) may file lawsuits in Federal court against individuals and/or entities that defraud the Federal government by filing false or fraudulent Medicaid claims. The Department of Justice (DOJ) has an opportunity to investigate the relator's allegations, and DOJ may intervene and take over the prosecution of the action. If DOJ chooses not to intervene, the relator has the right to conduct the action. In general, with respect to recoveries of Federal damages and penalties in cases in which DOJ has intervened, the relator is entitled to between 15 and 25 percent of the recovery of Federal damages and penalties depending upon the extent to which the relator substantially contributed to the case. In general, the relator is entitled to between 25 and 30. VerDate Aug<31>2005 17:53 Aug 18, 2006 Jkt 208001 PO 00000 Frm 00024 Fmt 4703 Sfmt 4703 E:\FR\

48553 Federal Register

Notices percent of any recoveries of Federal damages and penalties if DOJ has not intervened in the case. Because the FCA applies only to false claims against the Federal Government, the relator is not entitled to a share of the State portion of a Medicaid recovery under the FCA.

Many States have enacted their own false claims acts that establish civil liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. Generally, these laws include *qui tam* provisions that reward relators with a share of the State portion of recoveries in cases of Medicaid fraud. Currently, if a State obtains a recovery as the result of a State action relating to false or fraudulent claims submitted to its Medicaid program, it must share the damages recovered with the Federal Government in the same proportion as the Federal Government's share in the cost of the State Medicaid program. For example, if a State's Medicaid share is 40 percent, then the State would retain 40 percent of any damages recovered from an individual or entity that has defrauded Medicaid, and the Federal Government would be entitled to the remaining 60 percent of damages.

II. Section 1909 of the Social Security Act

In order to encourage States to pursue Medicaid fraud, Congress added a new section 1909 to the Act, effective January 1, 2007. Under this section, if a State has in effect a State false claims act that meets certain enumerated requirements, the Federal medical assistance percentage will be decreased by 10 percentage points with respect to any amount recovered under a State action brought under such a law.

Therefore, the State's share of any recovery in an action under such a law will be increased by 10 percentage points. For example, if a State has a qualifying State false claims act and the State's Medicaid share is 50 percent, the State would be entitled to 60 percent of the amount of the recovery, while the Federal Government would receive the remaining 40 percent. Section 1909(b) of the Act requires the Inspector General to determine, in consultation with the Attorney General, whether a State has in effect a false claims act that meets the following requirements:

1. The law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729 with respect to any expenditure described in section 1903(a) of the Act;

2. The law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in 31 U.S.C. 3730–3732;

3. The law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General; and

4. The law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729.

A State that, as of January 1, 2007, has a law in effect that meets the enumerated requirements shall be considered in compliance with such requirements so long as the law continues to meet such requirements.

The effective date of section 1909 of the Act is January 1, 2007. Thus, a State with a law in effect that meets the enumerated requirements will qualify for a 10 percentage point increase in its share of any amounts recovered from a State action brought under the law if the recovery is received on or after January 1, 2007. A State may enact a law before, on, or after January 1, 2007. Furthermore, the action that gives rise to the recovery may be commenced before, on, or after January 1, 2007. As long as the State's law meets the enumerated requirements on or after January 1, 2007, and the recovery from the action brought under the qualifying law is received by the State on or after January 1, 2007, the State will qualify for a 10 percent increase in its share of the amount recovered. It is important to note that section 1909 of the Act does not require a State to have in effect a false claims act or to enact a false claims act that meets these minimum requirements. States may choose not to enact false claims acts, or may choose to enact false claims acts that do not meet the enumerated requirements. However, a State that does not have such a law in effect will not qualify for the 10 percentage point increase in its share of any recoveries from an action brought under such a law.

III. OIG Guidelines for Evaluating State False Claims Acts

Section 1909(b) of the Act sets forth four requirements that a State law must meet if the State is to qualify for the 10 percentage point increase in

any State Medicaid share recovered under the law. The Inspector General is required to determine, in consultation with the Attorney General, whether a State law meets these requirements. After reviewing section 1909 of the Act and consulting with DOJ, OIG has developed guidelines to use in evaluating whether a State law meets the enumerated requirements. It is important to note that these guidelines are not model statutory provisions. OIG is not requiring any specific language to be included in State false claims acts. Rather, the guidelines reflect the provisions relevant to OIG's review of whether a State law meets the requirements of section 1909(b) of the Act.

A. Liability for False or Fraudulent Claims

Under section 1909(b)(1) of the Act, the State law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729, with respect to any expenditure described in section 1903(a) of the Act. Section 1903(a) of the Act describes expenditures related to State Medicaid plans, including all expenditures for medical assistance under a State Medicaid plan. When evaluating a State law to determine whether it meets the requirements of section 1909(b)(1) of the Act, OIG will consider whether the law provides for the following:

1. Liability to the State for false or fraudulent claims with respect to Medicaid program expenditures, including: Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval to the Medicaid program; Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Medicaid program; Conspiring to defraud the Medicaid program by getting a false or fraudulent claim allowed or paid; Knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medicaid program.

2. Definitions for the terms ''knowing'' and ''knowingly'' meaning that a person, with respect to information: (a) Has actual knowledge of the information; (b) acts in deliberate ignorance of the truth or falsity of the information; or (c) acts in reckless disregard of the truth or falsity of the information. In addition, no proof of specific intent to defraud should be required.

B. Qui Tam Provisions

Under section 1909(b)(2) of the Act, a State law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in 31 U.S.C. 3730–3732. When evaluating a State law to determine whether it meets the requirements of section 1909(b)(2) of the Act, OIG will consider

VerDate Aug<31>2005 17:53 Aug 18, 2006 Jkt 20800
48554 Federal Register

DOJ is authorized to adjust the civil penalties under the FCA for inflation and has issued regulations that raise the FCA penalties. *See* Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990); 28 CFR 85.3.

However, the statutory provisions of the FCA identify the range of civil penalties as $5,000 to $10,000, and OIG will review State laws based on those statutory provisions. whether the law provides for the following:

1. A provision that authorizes a person (relator) to bring a civil action for a violation of the State false claims act for the person and for the State, which will be brought in the name of the State.

2. A provision that requires a copy of complaint and written disclosure of material evidence and information to be served on the State Attorney General in accordance with State Rules of Civil Procedure.

3. A provision that provides that when a relator brings a qui tam action, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

4. Provisions that set forth rights of parties to *qui tam* actions, including: If the State proceeds with the action, the State has primary responsibility in the action, but the relator shall have the right to continue as a party to the action; and if the State elects not to proceed with the action, the relator may conduct the action but the State may intervene at a later date upon a showing of good cause.

5. Provisions that reward a relator with a share of the proceeds of the action or settlement of the claim, including: If the State proceeds with an action brought by the *qui tam* relator, the relator receives at least 15 percent of the proceeds of the action or settlement of the claim, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action;If the State does not proceed with an action, the relator receives at least 25 percent of the proceeds of the action or settlement, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action; and the court is authorized to award the relator an amount for reasonable expenses, including attorneys' fees and costs, to be awarded against the defendant.

6. A statute of limitations period not shorter than 6 years after the date of the violation is committed, or 3 years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with the responsibility to act in the circumstances, whichever occurs last.

7. A provision that establishes the burden of proof, for each of the elements of the cause of action including damages, no greater than a preponderance of the evidence.

8. A provision that provides a cause of action for relators who suffer retribution from employers for whistleblower activities related to the State false claims act. OIG is required to consider whether the State law is at least as effective in rewarding and facilitating *qui tam* actions when compared to the provisions at 31 U.S.C. 3730–3732. State false claims acts may include procedural rights, reductions in relator awards, jurisdictional bars, and other qui tam provisions similar to those found in the FCA that do not conflict with the requirements of section 1909(b)(2) of the Act. However, if such provisions are more restrictive than the provisions in the FCA, OIG may determine that a State law is

not as effective in rewarding or facilitating *qui tam* actions. OIG will make such determinations on a case-by-case basis and in consultation with DOJ.

C. Seal Provisions

Under section 1909(b)(3) of the Act, a State law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General. When evaluating whether a State law meets the requirements of section 1909(b)(3) of the Act, OIG will consider whether the law provides a provision that requires the complaint to be filed in camera and to remain under seal for at least 60 days. In addition, OIG will consider whether the State law's seal provisions operate in a way that conflict with the Federal seal in a pendant FCA case.

D. Civil Penalty Provisions

Under section 1909(b)(4) of the Act, the State law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729. OIG will review a State law to determine if these provisions include a provision that sets at least treble damages (or double damages in instances of timely self-disclosure and full cooperation) and civil penalties at amounts of at least $5,000 to $10,000 per false claim.2

IV. OIG Procedures for Reviewing State False Claims Acts

As noted above, the effective date of section 1909 of the Act is January 1, 2007. A State that, as of January 1, 2007, has a law in effect that meets the enumerated requirements shall be deemed in compliance with such requirements for so long as the law continues to meet such requirements. With the publication of these guidelines, OIG will accept requests for review of State laws to determine if they meet the requirements of section 1909(b) of the Act. In order to request OIG review of a State law, the State Attorney General's office should submit a complete copy of the State law, or any other relevant information, to the following address:

Office of Inspector General, Department of Health and Human Services, Cohen Building, Mail Stop 5527, 330 Independence Avenue, SW., Washington, DC 20201, Attention:
Roderick Chen, Office of Counsel to the Inspector General.
Submissions by telecopier, facsimile, or other electronic media will not be accepted. OIG will review the State law under these guidelines and in consultation with DOJ, and inform the State Attorney General's office in writing whether the State law meets the requirements of section 1909(b) of the Act.
Dated: August 16, 2006.

Daniel R. Levinson,
Inspector General.
[FR Doc. E6–13749 Filed

STATE PROTECTIONS

ALABAMA

No Act at this time
Effective February, 2008

ALASKA

No Act at this time
Effective February, 2008

ARIZONA

No Act at this time
Effective February, 2008

ARKANSAS

Arkansas Medicaid Fraud False Claims Act, Ark. Code Ann. 20-77-901 et seq. [Medicaid]

§20-77-901. Definitions. Arkansas Medicaid Fraud False Claims Act

As used in this subchapter:

(1) "Arkansas Medicaid program" means the program authorized under Title XIX of the federal Social Security Act, which provides for payments for medical goods or services on behalf of indigent families with dependent children and of aged, blind, or disabled individuals whose income and resources are insufficient to meet the cost of necessary medical services;

(2) "Claim" includes any request or demand, including any and all documents or information required by federal or state law or by rule, made against medical assistance programs funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. A claim may be made through electronic means if authorized by the Department of Human Services. Each claim may be treated as a separate claim, or several claims may be combined to form one claim.

(3) "Fiscal agent" means any individual, firm, corporation, professional association, partnership, organization, or other legal entity which, through a contractual relationship with the Department of Human Services, the State of Arkansas receives, processes, and pays claims under the program; **(4)** "Knowing" or "knowingly" means that the person has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information;

(5) "Medicaid recipient" means any individual on whose behalf any person claimed or received any payment or payments from the program or its fiscal agents, whether or not the individual was eligible for benefits under the program;

(6) "Person" means any provider of goods or services or any employee of the provider, whether that provider be an individual, individual medical vendor, firm, corporation, professional association, partnership, organization, or other legal entity under the program but which provides goods or services to a provider under the program or its fiscal agents; and

(7) "Records" means all documents in any form, including, but not limited to, medical documents and X rays, prepared by any person for the purported provision of any goods or services to any Medicaid recipient.

20-77-902. Liability for certain acts.

A person shall be liable to the State of Arkansas, through the Attorney General, for a civil penalty and restitution if he or she:

(1) Knowingly makes or causes to be made any false statement or

representation of a material fact in any application for any benefit or payment under the Arkansas Medicaid program;

(2) At any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to a benefit or payment;

(3) Having knowledge of the occurrence of any event affecting his or her initial or continued right to any benefit or payment or the initial or continued right to any benefit or payment of any other individual in whose behalf he or she has applied for or is receiving a benefit or payment knowingly conceals or fails to disclose that event with an intent fraudulently to secure the benefit or payment either in a greater amount or quantity than is due or when no benefit or payment is authorized;

(4) Having made application to receive any benefit or payment for the use and benefit of another and having received it, knowingly converts the benefit or payment or any part thereof to a use other than for the use and benefit of the other person;

(5) Knowingly presents or causes to be presented a claim for a physician's service for which payment may be made under the program and knows that the individual who furnished the service was not licensed as a physician; **(6)** Knowingly solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the program; or

(B) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the program;

(7)(A) Knowingly offers or pays any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce the person:

(i) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the program; or

(ii) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the program.

(B) Subdivision (7)(A) of this section shall not apply to:

(i) A discount or other reduction in price obtained by a provider of services or other entity under the program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under the program;

(ii) Any amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the providing of covered items or services; or

(iii) Any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under the program, if:

(a) The person has a written contract with each individual or entity which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each individual or entity under the contract; and

(b) In the case of an entity that is a provider of services as defined in § 20-9-101, the person discloses, in the form and manner as the Director of the Department of Human Services requires, to the entity and upon request to the director the amount received from each vendor with respect to purchases made by or on behalf of the entity; and

(iv) Any payment practice specified by the director promulgated pursuant to applicable federal or state law;

(8) Knowingly makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact:

(A) With respect to the conditions or operation of any institution, facility, or entity in order that the institution, facility, or entity may qualify either upon initial certification or upon recertification as a hospital, rural primary care hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity for which certification is required; or

(B) With respect to information required pursuant to applicable federal and state law, rules, regulations, and provider agreements;

(9) Knowingly:

(A) Charges for any service provided to a patient under the program money or other consideration at a rate in excess of the rates established by the state; or

(B) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under the program, any gift, money, donation, or other consideration other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded or as a requirement for the patient's continued stay in the facility when the cost of the services provided therein to the patient is paid for in whole or in part under the program;

(10) Knowingly makes or causes to be made any false statement or representation of a material fact in any application for benefits or for payment in violation of the rules, regulations, and provider agreements issued by the program or its fiscal agents; or

(11) Knowingly:

(A) Participates, directly or indirectly, in the Arkansas Medicaid program after having pleaded guilty or nolo contendere to or been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults as defined in the Arkansas Criminal Code, §§ 5-1-101 et seq.; or

(B) As a certified health provider enrolled in the Arkansas Medicaid program pursuant to Title XIX of the Social Security Act or the fiscal

agent of such a provider who employs, engages as an independent contractor, engages as a consultant, or otherwise permits the participation in the business activities of such a provider, any person who has pleaded guilty or nolo contendere to or has been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults as defined in the Arkansas Criminal Code, § 5-1-101 et seq.

20-77-903. Civil penalties.

(a)(1) It shall be unlawful for any person to commit any act proscribed by § 20-77-902, and any person found to have committed any such act or acts shall be deemed liable to the State of Arkansas, through the Attorney General, for full restitution and for a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) for each violation, plus three (3) times the amount of all payments judicially found to have been fraudulently received from the Arkansas Medicaid program or its fiscal agents because of the act of that person, except that if the court finds the following:

(A) The person committing the violation of this subchapter furnished officials of the Attorney General's office with all information known to the person about the violation within thirty (30) days after the date on which the defendant first obtained the information; and

(B) The person fully cooperated with any Attorney General's investigation of the violation, and at the time the person furnished the Attorney General with the information about the violation:

(i) No criminal prosecution, civil action, or administrative action had commenced under this subchapter with respect to the violation; and

(ii) The person did not have actual knowledge of the existence of an investigation into the violation.

(2) The court may assess not more than two (2) times the amount of damages which the state sustained because of the act of the person.

(b) In addition to any other penalties authorized herein, any person violating this subchapter shall also be liable to the State of Arkansas for the Attorney General's reasonable expenses, including the cost of investigation, attorney's fees, court costs, witness fees, and deposition fees.

(c) The entirety of any penalty less any reward which may be determined by the court pursuant to this subchapter shall be credited as special revenues of the State of Arkansas and deposited into the Arkansas Medicaid Program Trust Fund for the sole use of the program.

(d) For actions under this subchapter, the following shall apply:

(1) To enable the court to properly fix the amount of restitution, the Attorney General shall, after appropriate investigation, recommend an amount that would make the victim whole with respect to the money fraudulently received from the program or its fiscal agents, the expense

to the violation, it shall order the person to comply with the demand, subject to modifications the court may prescribe.

(c) If the person fails to comply with the order, the court may issue any of the following orders until the person complies with the order:

(1) Adjudging the person in contempt of court;

(2) Granting injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation; or

(3) Granting other relief as the court may deem proper.

(d) The court may award to the Attorney General costs and reasonable attorney's fees as determined by the court against the person failing to obey the order.

(e) Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

20-77-905. Order compelling testimony or production of evidence - Immunity - Contempt.

(a)(1)(A) In any proceeding or investigation under this subchapter, if a person refuses to answer a question or produce evidence of any kind on the ground that he or she may be incriminated and if the Attorney General or prosecuting attorney requests the court in writing to order the person to answer the question or produce the evidence, the court may make this order, and the person shall comply with the order.
(B) If the court denies the request, the court shall state its reasons for the denial in writing.

(2) After complying, the testimony or evidence or any information directly derived from the testimony or evidence shall not be used against the person in any proceeding or prosecution of a crime or offense concerning which he or she gave an answer or produced evidence under the court order.

(3) Immunity obtained pursuant to this section does not exempt any person from prosecution, penalty, or forfeiture for any perjury, false swearing, or contempt committed in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.

(b) If a person refuses to testify after being granted immunity and after being ordered to testify as prescribed in subsection (a) of this section, he or she may be adjudged in contempt.

20-77-906. Evidence - Disclosure.

(a) If the Attorney General determines that disclosure to the respondent of the evidence relied on to establish reasonable cause is not in the best interests of the investigation, he or she may request that the court examine the evidence in camera. If the Attorney General makes this

request, the court may examine the evidence in camera and then make its determination.

(b)(1) Any procedure, testimony taken, or material produced under this section shall be kept confidential by the Attorney General before bringing an action against a person under this subchapter for the violation under investigation unless any of the following applies:

(A) Confidentiality is waived by the person whose testimony is disclosed;

(B) Confidentiality is waived by the person who produced to the Attorney General the material being disclosed;

(C) The testimony or material is disclosed solely to the person, or the person's attorney, who testified or provided the material to the Attorney General; or

(D) Disclosure is authorized by court order.

(2) The Attorney General may disclose the testimony or material to an agency director of the State of Arkansas, of the United States, or of any other state, to the prosecuting attorney, or to the United States Attorney.

(c) An investigator conducting an examination pursuant to this section may exclude from the place of examination any person except the person being examined and the person's counsel.

(d) Nothing in this section shall be construed to limit the Attorney General's authority to access provider records in accordance with existing provisions of the Arkansas Code of 1987 Annotated.

20-77-907. Records.

(a)(1) All persons under the Arkansas Medicaid program are required to maintain at the person's principal place of Medicaid business all records at least for a period of five (5) years from the date of claimed provision of any goods or services to any Medicaid recipient. (2)(A) Any person found not to have maintained all records shall be guilty of a Class D felony if the unavailability of records impairs or obstructs a civil action pursuant to this subchapter.

(B) Otherwise, the unavailability of records shall be a Class A misdemeanor.

(b)(1) No potential Medicaid recipient shall be eligible for medical assistance unless he or she has authorized in writing the Director of the Department of Human Services to examine all records of his or her own or of those receiving or having received Medicaid benefits through him or her, whether the receipt of the benefits would be allowed by the program or not, for the purpose of investigating whether any person may have violated this subchapter or for use or potential use in any legal, administrative, or judicial proceeding.

(2) No person shall be eligible to receive any payment from the program or its fiscal agents unless that person has authorized in writing the director to examine all records for the purpose of investigating whether

any person may have committed the crime of Medicaid fraud or for use or for potential use in any legal, administrative, or judicial proceeding.

(c) The Attorney General shall be allowed access to all records of persons and Medicaid recipients under the program to which the director has access for the purpose of investigating whether any person may have violated this subchapter or for use or potential use in any legal, administrative, or judicial proceeding.

(d)(1) Records obtained by the director or the Attorney General pursuant to this subchapter shall be classified as confidential information and shall not be subject to outside review or release by any individual except when records are used or potentially to be used by any governmental entity in any legal, administrative, or judicial proceeding.

(2) Notwithstanding any other law to the contrary, no person shall be subject to any civil or criminal liability for providing access to records to the director, to the Attorney General, or to the prosecuting attorneys.

20-77-908. False claims jurisdiction - Procedure.

(a) Any action under this subchapter may be brought in the circuit court of the county where the defendant, or in the case of multiple defendants, any one (1) defendant resides. **(b)** A civil action under this section may not be brought more than five (5) years after the date on which the violation of this subchapter is committed.

(c) In any action brought pursuant to this subchapter, the State of Arkansas shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) A subpoena requiring the production of documents or the attendance of a witness at an interview, trial, or hearing conducted under this section may be served by the Attorney General or any duly authorized law enforcement officer in the State of Arkansas personally, telephonically, or by registered or certified mail. In the
case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand.

20-77-909 Injunctions against fraud

(a)(1) Whenever it appears that any person is engaged in or intends to engage in the transfer, conversion, or destruction of assets, records, or property in an effort to avoid detection of violations of this subchapter, the Attorney General may apply to the Circuit Court of Pulaski County, or to the court in which the records or property are located, to seize and impound the property. **(2)** The application for an ex parte order shall be in writing, furnish a reasonable basis for the granting of the proposed order, and demonstrate that an emergency exists which would support the granting of the motion.

(b)(1) If the order is granted, the respondent shall be notified of the order seizing and impounding his or her property immediately after the

seizure, or as soon as is reasonably practicable. If, after diligent inquiry, the respondent cannot be located, notice under this subsection may be accomplished by leaving a copy of the order at his or her dwelling house or usual place of abode with some person residing therein who is at least eighteen (18) years of age, or by delivering a copy thereof to a representative at the respondent's place of business who is at least eighteen (18) years of age.

(2) If the order is granted, the respondent shall be granted a hearing no later than five (5) days after being notified of the property's seizure for the purpose of determining whether the order should be continued.

(c) The burden at all stages of the proceeding shall be upon the state to prove by a preponderance of the evidence the necessity of the order of seizure.

20-77-910 Suspension of violators

The Director of the Department of Human Services may suspend or revoke the provider agreement between the Department of Human Services and the person in the event that the person is found guilty of violating the terms of this subchapter.

20-77-911 Reward for the detection and punishment of Medicaid fraud

(a) The court is authorized to pay a person sums, not exceeding ten percent (10%) of the aggregate penalty recovered, or in any case not more than one hundred thousand dollars ($100,000), as it may deem just, for information the person may have provided which led to the detecting and bringing to trial and punishment persons guilty of violating the Medicaid fraud laws.

(b) Upon disposition of any civil action relating to violations of this subchapter in which a penalty is recovered, the Attorney General may petition the court on behalf of a person who may have provided information which led to the detecting and bringing to trial and punishment persons guilty of Medicaid fraud to reward the person in an amount commensurate with the quality of information determined by the court to have been provided, in accordance with the requirements of this subchapter.

(c)(1) If the Attorney General elects not to petition the court on behalf of the person, the person may petition the court on his or her own behalf.

(2) Neither the state nor any defendant within the action shall be liable for expenses which a person incurs in bringing an action under this section.

(d) Employees or fiscal agents charged with the duty of referring or investigating cases of Medicaid fraud who are employed by or who contract with any governmental entity shall not be eligible to receive a reward under this section.

CALIFORNIA

The California False Claims Act, Cal. Gov't Code

§ 12650-12655 (1992)
Article 9
FALSE CLAIMS ACTIONS

§ 12650 Definitions

For purposes of this article:

(1) "Claim" includes any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state (hereinafter "state funds") or by any political subdivision thereof (hereinafter "political subdivision funds").

(2) "Knowing" and "knowingly" mean that a person, with respect to information, does any of the following:

(A) Has actual knowledge of the information.

(B) Acts in deliberate ignorance of the truth or falsity of the information.

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

Proof of specific intent to defraud is not required.

(3) "Political subdivision" includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries.

(4) "Prosecuting authority" refers to the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

§ 12651 Acts subjecting person to treble damages, costs and civil penalties; exceptions

(a) Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three times the amount of damages which the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the state or political subdivision for a civil penalty of up to ten thousand dollars ($10,000) for each false claim:

(1) Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false 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 claim paid or approved by the state or by any political subdivision.

(3) Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision.

(4) Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt.

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

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

(7) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or to any political subdivision.

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

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

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

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

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

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

(d) This section does not apply to any controversy involving an amount of less than five hundred dollars ($500) in value. For purposes of this

subdivision, "controversy" means any one or more false claims submitted by the same person in violation of this article.

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

(f) This section does not apply to claims, records, or statements made under the Revenue and Taxation Code.

§ 12652 Attorney general investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiff; jurisdiction of courts

(a)(1) The Attorney General shall diligently investigate violations under Section 12651 involving state funds. If the Attorney General finds that a person has violated or is violating Section 12651, the Attorney General may bring a civil action under this section against that person.
(2) If the Attorney General brings a civil action under this subdivision on a claim involving political subdivision funds as well as state funds, the Attorney General shall, on the same date that the complaint is filed in this action, serve by mail with "return receipt request[ed]" a copy of the complaint on the appropriate prosecuting authority.

(3) The prosecuting authority shall have the right to intervene in an action brought by the Attorney General under this subdivision within 60 days after receipt of the complaint pursuant to paragraph (2). The court may permit intervention thereafter upon a showing that all of the requirements of Section 387 of the Code of Civil Procedure have been met.

(b)(1) The prosecuting authority of a political subdivision shall diligently investigate violations under Section 12651 involving political subdivision funds. If the prosecuting authority finds that a person has violated or is violating Section 12651, the prosecuting authority may bring a civil action under this section against that person.

(2) If the prosecuting authority brings a civil action under this section on a claim involving state funds as well as political subdivision funds, the prosecuting authority shall, on the same date that the complaint is filed in this action, serve a copy of the complaint on the Attorney General.

(3) Within 60 days after receiving the complaint pursuant to paragraph (2), the Attorney General shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the Attorney General shall assume primary responsibility for conducting the action and the prosecuting authority shall have the right to continue as a party.

(B) Notify the court that it declines to take over the action, in which case the prosecuting authority shall have the right to conduct the action.

(C)(1) A person may bring a civil action for a violation of this article for the person and either for the State of California in the name of the state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are exclusively involved. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind this act.

(2) A complaint filed by a private person under this subdivision shall be filed in superior court in camera and may remain under seal for up to 60 days. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2), the qui tam plaintiff shall serve by mail with "return receipt requested" the Attorney General with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 60 days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve state funds but not political subdivision funds, the Attorney General may elect to intervene and proceed with the action.

(5) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to paragraph (2). The motion may be supported by affidavits or other submissions in camera.

(6) Before the expiration of the 60-day period or any extensions obtained under paragraph (5), the Attorney General shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the Attorney General and the seal shall be lifted.

(B) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(7)(A) Within 15 days after receiving a complaint alleging violations that exclusively involve political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure of material evidence and information to the appropriate prosecuting authority for disposition, and shall notify the qui tam plaintiff of the transfer.

(B) Within 45 days after the Attorney General forwards the complaint and written disclosure pursuant to subparagraph (A), the prosecuting authority may elect to intervene and proceed with the action.

(C) The prosecuting authority may, for good cause shown, move for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the 45-day period or any extensions obtained under subparagraph (C), the prosecuting authority shall do either of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the prosecuting authority and the seal shall be lifted.

(ii) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(8)(A) Within 15 days after receiving a complaint alleging violations that involve both state and political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure to the appropriate prosecuting authority, and shall coordinate its review and investigation with those of the prosecuting authority.

(B) Within 60 days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve both state and political subdivision funds, the Attorney General or the prosecuting authority, or both, may elect to intervene and proceed with the action.

(C) The Attorney General or the prosecuting authority, or both, may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the 60-day period or any extensions obtained under subparagraph (C), the Attorney General shall do one of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the Attorney General and the seal shall be lifted.

(ii) Notify the court that it declines to proceed with the action but that the prosecuting authority of the political subdivision involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the prosecuting authority.

(iii) Notify the court that both it and the prosecuting authority decline to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(E) If the Attorney General proceeds with the action pursuant to clause (i) of subparagraph (D), the prosecuting authority of the political subdivision shall be permitted to intervene in the action within 60 days after the Attorney General notifies the court of its intentions. The court may authorize intervention thereafter upon a showing that all the requirements of Section 387 of the Code of Civil Procedure have been met.

(9) The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed and served upon the defendant pursuant to Section 583.210 of the Code of Civil Procedure.

(10) When a person brings an action under this subdivision, no other person may bring a related action based on the facts underlying the pending action.

(d)(1) No court shall have jurisdiction over an action brought under subdivision (c) against a Member of the State Senate or Assembly, a member of the state judiciary, an elected official in the executive branch of the state, or a member of the governing body of any political subdivision if the action is based on evidence or information known to the state or political subdivision when the action was brought.

(2) A person may not bring an action under subdivision (c) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state or political subdivision is already a party.

(3)(A) No court shall have jurisdiction over an action under this article based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, auditor, or governing body of a political subdivision, or by the news media, unless the action is brought by the Attorney General or the prosecuting authority of a political subdivision, or the person bringing the action is an original source of the information.

(B) For purposes of subparagraph (A), "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the state or political subdivision before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure as described in subparagraph (A).

(4) No court shall have jurisdiction over an action brought under subdivision **(c)** based upon information discovered by a present or former

employee of the state or a political subdivision during the course of his or her employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the state or political subdivision failed to act on the information provided within a reasonable period of time.

(e)(1) If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

(2)(A) The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state or political subdivision may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(f)(1) If the state or political subdivision elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the Attorney General or prosecuting authority would have had if it had chosen to proceed under subdivision (c). If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2)(A) Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the state or political subdivision is allowed to intervene under paragraph (A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

(g)(1)(A) If the Attorney General initiates an action pursuant to subdivision (a) or assumes control of an action initiated by a prosecuting authority pursuant to subparagraph (A) of paragraph (3) of subdivision (b), the office of the Attorney General shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(B) If a prosecuting authority initiates and conducts an action pursuant to subdivision (b), the office of the prosecuting authority shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(C) If a prosecuting authority intervenes in an action initiated by the Attorney General pursuant to paragraph (3) of subdivision (a) or remains a party to an action assumed by the Attorney General pursuant to subparagraph (A) of paragraph (3) of subdivision (b), the court may award the office of the prosecuting authority a portion of the Attorney General's fixed 33 percent of the recovery under subparagraph (A), taking into account the prosecuting authority's role in investigating and conducting the action.

(2) If the state or political subdivision proceeds with an action brought by a qui tam plaintiff under subdivision (c), the qui tam plaintiff shall, subject to paragraphs (4) and (5), receive at least 15 percent but not more than 33 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action, the Attorney General's office or the office of the prosecuting authority of the political subdivision shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims made against the state or political subdivision. When both the Attorney General and a prosecuting authority are involved in a qui tam action pursuant to subparagraph (C) of paragraph (6) of subdivision (c), the court at its discretion may award the prosecuting authority a portion of the Attorney General's fixed 33 percent of the recovery, taking into account the prosecuting authority's contribution to investigating and conducting the action.

(3) If the state or political subdivision does not proceed with an action under subdivision (c), the qui tam plaintiff shall, subject to paragraphs (4) and (5), receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government. The amount shall be not less than 25 percent and not more than 50 percent of the proceeds of the action or settlement and shall be paid out of these proceeds.

(4) If the action is one provided for under paragraph (4) of subdivision (d), the present or former employee of the state or political subdivision is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff those sums from the proceeds as it considers appropriate, but in no case more than 33 percent of the proceeds if the state or political subdivision goes forth with the action or 50 percent if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of,

and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

(5) If the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff any sums from the proceeds that it considers appropriate, but in no case more than 33 percent of the proceeds if the state or political subdivision goes forth with the action or 50 percent if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

(6) The portion of the recovery not distributed pursuant to paragraphs (1) to **(5)**, inclusive, shall revert to the state if the underlying false claims involved state funds exclusively and to the political subdivision if the underlying false claims involved political subdivision funds exclusively. If the violation involved both state and political subdivision funds, the court shall make an apportionment between the state and political subdivision based on their relative share of the funds falsely claimed.

(7) For purposes of this section, "proceeds" include civil penalties as well as double or treble damages as provided in Section 12651.

(8) If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subdivision (c), the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

(9) If the state, a political subdivision, or the qui tam plaintiff proceeds with the action, the court may award to the defendant its reasonable attorney's fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought solely for purposes of harassment.

(h) The court may stay an act of discovery of the person initiating the action for a period of not more than 60 days if the Attorney General or local prosecuting authority show that the act of discovery would interfere with an investigation or a prosecution of a criminal or civil matter arising out of the same facts, regardless of whether the Attorney General or local prosecuting authority proceeds with the action. This showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Attorney General or local prosecuting

authority has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(i) Upon a showing by the Attorney General or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's or local prosecuting authority's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

(1)Limiting the number of witnesses the person may call.
(2) Limiting the length of the testimony of the witnesses.
(3)Limiting the person's cross-examination of witnesses.
(4)Otherwise limiting the participation by the person in the litigation.

(j) The False Claims Act Fund is hereby created in the State Treasury. Proceeds from the action or settlement of the claim by the Attorney General pursuant to this article shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support the ongoing investigation and prosecution of false claims in furtherance of this article.

12652.5 University of California as political subdivision; prosecuting authority of general counsel

Notwithstanding any other provision of law, the University of California shall be considered a political subdivision, and the General Counsel of the University of California shall be considered a prosecuting authority for the purposes of this article, and shall have the right to intervene in an action brought by the Attorney General or a private party or investigate and bring an action, subject to Section 12652, if it is determined that the claim involves the University of California.

12653 Employer interference with employee disclosures, etc.; liability of employer, remedies of employee

(a) No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under Section 12652.

(b) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against, an employee in the terms and conditions of employment because of lawful acts done

by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under Section 12652.

(c) An employer who violates subdivision (b) shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate. punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate superior court of the state for the relief provided in this subdivision.

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of participation in conduct which directly or indirectly resulted in a false claim being submitted to the state or a political subdivision shall be entitled to the remedies under subdivision (c) if, and only if, both of the following occur:

(1) The employee voluntarily disclosed information to a government or law enforcement agency or acted in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed.

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.

§ 12654 Limitation of actions; activities antedating this article; burden of proof

(a) A civil action under Section 12652 may not be filed more than three years after the date of discovery by the official of the state or political subdivision charged with responsibility to act in the circumstances or, in any event, no more than 10 years after the date on which the violation of Section 12651 is committed.

(b) A civil action under Section 12652 may be brought for activity prior to the effective date of this article if the limitations period set in subdivision (a) has not lapsed.

(c) In any action brought under Section 12652, the state, the political subdivision, or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether

upon a verdict after trial or upon a plea of guilty or nolo contenders, except for a plea of nolo contenders made prior to January 1, 1988, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subdivision (a), (b), or (c) of Section 12652.

(e) Subdivision (b) of Section 47 of the Civil Code shall not be applicable to any claim subject to this article.

§12655 Remedies under other laws; severability of provisions; liberality of article construction

(a) The provisions of this article are not exclusive, and the remedies provided for in this article shall be in addition to any other remedies provided for in any other law or available under common law.

(b) If any provision of this article or the application thereof to any person or circumstance is held to be unconstitutional, the remainder of the article and the application of the provision to other persons or circumstances shall not be affected thereby.

(c) This article shall be liberally construed and applied to promote the public interest.

12656. Commencement of action for violation, application or construction of this article; service of copies of notice or petition initiating proceeding on Attorney General; time requirements for filing; extensions

(a) if a violation of this article is alleged or the application or constructions of this article is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person or political subdivision that commenced that proceeding shall serve a copy of the notice or petition initiating the proceeding, and a copy of each paper, including briefs, that the person or political subdivision files in the proceeding within three days of the filing, on the Attorney General, directed to the attention of the False Claims Section in Sacramento, California.

(b) timely compliance with the three-day time period is a jurisdictional prerequisite to the entry of judgment, order, or decision construing or applying this article by the court in which the proceeding occurs, except that within that three-day period or thereafter, the time for compliance may be extended by the court for a good cause.

(c) the court shall extend the time period within which the Attorney General is permitted to respond to an action subject to this sections by at least the same period of time granted for good cause pursuant to subdivision (b) to the person or political subdivision that commenced the proceeding.

COLORADO

No Act at this time
Effective February, 2008

CONNECTICUIT

No Act at this time
Effective February, 2008

DELAWARE

Delaware False Claims and Reporting Act

§ 1201. Liability for certain acts.

(a) Any person who:

(1) Knowingly presents, or causes to be presented, directly or indirectly, 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, directly or indirectly, a false record or statement to get a false or fraudulent claim paid or approved;

(3) Conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(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 willfully to conceal the property, delivers or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(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 the person knows 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 to conceal, avoid, increase or decrease an obligation to pay or transmit money or property to or from the Government

(a) shall be liable to the Government for a civil penalty of not less than $5,500 and not more than $11,000 for each act constituting a violation of this section, plus 3 times the amount of actual damages which the Government sustains because of the act of that person.

(b) Notwithstanding the foregoing, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person, if:

(1) The person committing the violation of this subsection furnished officials of the Government responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violations; and

(3) At the time such person furnished the Government with the information about the violation, no criminal prosecution, civil action,

investigation or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violations. A person violating this subsection shall also be liable for the costs of a civil action brought to recover any such penalty or damages, including payment of reasonable attorneys' fees and costs.

(c) The Superior Court shall have jurisdiction of all offenses under this chapter.

§ 1202. Definitions.

As used in this chapter:

(1) "Affected person, entity or organization" includes an employee or former employee of a person who is liable under § 1201 of this title, or a "labor organization" as defined by § 1107A(d) of Title 19.

(2) "Claim" 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, directly or indirectly, any portion of the money or property which is requested or demanded, or where the Government will, directly or indirectly, reimburse such contractor, grantee or other recipient for any portion of the money or property which is requested or demanded.

(3) "Government" includes all departments, boards or commissions of the executive branch of the State, all political subdivisions of the State, the Delaware Department of Transportation and all state and municipal authorities, all organizations created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function, and all organizations, entities or persons receiving funds of the State where the act complained of pursuant to this act relates to the use of such funds of the State.

(4)"Knowing" and "knowingly" mean that a person, with respect to information:

a. Has actual knowledge of the information;

b. Acts in deliberate ignorance of the truth or falsity of the information; or

c. Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

§ 1203. Civil actions for false claims.

(a) Responsibilities of the Attorney General. -- The Attorney General shall diligently investigate suspected violations under this chapter. If the Attorney General finds that a person has violated or is violating the provisions of this chapter, the Attorney General may bring a civil action under this section against the person.

(b) Private actions. --

(1) A private civil action may be brought by any affected person, entity or organization (hereinafter "private party" or "party") for a violation of this chapter on behalf of the party bringing suit and for the Government. The action shall be brought in the name of the Government. Unless dismissed pursuant to paragraph (2) of this subsection, the action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the private party possesses shall be served on the Attorney General pursuant to Rules 4 and 5 of the Superior Court Civil Rules. The complaint shall be filed in camera and shall remain under seal for at least 60 days. The complaint shall not be served on the defendant until the expiration of 60 days or any extension approved under paragraph (3) of this subsection. Within 60 days after receiving a copy of the complaint, the Attorney General shall conduct an investigation of the factual allegations and legal contentions made in the complaint, shall make a written determination of whether there is substantial evidence that a violation of this chapter has occurred, and shall provide the affected person, entity or organization, and the Government, with a copy of the determination. The Government may elect to intervene and proceed with the action within 60 days after it receives the complaint, the material evidence and information, and the written determination of the Attorney General. If the Attorney General determines that there is not substantial evidence that a violation of this chapter occurred, then the complaint shall be dismissed.

(3) The Government or the Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motion may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Superior Court Civil Rules. The complaint shall be deemed unsealed at the expiration of the 60-day period in the absence of a court approved extension of the time frame.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3) of this subsection, the Government shall:

a. Proceed with the action, in which case the action shall be conducted by the Government; or

b. Notify the court that it declines to take over the action, in which case the private party bringing the action shall have the right to conduct the action if, pursuant to paragraph (2) of this subsection, the Attorney General determined that there is substantial evidence that a violation of this chapter has occurred.

(5) When a party brings an action under this subsection, no party other than the Government may intervene or bring a related action based on the facts underlying the pending action.

§ 1204. Rights of the parties to qui tam actions.

(a) If the Government proceeds with the action, it shall have the exclusive responsibility for prosecuting the action, and shall not be bound by an act of the party bringing the action. Such party shall have the right to continue as a nominal party to the action, but, except as provided in subsections (b) and (c) of this section, such party shall not have the right to participate in the litigation except as a witness.

(b) The Government may dismiss the action notwithstanding the objections of the party initiating the action if the party has been notified by the Government of the filing of the motion and the court has provided the party with an opportunity for a hearing on the motion.

(c) The Government may settle the action with the defendant notwithstanding the objections of the party initiating the action if the court determines after a hearing that the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(d) If the Government elects not to proceed with the action, the party who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of the pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a party proceeds with the action, the court, without limiting the status and rights of the party initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(e) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the party initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings. (72 Del. Laws, c. 370, § 1.)

§ 1205. Award to qui tam plaintiff.

(a) If the Government proceeds with an action brought by a party under § 1203(b) of this title, such party shall, subject to the 2nd sentence of this subsection, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the party substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information

provided by the party bringing the action) relating to allegations or transactions in a criminal, civil or administrative hearing, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the party bringing the action in advancing the case to litigation. Any payment to a party under the 1st or 2nd sentence of this paragraph shall be made from the proceeds. Any such party shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. In determining the amount of reasonable attorneys' fees and costs, the court shall consider, without limitation, whether such fees and costs were necessary to the prosecution of the action, were incurred for activities which were duplicative of the activities of the Government in prosecuting the case, or were repetitious, irrelevant or for purposes of harassment, or caused the defendant undue burden or unnecessary expense. All such expenses, fees and costs shall be awarded against the defendant.

(b) If the Government does not proceed with an action under this chapter, the party bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such party shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. In determining the amount of reasonable attorneys' fees and costs, the court shall consider, without limitation, whether such fees and costs were necessary to the prosecution of the action, were incurred for activities which were repetitious, irrelevant or for purposes of harassment, or caused the defendant undue burden or unnecessary expense. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a party who planned and initiated the violation upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the party would otherwise receive under subsection (a) or (b) of this section, taking into account the role of that party in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the party bringing the action is convicted of criminal conduct arising from his or her or its role in the violation of this chapter, that party shall be dismissed from the civil action and shall not receive any share of the
proceeds of the action. Such dismissal shall not prejudice the right of the State to continue the action, represented by the Attorney General's Office.

(d) If the Government does not proceed with the action and the party bringing the action conducts the action, the court may award to the defendant its reasonable attorneys fees and expenses if the defendant prevails in the action and the court finds that the claim of the party bringing the action was:

(1) Filed for any improper purpose, such as to harass or to vex;

(2) Not warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; or

(3) Based on allegations or factual contentions not supported by the evidence of record.

§ 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 substantially 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 the party bringing suit who has independent knowledge, including knowledge based on its own investigation of the defendant's conduct, of the information on which the allegations are based and has voluntarily provided or verified the information on which the allegations are based or has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

§ 1207. Government not liable for certain expenses.

No Government shall be liable for expenses which a party incurs in bringing an action under this chapter.

§ 1208. Employee protection.

Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or her 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.

§ 1209. False claims and reporting procedure.

(a) A civil action under this act may not be brought:

(1) More than 6 years after the date on which the violation is committed; or

(2) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the Government charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(b) In any action brought under this chapter, the Government or the private party shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(c) Notwithstanding any other provision of law, the Delaware Rules of Criminal Procedure, or the Delaware Rules of Civil Procedure, a final judgment rendered in favor of the Government in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under this chapter. (72 Del. Laws, c. 370, § 1.)

DISTRICT OF COLUMBIA

District of Columbia False Claims Act

§ 2-308.03. Claims by District government against contractor.

(1) All claims by the District government against a contractor arising under or relating to a contract shall be decided by the contracting officer who shall issue a decision in writing, and furnish a copy of the decision to the contractor.

(2) The decision shall be supported by reasons and shall inform the contractor of his or her rights as provided in this subchapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding.

(3) The authority of this subsection shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District government agency is specifically authorized to administer, settle, or determine.

(4) This subsection shall not authorize the contracting officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(b) The decision of the contracting officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced as authorized by § 2-309.04.

(c) Nothing in this subchapter shall prohibit the contracting officer from including a clause in District government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the contracting officer.

§ 2-308.13. Definitions.

For the purposes of this subpart, the term:

(1) "Claim" means any request or demand for money, property, or services made to any employee, officer, or agent of the District, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the District, or if the District will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(2) "Fixed obligation" means an amount due the District by contract or by law. The term "fixed obligation" does not include a fine to be imposed by law until the fine has been assessed.

(3) (A) "Knowing" or "knowingly" means that a person, with respect to information, does any of the following: **(i)** Has actual knowledge of the falsity of the information; **(ii)** Acts in deliberate ignorance of the truth or

falsity of the information; or **(iii)** Acts in reckless disregard of the truth or falsity of the information.

(B) Proof of specific intent to defraud is not required for an act to be knowing.

(4) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

(5) "Proceeds" means civil penalties as well as double or treble damages as provided in § 1- 1188.14, and criminal fines pursuant to § 1-1181.21.

§ 2-308.14. False claims liability, treble damages, costs, and civil penalties; exceptions.

(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and may be liable to the District for a civil penalty of not less than $5,000, and not more than $10,000, for each false claim for which the person:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the District a false 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 claim paid or approved by the District;

(3) Conspires to defraud the District by getting a false claim allowed or paid by the District;

(4) Has possession, custody, or control of public property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and knowingly makes or delivers a document that falsely represents the property used or to be used;

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

(7) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District;

(8) Is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District; or

(9) Is the beneficiary of an inadvertent payment or overpayment by the

District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

(b) Notwithstanding subsection (a) of this section, the court may assess not more than two times the amount of damages which the District sustains because of the act of the person, and there shall be no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the District responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;

(2) The person fully cooperated with any investigation by the District; and

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

(c) Liability pursuant to this section shall be joint and several for any act committed by 2 or more persons.

(d) This section shall not apply to the following:

(1) Workers' compensation claims filed pursuant to Chapter 3 of Title 36;

(2) Unemployment compensation claims filed pursuant to Chapter 1 of Title 46; and

(3) Claims, records, or statements made pursuant to those portions of Title 47 of the District of Columbia Code that refer or relate to taxation.

§ 2-308.15. Corporation counsel investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts.

(a) The Corporation Counsel shall investigate, with such assistance from other District agencies as may be required, violations pursuant to § 1-1188.14 involving District funds. If the Corporation Counsel finds that a person has violated or is violating the provisions of § 1- 1188.14, the Corporation Counsel may bring a civil action against that person in the Superior Court of the District of Columbia.

(b) (1) A person may bring a civil action for a violation of § 1-1188.14 for the person and either for the District or in the name of the District. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action brought by the qui tam plaintiff may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public disclosure purposes of this subpart. The Corporation Counsel shall be served with the notice of proposed dismissal and shall have the opportunity to be heard.

(2) A complaint filed by a qui tam plaintiff pursuant to this subsection shall be filed in the Superior Court in camera and may remain under seal for up to 180 days, unless the seal is extended by the court. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2) of this subsection, the qui tam plaintiff shall serve the Corporation Counsel by mail, return receipt requested, with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 180 days after receiving a complaint alleging violations involving District funds, the Corporation Counsel shall do either of the following:

(A) Notify the court that he or she intends to proceed with the action, in which case the seal may be lifted unless, for good cause shown, the court continues the seal; or

(B) Notify the court that he or she declines to take over the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(5) Upon a showing of good cause, the Corporation Counsel may move the court for extensions of the time during which the complaint remains under seal.

(6) When a qui tam plaintiff brings an action pursuant to this subsection, no other person may bring an action pursuant to this section based on the facts underlying the pending action.

(c) (1) No person may bring an action pursuant to subsection (b) of this section against a member of the Council of the District of Columbia ("Council"), a member of the District judiciary, or an elected official in the executive branch of the District, if the action is based on any official act occurring during his or her term of office.

(2) (A) No person may bring an action pursuant to subsection (b) of this section based upon allegations or transactions in a criminal, civil, or administrative proceeding, investigation, or report, or audit conducted by or at the request of the Council, the Auditor, the Inspector General, or other District or federal agency; or upon allegations or transactions disclosed by the news media, unless the person bringing the action is an original source of the information.

(B) For purposes of subparagraph (A) of this paragraph, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the District before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, report, hearing, audit, or media disclosure which led to the public disclosure as described in subparagraph (A) of this paragraph.

(3) No person may bring an action pursuant to subsection (b) of this section based upon information learned by the person in the course of an

internal investigation in preparation for, or in conjunction with, a voluntary disclosure to the District or federal government.

(4) No present or former employee of the District, or any person who is acting on behalf of or relying on information provided by that employee, may bring an action pursuant to subsection (b) of this section if the employee discovered or obtained the information on which the action is based during the course of his or her employment, unless that employee first in good faith exhausted internal procedures for reporting and seeking recovery of such falsely claimed sums through official channels, including notice to the Corporation Counsel, and unless the District failed to act on the information provided within a reasonable time.

(5) No member or employee of the Council of the District of Columbia, the Corporation Counsel's Office, the Office of the Inspector General, the Office of the Auditor, the Office of the Chief Financial Officer, or the Metropolitan Police Department may bring an action pursuant to subsection (b) of this section based upon information discovered during the term of his or her employment.

(6) No person may bring an action pursuant to this section if the person has been convicted of a criminal offense in connection with any false claim that is the subject of the action.

(7) No person may sell or otherwise transfer any cause of action, or interest in any present or future benefit provided, pursuant to this section.

(d) (1) If the District proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a party to the action and to participate in the action to the extent that the qui tam plaintiff is able to demonstrate to the court that such participation would neither be duplicative of nor interfere with the prosecution of the action by the Corporation Counsel; provided, that the qui tam action was proper pursuant to subsection (c) of this section.

(2) (A) The District may dismiss the action for good cause shown.

(B) The District may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to be heard, that the proposed settlement fairly, adequately, and reasonably protects the interests of the District under all of the circumstances.

(e)(1) If the District elects not to proceed and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff shall have the same right to conduct the action as the Corporation Counsel would have had if he or she had chosen to proceed pursuant to subsection (b) of this section. If the District so requests, the District shall be served with copies of all pleadings filed in the action.

(2) Upon timely application, the court shall permit the District to intervene in an action with which it had initially declined to proceed. In the event that the District is permitted to intervene, it shall have the

primary responsibility for prosecuting the action as provided in subsection (d)(1) of this section.

(f) (1) If the District proceeds with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff, subject to paragraphs (3) and (4) of this subsection, shall receive at least 10%, but not more than 20%, of the proceeds of the judgment or settlement of the claim, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the litigation, the qui tam plaintiff's attempts to avoid or resist such activity, and all other circumstances surrounding the activity, except, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may direct that the plaintiff receive less than 10%. When the Corporation Counsel conducts the action, 25% of the proceeds of the judgment or settlement of the claim shall be paid into the Antifraud Fund established by § 1-1188.20.

(2) If the District does not proceed with the action, the court may award the qui tam plaintiff those sums from the proceeds it considers appropriate, which shall be at least 25% but not more than 40%, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of such falsely claimed funds through official channels; provided, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may award the qui tam plaintiff less than 25%.

(3) The portion of the recovery not distributed pursuant to paragraphs (1) and (2) of this subsection shall be paid to the District treasury.

(4) If the District or the qui tam plaintiff prevails in or settles any action pursuant to subsection (c) of this section, the qui tam plaintiff shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable costs and attorneys fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the District.

(5) If the District does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorneys fees and expenses necessarily incurred if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was frivolous, vexatious, or brought solely for purposes of harassment.

(g) In any action brought pursuant to this section, the court may stay discovery if the Corporation Counsel or the United States Attorney's Office shows that discovery would interfere with an investigation or a prosecution of a criminal matter arising out of the same facts, regardless of whether the Corporation Counsel or the United States Attorney's Office has pursued the criminal or civil investigation or proceedings with

reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

§ 2-308.16. Employer interference with employee disclosures; liability of employer; remedies of employee.

(a) No employer, including the District of Columbia, shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency concerning, or from acting in furtherance of, a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed pursuant to § 2-308.15.

(b) No employer, including the District of Columbia, shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency relating to, or in furtherance of, a false claims action, including investigation of, initiation of, or testimony or assistance in, an action filed or to be filed pursuant to § 2-308.15.

(c) Any employer, including the District of Columbia, who violates subsection (b) of this section shall be liable for the relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate (except in the case of the District), punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys fees, necessarily incurred. An employee may bring an action in the Superior Court for the relief provided in this subsection.

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his or her employer, including the District of Columbia, because of participation in conduct which directly or indirectly results in submission of a false claim being submitted to the District shall be entitled to the remedies pursuant to subsection (c) of this section, only if the following is true:

(1) The employee voluntarily disclosed all relevant information to a government or law enforcement agency; and

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the activity giving rise to the false claim.

§ 2-308.17. Limitation of actions; burden of proof.

(a) A civil action brought pursuant to § 2-308.15 may not be filed more than 6 years after the date on which the violation of § 2-308.14 is committed or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Office of Corporation Counsel, but in no event more than 9 years after the date on which the violation is committed, whichever occurs last.

(b) A civil action brought pursuant to § 2-308.15 may not be brought for activity prior to April 12, 1997.

(c) In any action brought pursuant to § 2-308.15, the District or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a judgment of guilt in a criminal proceeding charging false statements or fraud, upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action brought pursuant to § 2-308.15 which involves the same transaction as in the criminal proceeding.

§ 2-308.18. Remedies pursuant to other laws; severability of provisions; liberality of article construction.

The provisions of this chapter are not exclusive, and the remedies provided for shall be in addition to any other remedies provided for in any other law or available pursuant to common law.

§ **2-308.19. Civil investigative demands.**

(a) (1) Whenever the Corporation Counsel has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Corporation Counsel may, in order to determine whether to commence a civil proceeding pursuant to this chapter, issue in writing and cause to be served upon such person a civil investigative demand requiring that such person do the following:

(A) Produce documentary material relevant to the false claims law investigation for inspection and copying;

(B) Answer in writing written interrogatories with respect to any documentary material or information relevant to the false claims law investigation;

(C) Provide oral testimony concerning any documentary material or information relevant to the false claims law investigation; or

(D) Furnish any combination of such material, answers, or testimony.

(2) The Corporation Counsel may delegate to the Principal Deputy

Corporation Counsel the authority, in his or her absence, to issue civil investigative demands pursuant to paragraph (1) of this subsection. The Corporation Counsel may not issue a civil investigative demand in order to conduct, or assist in the conducting of, a criminal investigation.

(b) (1) Each civil investigative demand issued pursuant to subsection (a)(1) of this section shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to have been violated.

(2) If such demand is for the production of documentary material, the demand shall do the following:

(A) Describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(B) Prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(C) Identify the false claims law investigator to whom such material shall be made available.

(3) If such demand is for answers to written interrogatories, the demand shall do the following:

(A) Set forth with specificity the written interrogatories to be answered;

(B) Prescribe dates at which time answers to written interrogatories shall be submitted; and

(C) Identify the false claims law investigator to whom such answers shall be submitted.

(4) If such demand is for the giving of oral testimony, the demand shall do the following:

(A) Prescribe the date, time, and place at which oral testimony shall commence;

(B) Identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(C) Specify that such attendance and testimony are necessary to conduct the investigation;

(D) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(E) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(5) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand shall be a date that is not less than 7 days after the date on which the demand is received, unless the Corporation Counsel determines that exceptional circumstances are

present that warrant the commencement of such testimony within a shorter period of time.

(6) The Corporation Counsel shall not authorize, pursuant to subsection **(a)(1)** of this section, issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Corporation Counsel, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(c) A civil investigative demand may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(1) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of the District of Columbia to aid in a grand jury investigation; or

(2) The standards applicable to discovery requests pursuant to the Superior Court Civil Rules to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(d) (1) Any civil investigative demand issued pursuant to subsection (a) of this section may be served by a false claims law investigator or his or her agent, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(2) Any such demand or any petition filed pursuant to subsection (a) of this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Superior Court Civil Rules prescribe for service in a foreign country; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(e) (1) Service of any civil investigative demand issued pursuant to subsection (a) of this section, or of any petition filed pursuant to subsection (a) of this section, may be made upon a partnership, corporation, association, or other legal entity by the following methods:

(A) Delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) Delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Service of any such demand or petition may be made upon any natural person by the following methods:

(A) Delivering an executed copy of such demand or petition to the person; or

(B) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(f) A verified return by the individual serving any civil investigative demand or any petition filed pursuant to subsection (a) of this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(g)(1) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the following:

(A) In the case of a natural person, by the person to whom the demand is directed; or

(B) In the case of a person other than a natural person, by a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

(2) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(3) Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct pursuant to subsection (j)(1) of this section. Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(h) (1) Each interrogatory in a civil investigative demand shall be answered separately and fully in writing under oath and shall be

submitted under a sworn certificate, in such form as the demand designates, as follows:

(A) In the case of a natural person, by the person to whom the demand is directed, or

(B) In the case of a person other than a natural person, by the person or persons responsible for answering each interrogatory.

(2) If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(i) (1) The examination of any person, pursuant to a civil investigative demand for oral testimony, shall be conducted before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is taken shall put the witness under oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken by any means authorized by, and in a manner consistent with, the Superior Court Civil Rules, and shall be transcribed.

(2) The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other representative of the person giving the testimony, the attorney for the District government, any person who may be agreed upon by the attorney for the District government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person

(4) When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by an attorney, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in

writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefore.

(5) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness. The officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Upon payment of reasonable charges therefore, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Corporation Counsel may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

(7) Any person compelled to appear for oral testimony pursuant to a civil investigative demand may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, with respect to any question asked of such person. Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record only when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not, directly or through the person's attorney, otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Superior Court of the District of Columbia pursuant to subsection (d)(1) of this section for an order compelling such person to answer the question.

(8) Any person appearing for oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and allowances that are paid to witnesses in the Superior Court of the District of Columbia.

(j) (1) The Corporation Counsel shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received pursuant to this section, and shall designate such additional false claims law investigators as the Corporation Counsel determines from time to time to be necessary to serve as deputies to the custodian.

(2) (A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the

return of documentary material pursuant to paragraph (4) of this subsection.

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or any other officer or employee of the Office of the Corporation Counsel who is authorized for such use by the Corporation Counsel. Such material, answers, and transcripts may be used by any authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony pursuant to this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or officer or employee of the Office of the Corporation Counsel authorized pursuant to subparagraph (B) of this paragraph. The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts. Nothing in this subparagraph is intended to prevent disclosure to the District of Columbia Council, including any committee of the Council, to the United States Attorney's Office, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any agency other than the Council or the United States Attorney's Office shall be allowed only upon application, made by the Corporation Counsel to the Superior Court of the District of Columbia, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities and after giving the individuals who provided the information an opportunity to be heard on the release of the information.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Corporation Counsel shall prescribe, the following shall apply:

(i) Documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) Transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Whenever any attorney of the Office of the Corporation Counsel is conducting any official investigation or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such investigation or proceeding as such attorney determines to be

FLORIDA

The Florida False Claims Act

§ 68.081 Short title; purpose

(1) Sections 68.081-68.09' may be cited as the "Florida False Claims Act." **(2)** The purpose of the Florida False Claims Act is to deter persons from knowingly causing or assisting in causing state government to pay claims that are false, and to provide remedies for obtaining treble damages and civil penalties for state government when money is obtained from state government by reason of a false claim.

§ 68.082 False claims against the state; definitions; liability

(1) As used in this section, the term:

(a) "Agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(b) "Claim" includes any request or demand, under a contract or otherwise, for money, property, or services, which is made to any employee, officer, or agent of an agency, or to any contractor, grantee, or other recipient if the agency provides any portion of the money or property requested or demanded, or if the agency will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded.

(c) "Knowing" or "knowingly" means, with respect to information, that a person:

1. Has actual knowledge of the information;

2. Acts in deliberate ignorance of the truth or falsity of the information: or

3. Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required. Innocent mistake shall be a defense to an action under this act.

(d) "State government" means the government of the state or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of the state.

(e) "Department" means the Department of Legal Affairs, except as specifically provided in ss. 68.083 and 68.084.

(2) Any person who:

(a) Knowingly presents or causes to be presented to an officer or employee of an agency a false claim for payment or approval;

(b) 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 an agency; AP

(c) Conspires to submit a false claim to an agency or to deceive an agency for the purpose of getting a false or fraudulent claim allowed or paid;

(d) Has possession, custody, or control of property or money used or to be used by an agency and, intending to deceive the agency or knowingly conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt:

(e) Is authorized to make or deliver a document certifying receipt of property used or to be used by an agency and, intending to deceive the agency. makes or delivers the receipt without knowing that the information on the receipt is true;

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

(g) Knowingly makes, uses. or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to an agency. is liable to the state for a civil penalty of not less than $5,000 and not more than $10,000 and for treble the amount of damages the agency sustains because of the act or omission of that person.

(3) The court may reduce the treble damages authorized under subsection (2) if the court finds one or more of the following specific extenuating circumstances:

(a) The person committing the violation furnished officials of the agency responsible for investigating false claims violations with all information known to the person about the violation within 30 days after the date on which the person first obtained the information

(b) The person fully cooperated with any official investigation of the violation;

(c) At the time the person furnished the agency with the information about the violation. no criminal prosecution, civil action, or administrative action had commenced under this section with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violations in which case the court shall award no less than 2 times the amount of damages sustained by the agency because of the act of the person. The court shall set forth in a written order its findings and basis for reducing the treble damages award.

§ 68.083 Civil actions for false claims.

(1) The department may diligently investigate a violation under s. 68.082. If the department finds that a person has violated or is violating s. 68.082, the department may bring a civil action under the Florida False Claims Act against the person. The Department of Banking and Finance may bring a civil action under this section if the action arises from an

investigation by that department and the Department of Legal Affairs has not filed an action under this act.

(2) A person may bring a civil action for a violation of s. 68.082 for the person and for the affected agency. Civil actions instituted under this act shall be governed by the Florida Rules of Civil Procedure and shall be brought in the name of the State of Florida. Prior to the court unsealing the complaint under subsection (3), the action may be voluntarily dismissed by the person bringing the action only if the department gives written consent to the dismissal and its reasons for such consent.

(3) The complaint shall be identified on its face as a qui tam action and shall be filed in the circuit court of the Second Judicial Circuit, in and for Leon County. Immediately upon the filing of the complaint, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General, as head of the department, and on the Comptroller, as head of the Department of Banking and Finance, by registered mail, return receipt requested. The department, or the Department of Banking and Finance under the circumstances specified in subsection (4), may elect to intervene and proceed with the action, on behalf of the state, within 90 days after it receives both the complaint and the material evidence and information.

(4) If a person brings an action under subsection (2) and the action is based upon the facts underlying a pending investigation by the Department of Banking and Finance, the Department of Banking and Finance, instead of the department, may take over the action on behalf of the state. In order to take over the action, the Department of Banking and Finance must give the department written notification within 20 days after the action is filed that the Department of Banking and Finance is conducting an investigation of the facts of the action and that the Department of Banking and Finance, instead of the department, will take over the action filed under subsection (2). If the Department of Banking and Finance takes over the action under this subsection, the word "department" as used in this act means the Department of Banking and Finance. and that department, for purposes of that action, shall have all rights and standing granted the department under this act.

(5) The department may, for good cause shown, request the court to extend the time during which the complaint remains under seal under subsection (2). Any such motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant in accordance with law.

(6) Before the expiration of the 90-day period or any extensions obtained under subsection (5), the department shall:

(a) Proceed with the action, in which case the action is conducted by the department on behalf of the state; or

(b) Notify the court that it declines to take over the action, in which case the person bringing the action has the right to conduct the action.

(7) When a person files an action under this section, no person other than the department on behalf of the state may intervene or bring an action under this act based on the facts underlying the pending action.

§ 68.084 Rights of the parties in civil actions.

(1) If the department, on behalf of the state, proceeds with the action, it has the primary responsibility for prosecuting the action, and is not bound by any act of the person bringing the action. The person bringing the action has the right to continue as a party to the action subject to the limitations specified in subsection (2).

(2) (a) The department may voluntarily dismiss the action notwithstanding the objections of the person initiating the action.

(b) Subject to s. 17.04, nothing in this act shall be construed to limit the authority of the department or the qui tam plaintiff to compromise a claim brought in a complaint filed under this act if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

(c) Upon a showing by the department that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the department's prosecution of the case, or would be repetitious. irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation including, but not limited to:

1. Limiting the number of witnesses the person may call;

2. Limiting the length of the testimony of the person's witnesses;

3. Limiting the person's cross-examination of witnesses; or

4. Otherwise limiting the participation by the person in the litigation.

(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the department elects not to proceed with the action, the person who initiated the action has the right to conduct the action. If the Attorney General. as head of the department, or the Comptroller, as head of the Department of Banking and Finance, so requests, it shall be served, at the requesting department's expense, with copies of all pleadings and motions filed in the action and copies of all deposition transcripts. When a person proceeds with the action, the court. without limiting the rights of the person initiating the action, may nevertheless permit the department to intervene and take over the action on behalf of the state at a later date upon showing of good cause.

(4) Whether or not the department proceeds with the action, upon a showing by the department that certain actions of discovery by the person initiating the action would interfere with an investigation by state government or the prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 90 days. Such a showing shall be conducted in camera. The court may extend the 90-day period upon a further showing in camera by the department that the criminal or civil investigation or proceeding has been pursued with reasonable diligence and any proposed discovery in the civil action will interfere with an ongoing criminal or civil investigation or proceeding.

(5) The application of one civil remedy under this act does not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental, not mutually exclusive. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. As used in this subsection, the term "final" means not subject to judicial review.

(6) The Department of Banking and Finance, or the department, may intervene on its own behalf as a matter of right.

§ 68.085 Awards to plaintiffs bringing action.

(1) If the department proceeds with and prevails in an action brought by a person under this act, except as provided in subsection (2), the court shall order the distribution to the person of at least 15 percent but not more than 25 percent of the proceeds recovered under any judgment obtained by the department in an action under s. 68.082 or of the proceeds of any settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(2) If the department proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing: a legislative, administrative, chief internal auditor, inspector general. or auditor general report, hearing, audit, or investigations or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds recovered under a judgment or received in settlement of a claim under this act, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) If the department does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and

not more than 30 percent of the proceeds recovered under a judgment rendered in an action under this act or in settlement of a claim under this act.

(4) Following any distributions under subsections (1), (2), or (3), the agency injured by the submission of a false claim shall be awarded an amount not to exceed its compensatory damages. Any remaining proceeds, including civil penalties awarded under s. 68.082, shall be deposited in the General Revenue Fund.

(5) Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

(6) Whether or not the department proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of s. 68.082 upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of s. 68.082. the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the department to continue the action.

§ 68.086 Expenses; attorney's fees and costs.

(I) If the department initiates an action under this act or assumes control of an action brought by a person under this act, the department shall be awarded its reasonable attorney's fees, expenses, and costs.

(2) If the court awards the person bringing the action proceeds under this act, the person shall also be awarded an amount for reasonable attorney's fees and costs. Payment for reasonable attorney's fees and costs shall be made from the recovered proceeds before the distribution of any award.

(3) If the department does not proceed with an action under this act and the defendant is the prevailing party, the court shall award the defendant reasonable attorney's fees and costs against the person bringing the action.

(4) No liability shall be incurred by the state government, the affected agency, or the department for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this act.

§ 68.087 Exemptions to civil actions.

(1) No court shall have jurisdiction over an action brought under this act against a member of the Legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or

information known to the state government when the action was brought. For purposes of this subsection, the term .,senior executive branch official" means any person employed in the executive branch of government holding a position in the Senior Management Service as defined in s. 110.402.

(2) In no event may a person, on bring an action under s. 68.083(2) based upon allegations or transactions that are the subject of a civil action or an administrative proceeding in which the agency is already a party.

(3) No court shall have jurisdiction over an action brought under this act based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing in a legislative, administrative, chief internal auditor, inspector general, or Auditor General, Comptroller, or Department of Banking and Finance report, hearing, audit, or investigation; or from the news media, unless the action is brought by the department, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "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 department before filing an action under this act based on the information.

(4) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) is:

(a) Acting as an attorney for state government, or

(b) An employee or former employee of state government, and the action is based, in whole or in part, upon information obtained in the course or scope of government employment.

(5) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) obtained the information from an employee or former employee of state government who was not acting in the course or scope of government employment.

(6) No court shall have jurisdiction over an action brought under this act against a local government. For the purposes of this subsection, the term "local government" means any county or municipality.

§ 68.088 Protection for participating employees.

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this act, including investigation for initiation of, testimony for or assistance in an action filed or to be filed under this act, shall have a cause of action under s. 112.3187.

§ 68.089 Limitation of actions.

A civil action under this act may not be brought:

(1) More than 6 years after the date on which the violation of s. 68.082 is committed; or

(2) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

§ 68.090 Burden of proof.

In any action brought under this act, the State of Florida or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

§ 68.091 Construction and severability of provisions.

(I) This act shall be liberally construed to effectuate its remedial and deterrent purposes.

(2) If any provision of this act or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this act.

§ 68.092 Deposit of recovered moneys.

All moneys recovered by the Comptroller, as head of the Department of Banking and Finance, under s. 68.086(l) of this act in any civil action for violation of the Florida False Claims Act shall be deposited in the Administrative Trust Fund of the Department of Banking and Finance.

An act relating to false claims; amending s. 68.081, F.S.; providing that the purpose of the Florida False Claims Act is to prevent the state from paying false and fraudulent claims; amending s. 68.082, F.S.; redefining the term "claim" to include claims filed electronically; providing that a person is liable for a civil penalty if he or she files a false or fraudulent claim; amending s. 68.083, F.S.; reducing time limits for false claim proceedings; amending s. 68.084, F.S.; revising the period in which a stay to conduct discovery may be granted; amending s. 68.085, F.S.; providing an award to the agency injured by the false or fraudulent claim; amending s. 68.089,F.S.; revising the time periods in which a civil

action may be filed under the False Claims Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1.

Subsection (2) of section 68.081, Florida Statutes, is amended to read: 68.081 Florida False Claims Act; short title; purpose. -- (2) The purpose of the Florida False Claims Act is to deter persons from knowingly causing or assisting in causing state government to pay claims that are false or fraudulent, and to provide remedies for obtaining treble damages and civil penalties for state government when money is obtained from state government by reason of a false or fraudulent claim.

Section 2.

Paragraph (b) of subsection (1) and subsection (2) of section 68.082, Florida Statutes, are amended to read: 68.082 False claims against the state; definitions; liability.—

(1) As used in this section, the term:
(b) "Claim" includes any written or electronically submitted request or demand, under a contract or otherwise, for money, property, or services, which is made to any employee, officer, or agent of an agency, or to any contractor, grantee, or other recipient if the agency provides any portion of the money or property requested or demanded, or if the agency will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded.
(2) Any person who:
(a) Knowingly presents or causes to be presented to an officer or employee of an agency a false or fraudulent claim for payment or approval;
(b) 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 an agency;
(c) Conspires to submit a false or fraudulent claim to an agency or to deceive an agency for the purpose of getting a false or fraudulent claim allowed or paid;
(d) Has possession, custody, or control of property or money used or to be used by an agency and, intending to deceive the agency or knowingly conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
(e) Is authorized to make or deliver a document certifying receipt of property used or to be used by an agency and, intending to deceive the agency, makes or delivers the receipt without knowing that the information on the receipt is true;
(f) Knowingly buys or receives, as a pledge of an obligation or a debt, public property from an officer or employee of an agency who may not

sell or pledge the property lawfully; or
(g) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to an agency, is liable to the state for a civil penalty of not less than $5,500$5,000 and not more than$11,000$10,000 and for treble the amount of damages the agency sustains because of the act or omission of that person.

Section 3.

Subsections (3) and (6) of section 68.083, Florida Statutes, are amended to read: 68.083 Civil actions for false claims.--
(3) The complaint shall be identified on its face as a qui tam action and shall be filed in the circuit court of the Second Judicial Circuit, in and for Leon County. Immediately upon the filing of the complaint, a copy of the complaint and written disclosure of substantially all material evidence and
information the person possesses shall be served on the Attorney General, as head of the department, and on the Chief Financial Officer, as head of the Department of Financial Services, by registered mail, return receipt requested. The department, or the Department of Financial Services under the circumstances specified in subsection (4), may elect to intervene and proceed with the action, on behalf of the state, within 60 90 days after it receives both the complaint and the material evidence and information.
(6) Before the expiration of the 60-day 90-day period or any extensions obtained under subsection (5), the department shall:
(a) Proceed with the action, in which case the action is conducted by the department on behalf of the state; or
(b) Notify the court that it declines to take over the action, in which case the person bringing the action has the right to conduct the action.

Section 4.

Subsection (4) of section 68.084, Florida Statutes, is amended to read: 68.084 Rights of the parties in civil actions.--
(4) Whether or not the department proceeds with the action, upon a showing by the department that certain actions of discovery by the person initiating the action would interfere with an investigation by state government or the prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 90 days. Such a showing shall be conducted in camera. The court may extend the 60-day 90-day period upon a further showing in camera by the department that the criminal or civil investigation or proceeding has been pursued with reasonable diligence and any proposed discovery in the civil action will interfere with an ongoing criminal or civil investigation or proceeding.

Section 5.

Subsection **(4)** of section 68.085, Florida Statutes, is amended to read: 68.085 Awards to plaintiffs bringing action.--
(4) Following any distributions under subsection (1), subsection (2), or subsection (3), the agency injured by the submission of a false or fraudulent claim shall be awarded an amount not to exceed its compensatory damages. Any remaining proceeds, including civil penalties awarded under s. 68.082, shall be deposited in the General Revenue Fund.

Section 6.

Section 68.089, Florida Statutes, is amended to read: 68.089 Limitation of actions.--A civil action under this act may not be brought:
(1) More than 6 5 years after the date on which the violation of s. 68.082 is committed; or
(2) More than 3 2 years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, but in no event more than 10 7 years after the date on which the violation is committed, whichever occurs last. Section 7. This act shall take effect July 1,2007.

68.093 Florida Vexatious Litigant Law.--

(1) This section may be cited as the "Florida Vexatious Litigant Law."
(2) As used in section, the term:

(a) "Action" means a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply.

(b) "Defendant" means any person or entity, including a corporation, association, partnership, firm, or governmental entity, against whom an action is or was commenced or is sought to be commenced.

(c) "Security" means an undertaking by a vexatious litigant to ensure payment to a defendant in an amount reasonably sufficient to cover the defendant's anticipated, reasonable expenses of litigation, including attorney's fees and taxable costs.

(d) "Vexatious litigant" means:

1. A person as defined in s. 1.01(3) who, in the immediately preceding

5-year period, has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity; or

2. Any person or entity previously found to be a vexatious litigant pursuant to this action.

An action is not deemed to be "finally and adversely determined" if an appeal in that action is pending. If an action has been commenced on behalf of a party by an attorney licensed to practice law in this state, that action is not deemed to be pro se even if the attorney later withdraws from the representation and the party does not retain new counsel.

(3)(a) In any action pending in any court of this state, including actions governed by the Florida Small Claims Rules, any defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion shall be based on the grounds, and supported by a showing, that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant.

(b) At the hearing upon any defendant's motion for an order to post security, the court shall consider any evidence, written or oral, by witness or affidavit, which may be relevant to the consideration of the motion. No determination made by the court in such a hearing shall be admissible on the merits of the action or deemed to be a determination of any issue in the action. If, after hearing the evidence, the court determines that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant, the court shall order the plaintiff to furnish security to the moving defendant in an amount and within such time as the court deems appropriate.

(c) If the plaintiff fails to post security required by an order of the court under this section, the court shall immediately issue an order dismissing the action with prejudice as to the defendant for whose benefit the security was ordered.

(d) If a motion for an order to post security is filed prior to the trial in an action, the action shall be automatically stayed and the moving defendant need not plead or otherwise respond to the complaint until 10 days after the motion is denied. If the motion is granted, the moving defendant shall respond or plead no later than 10 days after the required security has been furnished.

(4) In addition to any other relief provided in this section, the court in any judicial circuit may, on its own motion or on the motion of any party, enter a pre-filing order prohibiting a vexatious litigant from

commencing, pro se, any new action in the courts of that circuit without first obtaining leave of the administrative judge of that circuit. Disobedience of such an order may be punished as contempt of court by the administrative judge of that circuit. Leave of court shall be granted by the administrative judge only upon a showing that the proposed action is meritorious and is not being filed for the purpose of delay or harassment. The administrative judge may condition the filing of the proposed action upon the furnishing of security as provided in this section.

(5) The clerk of the court shall not file any new action by a vexatious litigant pro se unless the vexatious litigant has obtained an order from the administrative judge permitting such filing. If the clerk of the court mistakenly permits a vexatious litigant to file an action pro se in contravention of a pre-filing order, any party to that action may file with the clerk and serve on the plaintiff and all other defendants a notice stating that the plaintiff is a pro se vexatious litigant subject to a pre-filing order. The filing of such a notice shall automatically stay the litigation against all defendants to the action. The administrative judge shall automatically dismiss the action with prejudice within 10 days after the filing of such notice unless the plaintiff files a motion for leave to file the action. If the administrative judge issues an order permitting the action to be filed, the defendants need not plead or otherwise respond to the complaint until 10 days after the date of service by the plaintiff, by United States mail, of a copy of the order granting leave to file the action.

(6) The clerk of a court shall provide copies of all pre-filing orders to the Clerk of the Florida Supreme Court, who shall maintain a registry of all vexatious litigants.

(7) The relief provided under this section shall be cumulative to any other relief or remedy available to a defendant under the laws of this state and the Florida Rules of Civil Procedure, including, but not limited to, the relief provided under s. 57.105.

GEORGIA

§ 49-4-168. Definitions.

As used in this article, the term:
(1) "Claim" includes any request or demand, whether under a contract or otherwise, for money, property, or services, which is made to the Georgia Medicaid program, or to any officer, employee, fiscal intermediary, grantee or contractor of the Georgia Medicaid program, or to other persons or entities if it results in payments by the Georgia Medicaid program, if the Georgia Medicaid program provides or will provide any portion of the money or property requested or demanded, or if the Georgia Medicaid program will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded. A claim includes a request or demand made orally, in writing, electronically, or magnetically. Each claim may be treated as a separate claim.
(2) "Knowing" and "knowingly" mean that a person, with respect to information:
(A) Has actual knowledge of the information;
(B) Acts in deliberate ignorance of the truth or falsity of the information; or
(C) Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.
(3) "Person" means any natural person, corporation, company, association, firm, partnership, society, jointstock company, or any other entity with capacity to sue or be sued.

§ 49-4-168.1. False or fraudulent claims; penalties; liability for costs of civil action.

(a) Any person who:
(1) Knowingly presents or causes to be presented to the Georgia Medicaid program 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 Georgia Medicaid program;
(3) Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid;
(4) Has possession, custody, or control of property or money used, or to be used by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate of receipt;
(5) Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, 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 Georgia Medicaid program, who lawfully may not sell or pledge the property; or
(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay, repay or transmit money or property to the State of Georgia, shall be liable to the State of Georgia for a civil penalty of not less than $5,500.00 and not more than $11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.
(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:
(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
(2) Such person fully cooperated with any government investigation of such violation; and
(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation the court may assess not more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.
(c) A person violating any provision of this subsection shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article.

§ 49-4-168.2. Investigation of violations; civil action brought by Attorney General or private person.

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article.
(b) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person. A civil action shall be brought in the name of the State of Georgia. The civil action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting to such dismissal.
(c) Where a private person brings a civil action under this article, such person shall follow the following special procedures:
(1) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General;

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The purpose of the period under seal shall be to allow the Attorney General to investigate the allegations of the complaint. The Attorney General may elect to intervene and proceed with the civil action within 60 days after it receives both the complaint and the material evidence and information;
(3) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera;
(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the Attorney General shall:
(A) Proceed with the civil action, in which case the civil action shall be conducted by the Attorney General; or
(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action;
(5) The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant; and
(6) When a person brings a civil action under this subsection, no person other than the Attorney General may intervene or bring a related civil action based on the facts underlying the pending civil action.
(d)(1) If the Attorney General elects to intervene and proceed with the civil action, he or she shall have the primary responsibility for prosecuting the civil action, and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.
(2) The Attorney General may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the Attorney General of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
(3) The Attorney General may settle the civil action with the defendant notwithstanding the objections of the person initiating the civil action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.
(4) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the Attorney General's litigation of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:
(A) Limiting the number of witnesses the person may call;
(B) Limiting the length of the testimony of such witnesses;

(C) Limiting the person's cross-examination of witnesses; or
(D) Otherwise limiting the participation by the person in the litigation.
(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.
(f) If the Attorney General elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the Attorney General so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the Attorney General to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the objections of the person initiating the civil action if such person has been notified by the Attorney General of the filing of such motion and the court has provided such person with an opportunity for a hearing on such motion.
(g) Whether or not the Attorney General proceeds with the civil action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the civil action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil
action will interfere with the ongoing criminal or civil investigation or proceedings.
(h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General may elect to pursue this state's claim through any alternate remedy available to the Attorney General, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Georgia, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.
(i)(1) If the Attorney General proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or

settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or
administrative hearing, in a legislative, administrative, or Attorney General hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to the Indigent Care Trust Fund to be used for the purposes set forth in Code Section 31-8-154. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. The remaining proceeds shall be payable to the Indigent Care Trust Fund to be used for the purposes set forth in Code Section 31-8-154. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of Code Section 49-4-168.1 upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of Code Section 49-4-168.1, such person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General.

(4) If the Attorney General does not proceed with the civil action and the person bringing the civil action conducts the civil action, the court may award to the defendant its reasonable attorney's fees and expenses against

the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.
(5) The State of Georgia shall not be liable for expenses which a private person incurs in bringing a civil action under this article.
(j) For purposes of this subsection, "public employee," "public official," and "public employment" shall include federal, state, and local employees and officials.
(1) No civil action may be brought under this article by a person who is or was a public employee or public official if the allegations of such action are substantially based upon:
(A) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office; or
(B) Information or records to which such person had access as a result of his or her public employment or office.
(2) No court shall have jurisdiction over a civil action under this article based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General report, hearing, audit, or investigation, or from the news media, unless the civil action is brought by the Attorney General or unless the person bringing the civil action is an original source of the information. For purposes of this paragraph, "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 this state before filing a civil action under this Code section based on such information.
(3) In no event may a person bring a civil action under this article which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.
(4) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund or collection of taxes pursuant to any provisions of Title 48.

§ 49-4-168.3. Standard of proof; actions governed by Civil Procedure Act.

(a) In any civil action brought under this article, the State of Georgia or person bringing the civil action shall be required to prove all essential elements of the cause of civil action, including damages, by a preponderance of the evidence.
(b) Except as otherwise provided in this article, all civil actions brought under this article shall be governed by the provisions of Chapter 11 of Title 9, the "Georgia Civil Practice Act."

§ 49-4-168.4. Discrimination against employee for lawful acts in furtherance of civil action under article; relief.

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee, on behalf of the employee or others, in furtherance of a civil action under this article, including investigation for, initiation of, testimony for, or assistance in a civil action filed or to be filed under this article, 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, two times the amount of back pay, interest on the back pay award, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring a civil action in an appropriate court of the State of Georgia for the relief provided in this Code section.

§ 49-4-168.5. Limitation of actions.

All civil actions under this article shall be filed pursuant to Code Section 49-4-168.2 within six years after the date the violation was committed, or three years after the date when facts material to the right of civil action are known or reasonably should have been known by the state official charged with the responsibility to act in the circumstances, whichever occurs last; provided, however, that in no event shall any civil action be filed more than ten years after the date upon which the violation was committed.

§ 49-4-168.6. Venue.

All civil actions brought against natural persons under this article shall be brought in the county where the defendant or, in the case of multiple defendants, or of defendants who are not residents of the State of Georgia, in any county where any one defendant resides, can be found, transacts business or commits an act in furtherance of the submittal of a false or fraudulent claim to the Georgia Medicaid program.

HAWAII

FALSE CLAIMS TO THE STATE (661-21 et seq)
AND FALSE CLAIMS TO THE COUNTIES (46-171 et seq.)
Chapter 661, Hawaii Revised Statutes
PART II. QUI TAM ACTIONS OR RECOVERY OF FALSE CLAIMS TO THE STATE

§661-21 Actions for false claims to the State; qui tam actions.

(a) Notwithstanding section 661-7 to the contrary, any person who:
(1) Knowingly presents, or causes to be presented, to an officer or employee
of the State a false 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 state;
(3) Conspires to defraud the State by getting a false or fraudulent claim allowed or paid;
(4) Has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used by the State and, intending to defraud the State, 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 any officer or employee of the State who may not lawfully sell or pledge the property;
(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State; or
(8) Is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim; shall be liable to the State for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages that the State sustains due to the act of that person.
(b) If the court finds that a person who has violated subsection (a):
(1) Furnished officials of the State responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;
(2) Fully cooperated with any State investigation of such violation; and
(3) At the time the person furnished the State with the information about

the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation; the court may assess not less than two times the amount of damages that the State sustains because of the act of the person. A person violating subsection (a), shall also be liable to the State for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.

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

(d) This section shall not apply to any controversy involving an amount of less than $500 in value. For purposes of this subsection, "controversy" means the aggregate of any one or more false claims submitted by the same person in violation of this chapter. Proof of specific intent to defraud is not required.

(e) For purposes of this section: “Claim" includes any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the State provides any portion of the money or property that is requested or demanded, or if the government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. "Knowing" and "knowingly" means that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information; and no proof of specific intent to defraud is required.

(f) This section shall not apply to claims, records, or statements for which procedures and remedies are otherwise specifically provided for under chapter 231.

§661-22 Civil actions for false claims.

The attorney general shall investigate any violation under section 661-21. If the attorney general finds that a person has violated or is violating section 661-21, the attorney general may bring a civil action under this section.

§661-23 Evidentiary determination; burden of proof.

A determination that a person has violated the provisions of this chapter shall be based on a preponderance of the evidence.

§661-24 Statute of limitations.

An action for false claims to the State pursuant to this chapter shall be brought within six years after the false claim is discovered or by exercise

of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which the violation of section 661-21 is committed.

§661-25 Action by private persons.

(a) A person may bring a civil action for a violation of section 661-21 for the person and for the State. The action shall be brought in the name of the State. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this chapter.
(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State in accordance with the Hawaii Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.
(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subsection
(b) Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant in accordance with the Hawaii Rules of Civil Procedure.
(d) Before the expiration of the sixty-day period or any extension obtained, the State shall:
(1) Proceed with the action, in which case the action shall be conducted by the State and the seal shall be lifted; or
(2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action and the seal shall be lifted.
(e) When a person brings an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

§661-26 Rights of parties to qui tam actions.

(a) If the State proceeds with an action under section 661- , the State shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person shall have the right to continue as a party to the action, subject to the following limitations:
(1) The State may dismiss the action notwithstanding the objections of the person initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed;

(2) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable. Upon a showing of good cause, the hearing may be held in camera;

(3) The court, upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, may, in its discretion impose limitations on the person's participation by:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(b) The defendant, by motion upon the court, may show that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense. At the court's discretion, the court may limit the participation by the person in the litigation.

(c) If the State elects not to proceed with the action, the person who initiated that action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person proceeds with the action, the court without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon showing of good cause.

(d) Whether or not the State proceeds with the action, upon motion and a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The court may extend the sixty day period upon a motion and showing by the State that the State has pursued the investigation or prosecution of the criminal or civil matter with reasonable diligence and the proposed discovery would interfere with the ongoing investigation or prosecution of the criminal or civil matter.

(e) Notwithstanding section 661-25, the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceedings to determine civil monetary penalties. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceedings as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that becomes final shall be conclusive on all parties to an action under this section.

(f) Whether or not the State elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached.

§661-27 Awards to qui tam plaintiffs.

(a) If the State proceeds with an action brought by a person under section 661-25, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. Any person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.
(b) If the State does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.
(c) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 661-21 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 661-21 , that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.
(d) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action

was frivolous, vexatious, or brought primarily for purposes of harassment.
(e) In no event may a person bring an action under section 661-25 :
(1) Against a member of the state senate or state house of representatives, a member of the judiciary, or an elected official in the executive branch of the State, if the action is based on evidence or information known to the State. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the state;
(2) When the person is a present or former employee of the State and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the State failed to act on the information provided within a reasonable period of time; or
(3) That is based upon allegations or transactions that are the subject of a civil or criminal investigation by the State, civil suit, or an administrative civil money penalty proceeding in which the State is already a party.

§661-28 Jurisdiction.

No court shall have jurisdiction over an action under this part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information. For purposes of this section: "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 State before filing an action under this part that is based on the information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure.

§661-29 Fees and costs of litigation.

The State shall not be liable for expenses or fees, including attorney fees, that a person incurs in bringing an action under this part and shall not elect to pay those expenses or fees.
SECTION 2. The provisions of this Act are not exclusive and are in addition to any other applicable law or remedy. This Act shall be liberally construed and applied to promote the public interest.
SECTION 3. This Act shall take effect upon its approval.
Added by Act 126, 5/26/00.

Chapter 46, Hawaii Revised Statutes

PART X. QUI TAM ACTIONS OR RECOVERY OF FALSE CLAIMS TO THE COUNTIES

§46-171 Actions for false claims to the counties; qui tam actions.

(a) Any person who:
(1). Knowingly presents, or causes to be presented, to an officer or employee of a county 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 a county;
(3). Conspires to defraud a county by getting a false or fraudulent claim allowed or paid;
(4). Has possession, custody, or control of property or money used, or to be used, by a county and, intending to defraud a county or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
(5). Is authorized to make or deliver a document certifying receipt of property used, or to be used by a county and, intending to defraud a county, makes or delivers the receipt without completely knowing that the information on the receipt is true;
(6). Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of a county that the person knows may not lawfully sell or pledge the property;
(7). Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to a county; or
(8). Is a beneficiary of an inadvertent submission of a false claim to a county, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the county within a reasonable time after discovery of the false claim; shall be liable to the county for a civil penalty of not less than $ 5,000 and not more than $ 10,000, plus three times the amount of damages that the county sustains due to the act of that person.
(b) If the court finds that a person who has violated subsection (a):
(1). Furnished officials of the county responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;
(2). Fully cooperated with any county investigation of the violation; and
(3). At the time the person furnished the county with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation; the court may assess not less than

two times the amount of damages that the county sustains because of the act of the person. A person violating subsection (a), shall also be liable to the county for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.
(c) Liability under this section shall be joint and several for any act committed by two or more persons.
(d) This section shall not apply to any controversy involving an amount of less than $ 500 in value. For purposes of this subsection, "controversy" means the aggregate of any one or more false claims submitted by the same person in violation of this part. Proof of specific intent to defraud is not required.
(e) For purposes of this section: "Claim" includes any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the county provides any portion of the money or property that is requested or demanded, or if the government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. "Knowing" and "knowingly" means that a person, with respect to information:
(1). Has actual knowledge of the information;
(2). Acts in deliberate ignorance of the truth or falsity of the information; or
(3). Acts in reckless disregard of the truth or falsity of the information; and no proof of specific intent to defraud is required.

§46-172 Civil actions for false claims.

The county corporation counsel or county attorney shall investigate any violation under §46-171.
If the corporation counsel or county attorney finds that a person has violated or is violating §46-171, the corporation counsel or county attorney may bring a civil action under this section.

§46-173 Evidentiary determination; burden of proof.

A determination that a person has violated this part shall be based on a preponderance of the evidence.

§46-174 Statute of limitations.

An action for false claims to a county pursuant to this part shall be brought within six years after the false claim is discovered or by exercise of reasonable diligence should have been discovered and, in any event,

no more than ten years after the date on which the violation of §46-171 is committed.

§46-175 Action by private persons.

(a) A person may bring a civil action for a violation of §46-171 for the person and for a county.
The action shall be brought in the name of the county. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this part.
(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the county in accordance with the Hawaii rules of civil procedure. The complaint:
(1) Shall be filed in camera;
(2) Shall remain under seal for at least sixty days; and
(3) Shall not be served on the defendant until the court so orders.
The county may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.
(c) The county, for good cause shown, may move the court for extensions of the time during which the complaint remains under seal under subsection (b). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant in accordance with the Hawaii rules of civil procedure.
(d) Before the expiration of the sixty-day period or any extension obtained, the county shall:
(1). Proceed with the action, in which case the action shall be conducted by the county and the seal shall be lifted; or
(2). Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action and the seal shall be lifted.
(e) When a person brings an action under this section, no person other than the county may intervene or bring a related action based on the facts underlying the pending action.

§46-176 Rights of parties to qui tam actions.

(a) If a county proceeds with an action under §46-175, the county shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person shall have the right to continue as a party to the action, subject to the following limitations:
(1). The county may dismiss the action notwithstanding the objections of the person initiating the action if the court determines, after a hearing on

the motion, that dismissal should be allowed;
(2). The county may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable. Upon a showing of good cause, the hearing may be held in camera;
(3). The court, upon a showing by the county that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the county's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, may, in its discretion, impose limitations on the person's participation by:
(A). Limiting the number of witnesses the person may call; Limiting the length of the testimony of the witnesses;
(B). Limiting the person's cross-examination of witnesses; or
(C). Otherwise limiting the participation by the person in the litigation.
(b) The defendant, by motion upon the court, may show that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense. At the court's discretion, the court may limit the participation by the person in the litigation.
(c) If the county elects not to proceed with the action, the person who initiated that action shall have the right to conduct the action. If the county so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the county's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the county to intervene at a later date upon showing of good cause.
(d) Regardless of whether the county proceeds with the action, upon motion and a showing by the county that certain actions of discovery by the person initiating the action would interfere with the county's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The court may extend the sixty-day period upon a motion and showing by the county that the county has pursued the investigation or prosecution of the criminal or civil matter with reasonable diligence and the proposed discovery would interfere with the ongoing investigation or prosecution of the criminal or civil matter.
(e) Notwithstanding §46-175, the county may elect to pursue its claim through any alternate remedy available to the county, including any administrative proceedings to determine civil monetary penalties. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceedings as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that becomes final shall be conclusive on all parties to an action under this

section.
(f) Regardless of whether the county elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached.

§46-177 Awards to qui tam plaintiffs.

(a) If a county proceeds with an action brought by a person under §46-175, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.
(b) If the county does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.
(c) Regardless of whether the county proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of §46-171 upon which the action was brought, then the court, to the extent the court considers appropriate, may reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of §46-171, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the county to continue the action.
(d) If the county does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant

prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.
(e) In no event may a person bring an action under §46-175:
(1) Against any elected official of the county, if the action is based on evidence or information known to the county. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the county;
(2) When the person is a present or former employee of the county and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the county failed to act on the information provided within a reasonable period of time; or
(3) That is based upon allegations or transactions that are the subject of a civil or criminal investigation by the county, civil suit, or an administrative civil money penalty proceeding in which the county is already a party.

§46-178 Jurisdiction.

(a) No court shall have jurisdiction over an action under this part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by a county corporation counsel or county attorney or the person bringing the action is an original source of the information.
(b) For purposes of this section: "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 county before filing an action under this part that is based on the information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure.

§46-179 Fees and costs of litigation.

A county shall not be liable for expenses or fees, including attorney fees, that a person incurs in bringing an action under this part and shall not elect to pay those expenses or fees.
SECTION 2. The provisions of this Act are not exclusive and are in addition to any other applicable law or remedy. This Act shall be liberally construed and applied to promote the public interest.
SECTION 3. In codifying the new sections added by section 1 of this Act, the reviser of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.
SECTION 4. This Act shall take effect upon its approval.

IDAHO

No Act at this time
Effective February, 2008

ILLINOIS

Illinois Whistleblower Reward and Protection Act

175/1 Short title.

§ 1. This Act may be cited as the Whistleblower Reward and Protection Act.

175/2 Definitions.

§ 2. Definitions. As used in this Act:

(a) "State" means the State of Illinois; and any of the following entities which may elect to adopt the provisions of this Act by ordinance or resolution, a copy of which shall be filed with the Attorney General within 30 days of its adoption: the system of State colleges and universities, any school district, any public community college district, any municipality, municipal corporations, units of local government, and any combination of the above under an intergovernmental agreement that includes provisions for a governing body of the agency created by the agreement.

(b) "Guard" means the Illinois National Guard.

(c) "Investigation" means any inquiry conducted by any investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this Act.

(d) "Investigator" means a person who is charged by the Department of State Police with the duty of conducting any investigation under this Act, or any officer or employee of the State acting under the direction and supervision of the Department of State Police, through the Division of Criminal Investigation or the Division of Internal Investigation, with an investigation.

(e) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation. chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(f) "Custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (I)(1) of Section 6.

(g) "Product of discovery" includes:

(1) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property. examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(2) any digest, analysis, selection, compilation, or derivation of any item listed in paragraph (1); and

(3) any index or other manner of access to any item listed in paragraph (I)

175/3 False claims.

§ 3. False claims.

(a) Liability for certain acts. Any person who:

(1) knowingly presents, or causes to be presented, to an officer or employee of the State or a member of the Guard 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 State:

(3) conspires to defraud the State by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or willfully to conceal the property. delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the State and, intending to defraud the State, 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 State, or a member of the Guard, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the State, is liable to the State for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the State sustains because of the act of that person. A person violating this subsection (a) shall also be liable to the State for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and knowingly defined. As used in this Section, the terms "knowing" and "knowingly" mean that a person, with respect to information:

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information: or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) Claim defined. As used in this Section, "claim" 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 if the State

provides any portion of the money or property which is requested or demanded, or if the State will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) Exclusion. This Section does not apply to claims, records, or statements made under the Illinois Income Tax Act.

175/4 Civil actions for false claims.

§ 4. Civil actions for false claims.

(a) Responsibilities of the Attorney General and the Department of State Police. The Department of State Police shall diligently investigate a civil violation under Section 3. If the Department of State Police finds that a person has violated or is violating Section 3, the Attorney General may bring a civil action under this Section against the person.

(b) Actions by private persons. **(1)** A person may bring a civil action for a violation of Section 3 for the person and for the State. The action shall be brought in the name of the State. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this Section until 20 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the State shall:

(A) proceed with the action, in which case the action shall be conducted by the State, or

(B) notify the court that if declines to take over the action, in which case the person bringing the action shall have the fight to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to Qui Tam actions. **(1)** If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the

action. Such person shall have the fight to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as

(i) limiting the number of witnesses the person may call,

(ii) limiting the length of the testimony of such witnesses

(iii) limiting the person's cross-examination of witnesses: or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the State's expense). When a person proceeds with the action, the court. without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(4) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this Section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this Section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam plaintiff. **(1)** If the State proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the news media. the court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph (I) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. The State shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the Attorney General, including reasonable attorneys' fees and costs, and the amount received shall be deposited in the Whistleblower Reward and protection Fund created under this Act. All such expenses, fees, and costs shall be awarded against the defendant. When the system of State colleges and universities, any school district, any public community college district, any municipality, any municipal corporation, any unit of local government, or any combination of the above under an intergovernmental agreement has been adversely affected by a defendant, the court may award such sums as it considers appropriate to the affected entity, specifying in its order the amount to be awarded to the entity from the net proceeds that are deposited in the Whistleblower Reward and Protection Fund.

(2) If the State does not proceed with an action under this Section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and

damages. The amount shall be not less than 25% and not more than 30% of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of Section 3 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection (d), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of Section 3, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the State to continue the action.

(4) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain actions barred. **(1)** No court shall have jurisdiction over an action brought by a former or present member of the Guard under subsection (b) of this Section against a member of the Guard arising out of such person's service in the Guard.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a member of the General Assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known to the State when the action was brought.

(B) For purposes of this paragraph (2), "exempt official" means any of the following officials in State service: directors of departments established under the Civil Administrative Code of Illinois, the Adjutant General, the Assistant Adjutant General, the Director of the State Emergency Services and Disaster Agency, members of the boards and commissions, and all other positions appointed by the Governor by and with the consent of the Senate.

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(4)(A) No court shall have jurisdiction over an action under this Section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the

news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph (4), "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 State before filing an action under this Section which is based on the information.

(f) State not liable for certain expenses. The State is not liable for expenses which a person incurs in bringing an action under this Section.

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this Section. including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the 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 circuit court for the relief provided in this subsection (g).

175/5 False claims procedure.

§ 5. False claims procedure.

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under Section 4 of this Act may be served at any place in the State.

(b) A civil action under Section 4 may not be brought:

(1) more than 6 years after the date on which the violation of Section 3 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed. whichever occurs last.

(c) In any action brought under Section 4, the State shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a final judgment rendered in favor of the State in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of

guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of Section 4.

175/6 Civil investigative demands.

§ 6. Subpoenas.

(a) In general.

(1) Issuance and service. Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation, the Attorney General may, before commencing a civil proceeding under this Act, issue in writing and cause to be served upon such person, a subpoena requiring such person:

(A) to produce such documentary material for inspection and copying,

(B) to answer, in writing, written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue subpoenas under this subsection (a) to the Department of State Police subject to conditions as the Attorney General deems appropriate. Whenever a subpoena is an express demand for any product of discovery, the Attorney General or his or her delegate shall cause to be served, in any manner authorized by this Section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(1.5) Where a subpoena requires the production of documentary material, the respondent shall produce the original of the documentary material, provided, however, that the Attorney General may agree that copies may be substituted for the originals. All documentary material kept or stored in electronic form, including electronic mail, shall be produced in hard copy, unless the Attorney General agrees that electronic versions may be substituted for the hard copy. The production of documentary material shall be made at the respondent's expense.

(2) Contents and deadlines. Each subpoena issued under paragraph (1):

(A) Shall state the nature of the conduct constituting an alleged violation that is under investigation and the applicable provision of law alleged to be violated.

(B) Shall identify the individual causing the subpoena to be served and

to whom communications regarding the subpoena should be directed.

(C) Shall state the date, place, and time at which the person is required to appear, produce written answers to interrogatories, produce documentary material or give oral testimony. The date shall not be less than 10 days from the date of service of the subpoena. Compliance with the subpoena shall be at the Office of the Attorney General in either the Springfield or Chicago location or at other location by agreement.

(D) If the subpoena is for documentary material or interrogatories, shall describe the documents or information requested with specificity.

(E) Shall notify the person of the right to be assisted by counsel.

(F) Shall advise that the person has 20 days from the date of service or up until the return date specified in the demand, whichever date is earlier, to move, modify, or set aside the subpoena pursuant to subparagraph (j)(2)(A) of this Section.

(b) Protected material or information.

(1) In general. A subpoena issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this State to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Code of Civil Procedure, [FN1] to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this Section.

(2) Effect on other orders, rules, and laws. Any such subpoena which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this Section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such subpoena does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service in general. Any subpoena issued under subsection (a) may be served by any person so authorized by the Attorney General or by any person authorized to serve process on individuals within Illinois, through any method prescribed in the Code of Civil Procedure or as otherwise set forth in this Act.

(d) Service upon legal entities and natural persons.

(1) Legal entities. Service of any subpoena issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by:

(A) delivering an executed copy of such subpoena or petition to any partner, executive officer, managing agent, general agent, or registered agent of the partnership, corporation, association or entity;

(B) delivering an executed copy of such subpoena or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity as its principal office or place of business.

(2) Natural person. Service of any such subpoena or petition may be made upon any natural person by:

(A) delivering an executed copy of such subpoena or petition to the person; or

(B) depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of service. A verified return by the individual serving any subpoena issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(f) Documentary material.

(1) Sworn certificates. The production of documentary material in response to a subpoena served under this Section shall be made under a sworn certificate, in such form as the subpoena designates, by:

(A) in the case of a natural person, the person to whom the subpoena is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the subpoena is directed has been produced and made available to the Attorney General.

(2) Production of materials. Any person upon whom any subpoena for the production of documentary material has been served under this Section shall make such material available for inspection and copying to the Attorney General at the place designated in the subpoena, or at such other place as the Attorney General and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such subpoena, or on such later date as the Attorney

General may prescribe in writing. Such person may, upon written agreement between the person and the Attorney General, substitute copies for originals of all or any part of such material.

(g) Interrogatories. Each interrogatory in a subpoena served under this Section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the subpoena designates by:

(1) in the case of a natural person, the person to whom the subpoena is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the subpoena and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) Procedures. The examination of any person pursuant to a subpoena for oral testimony served under this Section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this State or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a certified copy of the transcript of the testimony in accordance with the instructions of the Attorney General. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Code of Civil Procedure.

(2) Persons present. The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the State, any person who may be agreed upon by the attorney for the State and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken. The oral testimony of any person taken pursuant to a subpoena served under this Section shall be taken in the

county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Attorney General and such person.

(4) Transcript of testimony. When the testimony is fully transcribed, the Attorney General or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to review and correct the transcript, in accordance with the rules applicable to deposition witnesses in civil cases. Upon payment of reasonable charges, the Attorney General shall furnish a copy of the transcript to the witness, except that the Attorney General may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(5) Conduct of oral testimony.

(A) Any person compelled to appear for oral testimony under a subpoena issued under subsection (a) may be accompanied, represented, and advised by counsel, who may raise objections based on matters of privilege in accordance with the rules applicable to depositions in civil cases. If such person refuses to answer any question, a petition may be filed in circuit court under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with Article 106 of the Code of Criminal Procedure of 1963. [FN2]

(6) Witness fees and allowances. Any person appearing for oral testimony under a subpoena issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the circuit court.

(i) Custodians of documents, answers, and transcripts.

(1) Designation. The Attorney General or his or her delegate shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this Section.

(2) Except as otherwise provided in this Section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual, except as determined necessary by the Attorney General and subject to the conditions imposed by him or her for effective enforcement of the laws of this State, or as otherwise provided by court order.

(3) Conditions for return of material. If any documentary material has been produced by any person in the course of any investigation pursuant to a subpoena under this Section and:

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any State agency involving

such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(j) Judicial proceedings.

(1) Petition for enforcement. Whenever any person fails to comply with any subpoena issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the circuit court of any county in which such person resides, is found, or transacts business, or the circuit court of the county in which an action filed pursuant to Section 4 of this Act is pending if the action relates to the subject matter of the subpoena and serve upon such person a petition for an order of such court for the enforcement of the subpoena.

(2) Petition to modify or set aside subpoena.

(A) Any person who has received a subpoena issued under subsection (a) may file, in the circuit court of any county within which such person resides, is found, or transacts business, and serve upon the Attorney General a petition for an order of the court to modify or set aside such subpoena. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the circuit court of the county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph (A) must be filed:

(i) within 20 days after the date of service of the subpoena, or at any time before the return date specified in the subpoena, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by the Attorney General.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the subpoena to comply with the provisions of this Section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the subpoena, in whole or in part, except that the person filing the petition shall comply with any portion of the subpoena not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery. In the case of any subpoena issued under subsection (a) which is an

express demand for any product of discovery, the person from whom such discovery was obtained may file, in the circuit court of the county in which the proceeding in which such discovery was obtained is or was last pending, a petition for an order of such court to modify or set aside those portions of the subpoena requiring production of any such product of discovery, subject to the same terms, conditions, and limitations set forth in subparagraph (j)(2) of this Section.

(4) Jurisdiction. Whenever any petition is filed in any circuit court under this subsection (j), such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be required to carry out the provisions of this Section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this Section by any court shall be punished as a contempt of the court.

(k) Disclosure exemption. Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under subsection (a) shall be exempt from disclosure under the Illinois Administrative Procedure Act.

175/7 Procedure.

§ 7. Procedure. The Code of Civil Procedure shall apply to all proceedings under this Act, except when that Code is inconsistent with this Act.

175/8 Funds-Grants.

§ 8. Funds; Grants.

(a) There is hereby created the Whistleblower Reward and Protection Fund as a special fund in the State Treasury. All proceeds of an action or settlement of a claim brought under this Act shall be deposited in the Fund.

(b) Monies in the Fund shall be allocated, subject to appropriation, as follows: One-sixth of the monies shall be paid to the Attorney General and one-sixth of the monies shall be paid to the Department of State Police for State law enforcement purposes. The remaining two-thirds of the monies in the Fund shall be used for payment of awards to Qui Tam plaintiffs, for attorneys' fees and expenses, and as otherwise specified in this Act. The Attorney General shall direct the State Treasurer to make disbursement of funds as provided in court orders setting those awards,

fees, and expenses. The State Treasurer shall transfer any fund balances in excess of those required for these purposes to the General Revenue Fund.

THE CITY OF CHICAGO

Chapter 1-21 False Statements

§ 1-21-010-1-22-060

False Statements.

Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly falsifies any statement of material fact made in connection with an application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than $500 and not more than $1,000, plus up to three times the amount of damages which the city sustains because of the person’s violation of this Section. A person who violates this Section shall also be liable for the city’s litigation and collection costs and attorney’s fees. The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code.

1-21-020 Aiding and Abetting.

Any person who aids, abets, incites, compels or coerces the doing of any act prohibited by this chapter shall be liable to the city for the same penalties for the violation.

1-21-030 Enforcement.

In addition to any other means authorized by law, the corporation counsel may enforce this chapter by instituting an action with the department of administrative hearings.

Chapter 1-22 False Claims

1-22-010 Definitions.

As used in this chapter: "Claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made by a city contractor, grantee, or other recipient if the city is the source of any portion of the money or property which is requested or demanded, or if the city will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded. "Contract" means any agreement or transaction pursuant to which a person
(i) receives or may be entitled to receive city funds or other property, including grant funds, in consideration for services, work or goods provided or rendered, including contracts for legal or other professional

services,
(ii) purchases the city's real or personal property or is granted the right to use it by virtue of a lease, license or otherwise, or
(iii) collects monies (other than taxes) on behalf of the city. "City contractor" means a person who enters into a contract or who has taken any action to obtain a contract, or any owner, officer, director, employee or agent of such a person, or any subcontractor, or any person acting in concert or conspiring with such person, but shall not include any person who is a city official or employee or was a city official or employee at the time of the alleged conduct. "Investigation" means any inquiry conducted by any investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this chapter. "Knowing" and "knowingly" mean that a person, with respect to information:
(1) has actual knowledge of the information;
(2) acts in deliberate ignorance of the truth or falsity of the information; or
(3) acts in reckless disregard of the truth or falsity of the information, regardless of whether there is specific proof of intent to defraud.

1-22-020 False Claims.

Any person who:
(1) knowingly presents, or causes to be presented, to an official or employee of the city 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 city;
(3) conspires to defraud the city by getting a false or fraudulent claim allowed or paid;
(4) has possession, custody, or control of property or money used, or to be used, by the city and, intending to defraud the city or to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the city and, intending to defraud the city, makes or delivers the receipt without complete knowledge 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 city who lawfully may not sell or pledge the property; or
(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the city, is liable to the city for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages which the city sustains because of the act of that person. A person violating this section shall also be liable to the

city for the attorneys' fees and costs of a civil action brought to recover any such penalty or damages.

1-22-030 Civil actions for false claims.
(a) The corporation counsel may bring a civil action under this section against any person who has violated or is violating section 1-22-020.
(b) Actions by private persons.
(1) A person may bring a civil action against a city contractor for a violation of section 1-22-020 for the person and for the city. The action shall be brought in the name of the city. The action may be dismissed only if the court and the corporation counsel give written consent to the dismissal and their reasons for consenting.
(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the city. In all such actions, service upon the city shall be made by leaving a copy with the city clerk. The compliant shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The city may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.
(3) The city may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant.
(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the city shall:
(A) proceed with the action, in which case the action shall be conducted by the city; or
(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.
(5) When a person brings an action under this subsection (b), no person other than the city may intervene or bring a related action based on the facts underlying the pending action.
(c) Rights of the parties to Qui Tam actions.
(1) If the city proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).
(2) (A) The city may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the city of the filing of the motion to dismiss and the court has provided the person with an opportunity for a hearing on the motion.
(B) The city may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable

under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the city that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the city's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of the witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the city elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the city so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all discovery and deposition transcripts at the city's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the city to intervene at a later date upon a showing of good cause.

(4) Whether or not the city proceeds with the action, upon a showing by the city that certain actions of discovery by the person initiating the action would interfere with the city's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the city has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

(5) Notwithstanding any other provision in subsection (b), the city may elect to pursue its claim through any alternate remedy available to the city, including an administrative proceeding in the Department of Administrative Hearings. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam plaintiff.

(1) If the city proceeds with an action brought by a person under this

section, such person shall, subject to the second sentence of this paragraph, receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Inspector General's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(2) If the city does not proceed with an action under this section and the action is successfully brought or the claim is settled by another person, that person shall, subject to the exception set forth in this paragraph, receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25% and not more than 30% of the proceeds of the action or settlement and shall be paid out of such proceeds.

(3) Any person entitled to an award under paragraphs (1) and (2) of this subsection (d) shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. The city shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the corporation counsel, including reasonable attorney's fees and costs. All such expenses, fees and costs awarded pursuant to this subsection (d) shall be awarded against the defendant.

(4) Whether or not the city proceeds with the action, if the court finds that the action was brought by a person who planned, initiated or participated in the violation of section 1-22-020 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 1-22-020, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the city to continue the action.

(5) If the city does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) In no event may a person bring an action under subsection (b) which

is based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the city is already a party.
(f) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Inspector General's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the corporation counsel or the person bringing the action is an original source of the information. For purposes of this subsection (f), "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 city before filing an action under this section which is based on the information.
(g) The city is not liable for expenses, including attorney's fees, which a person incurs in bringing an action under this section.

1-22-040 False claims procedure.
(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under section 1-22-030 may be served at any place in the state.
(b) A civil action under section 1-22-030 may not be brought:
(1) more than 6 years after the date on which the violation of section 1-22-020 is committed; or
(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the city charged with responsibility to act in the circumstances, but in no even more than 10 years after the date on which the violation is committed, whichever occurs last.
(c) In any action brought under section 1-22-030, the city shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.
(d) Notwithstanding any other provision of law, a final judgment rendered in favor of the city in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 1-22-030.

1-22-050 Subpoenas.

(a) In general. **(1)** Issuance and service. Whenever the corporation counsel has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation, the corporation counsel may, before commencing a civil proceeding under this chapter, issue in writing and cause to be served upon such person, a subpoena requiring such person:
(A) to produce such documentary material for inspection and copying,

(B) to answer, in writing, written interrogatories with respect to such documentary material or information,
(C) to give oral testimony concerning such documentary material or information, or
(D) to furnish any combination of such material, answers, or testimony. Whenever a subpoena is an express demand for any product of discovery, the corporation counsel shall cause to be served, in any manner authorized by this Section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.
(2) Contents and deadlines. Each subpoena issued under paragraph (1):
(A) Shall state the nature of the conduct constituting an alleged violation that is under investigation and the applicable provision of law alleged to be violated.
(B) Shall identify the individual causing the subpoena to be served and to whom communications regarding the subpoena should be directed.
(C) Shall state the date, place, and time at which the person is required to appear, produce written answers to interrogatories, produce documentary material or give oral testimony. The date shall not be less than 10 days from the date of service of the subpoena. Compliance with the subpoena shall be at the office of the corporation counsel.
(D) If the subpoena is for documentary material or interrogatories, shall describe the documents or information requested with specificity.
(E) Shall notify the person of the right to be assisted by counsel.
(F) Shall advise that the person has 20 days from the date of service or up until the return date specified in the demand, whichever date is earlier, to move, modify, or set aside the subpoena pursuant to subparagraph (j)(2)(A) of this Section.
(b) Protected material or information.
(1) In general. A subpoena issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:
(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or
(B) the standards applicable to discovery requests under the code of civil procedure, to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this Section.
(2) Effect on other orders, rules, and laws. Any such subpoena which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this Section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such subpoena does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service in general. Any subpoena issued under subsection (a) may be served by any person so authorized by the corporation counsel or by any person authorized to serve process on individuals within Illinois, through any method prescribed in the code of civil procedure or as otherwise set forth in this chapter.
(d) Service upon legal entities and natural persons.
(1) Legal entities. Service of any subpoena issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by:
(A) delivering an executed copy of such subpoena or petition to any partner, executive officer, managing agent, general agent, or registered agent of the partnership, corporation, association or entity;
(B) delivering an executed copy of such subpoena or petition to the principal office or place of business of the partnership, corporation, association, or entity; or
(C) depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity as its principal office or place of business.
(2) Natural person. Service of any such subpoena or petition may be made upon any natural person by:
(A) delivering an executed copy of such subpoena or petition to the person; or
(B) depositing an executed copy of such subpoena or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.
(e) Proof of service. A verified return by the individual serving any subpoena issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena. (f) Documentary material. (1) Sworn certificates. The production of documentary material in response to a subpoena served under this Section shall be made under a sworn certificate, in such form as the subpoena designates, by:
(A) in the case of a natural person, the person to whom the subpoena is directed, or
(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.
The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the subpoena is directed has been produced and made available to the corporation counsel.
(2) Production of materials. Any person upon whom any subpoena for the production of documentary material has been served under this Section shall make such material available for inspection and copying to the corporation counsel at the place designated in the subpoena, or at

such other place as the corporation counsel and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such subpoena, or on such later date as the corporation counsel may prescribe in writing. Such person may, upon written agreement between the person and the corporation counsel, substitute copies for originals of all or any part of such material.

(g) Interrogatories. Each interrogatory in a subpoena served under this Section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the subpoena designates by:

(1) in the case of a natural person, the person to whom the subpoena is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory. If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the subpoena and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished. (h) Oral examinations.

(1) Procedures. The examination of any person pursuant to a subpoena for oral testimony served under this Section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this state or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a certified copy of the transcript of the testimony in accordance with the instructions of the corporation counsel. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the code of civil procedure.

(2) Persons present. The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the city, any person who may be agreed upon by the attorney for the city and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken. The oral testimony of any person taken pursuant to a subpoena served under this section shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the corporation counsel and such person.

(4) Transcript of testimony. When the testimony is fully transcribed, the corporation counsel or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to review and correct the transcript, in accordance with the rules applicable to deposition witnesses in civil cases. Upon payment of reasonable charges, the corporation counsel shall furnish a copy of the transcript to the witness, except that the corporation counsel may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(5) Conduct of oral testimony. (A) Any person compelled to appear for oral testimony under a subpoena issued under subsection (a) may be accompanied, represented, and advised by counsel, who may raise objections based on matters of privilege in accordance with the rules applicable to depositions in civil cases. If such person refuses to answer any question, a petition may be filed in circuit court under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses any question on the grounds of the privilege against self -incrimination, the testimony of such person may be compelled in accordance with article 106 of the code of criminal procedure of 1963.

(6) Witness fees and allowances. Any person appearing for oral testimony under a subpoena issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the circuit court.

(i) Custodians of documents, answers, and transcripts. (1) Designation. The corporation counsel shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section.

(2) Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual, except as determined necessary by the corporation counsel and subject to the conditions imposed by him or her for effective enforcement of the laws of this city, or as otherwise provided by court order.

(3) Conditions for return of material. If any documentary material has been produced by any person in the course of any investigation pursuant to a subpoena under this section and:

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any city agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material which has not passed into the

control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(j) Judicial proceedings**.**

(1) Petition for enforcement. Whenever any person fails to comply with any subpoena issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the corporation counsel may file, in the circuit court of any county in which such person resides, is found, or transacts business, or the circuit court of the county in which an action filed pursuant to section 1-22-030 is pending if the action relates to the subject matter of the subpoena and serve upon such person a petition for an order of such court for the enforcement of the subpoena.

(2) Petition to modify or set aside subpoena.

(A) Any person who has received a subpoena issued under subsection (a) may file, in the circuit court of any county within which such person resides, is found, or transacts business, and serve upon the corporation counsel a petition for an order of the court to modify or set aside such subpoena. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the circuit court of the county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph (A) must be filed:

(i) within 20 days after the date of service of the subpoena, or at any time before the return date specified in the subpoena, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by the corporation counsel.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the subpoena to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the subpoena, in whole or in part, except that the person filing the petition shall comply with any portion of the subpoena not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery. In the case of any subpoena issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the circuit court of the county in which the proceeding in which such discovery was obtained is or was last pending, a petition for an order of such court to modify or set aside those portions of the subpoena requiring production of any such product of discovery, subject to the same terms, conditions, and limitations set forth in subparagraph (j)(2) of this section.

(4) Jurisdiction. Whenever any petition is filed in any circuit court under this subsection (j)**,** such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be

required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.
(k) Disclosure exemption. Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under subsection **(a)** shall be exempt from disclosure under the Illinois Administrative Procedure Act.

1-22-060 Procedure.

The Illinois code of civil procedure shall apply to all proceedings under this chapter, except when that code is inconsistent with this chapter.
2-152-171 Whistle blower protection.
(a) For the purposes of this section:
(1) "Public body" means **(i)** any office or department of the City; **(ii)** the federal government; **(iii)** any local law enforcement agency or prosecutorial office; **(iv)** any federal or State judiciary, grand or petit jury, or law enforcement agency; and **(v)** any officer, employee, department, agency, or other division of any of the foregoing.
(2) "Retaliatory action" means the reprimand, discharge, suspension, demotion, or denial of promotion or transfer of any employee that is taken in retaliation for an employee's involvement in protected activity as set forth in subsection **(b)** of this section.
(3) "City contractor" means a "city contractor" as defined in section 1-22-020.
(b) No person shall take any retaliatory action against an employee because the employee does any of the following:
(1) Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, employee, or city contractor that the employee reasonably believes evidences:
(i) an unlawful use of funds, unlawful use of authority, or other unlawful conduct that poses a substantial and specific danger to public health or safety by any officer, employee or city contractor; or
(ii) any other violation of a law, rule, or regulation by any officer, employee, or city contractor; or
(2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any activity, policy, or practice described in subsection (b)(1).
(c) If any action is taken against an employee in violation of this section, the employee shall be entitled to injunctive relief, including:
(1) reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position;
(2) two times the amount of back pay; and
(3) reinstatement of full fringe benefits and seniority rights.

INDIANA

IC 5-11-5.5

Chapter 5.5. False Claims and Whistleblower Protection

§ IC 5-11-5.5-1

Definitions
Sec. 1. The following definitions apply throughout this chapter:
(1) "Claim" means a request or demand for money or property that is made to a contractor, grantee, or other recipient if the state:
(A) provides any part of the money or property that is requested or demanded; or
(B) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.
(2) "Documentary material" means:
(A) the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document;
(B) a data compilation stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations; and
(C) a product of discovery.
(3) "Investigation" means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.
(4) “Knowing,” “knowingly,” or “known” means that a person, regarding information:
(A) has actual knowledge of the information;
(B) acts in deliberate ignorance of the truth or falsity of the information; or
(C) acts in reckless disregard of the truth or falsity of the information.
(5) "Person" includes a natural person, a corporation, a firm, an association, an organization, a partnership, a limited liability company, a business, or a trust.
(6) "Product of discovery" means the original or duplicate of:
(A) a deposition;
(B) an interrogatory;
(C) a document;
(D) a thing;
(E) a result of the inspection of land or other property; or
(F) an examination or admission; that is obtained by any method of discovery in a judicial or an administrative proceeding of an adversarial nature. The term includes a digest, an analysis, a selection, a compilation, a derivation, an index, or another method of accessing an item listed in this subdivision.
(7) "State" means Indiana or any agency of state government. The term does not include a political subdivision.

IC 5-11-5.5-2

False claims; civil penalty; reduced penalty for certain disclosures
Sec. 2.
(a) This section does not apply to a claim, record, or statement concerning income tax (IC 6-3).
(b) A person who knowingly or intentionally:
(1) presents a false claim to the state for payment or approval;
(2) makes or uses a false record or statement to obtain payment or approval of a false claim from the state;
(3) with intent to defraud the state, delivers less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;
(4) with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;
(5) receives public property as a pledge of an obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;
(6) makes or uses a false record or statement to avoid an obligation to pay or transmit property to the state;
(7) conspires with another person to perform an act described in subdivisions (1) through (6); or
(8) causes or induces another person to perform an act described in subdivisions (1) through (6); is, except as provided in subsection (c), liable to the state for a civil penalty of at least five thousand dollars ($5,000) and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.
(c) If the fact finder determines that the person who violated this section:
(1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;
(2) fully cooperated with the investigation of the violation; and
(3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials; the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

IC 5-11-5.5-3

Duties of inspector general and attorney general; concurrent jurisdiction to investigate; civil actions; when inspector general may bring a civil

action;venue
Sec. 3.
(a) The:
(1) attorney general; and
(2) inspector general;
have concurrent jurisdiction to investigate a violation of section 2 of this chapter.
(b) If the attorney general discovers a violation of section 2 of this chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.
(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.
(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as
set forth in section 4 of this chapter.
(e) If the attorney general:
(1) is disqualified from investigating a possible violation of section 2 of this chapter;
(2) is disqualified from bringing a civil action concerning a possible violation of section 2 of this chapter;
(3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter; **(4)** elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or
(5) elects not to intervene under section 4 of this chapter; the attorney general shall certify the attorney general's disqualification or election to the inspector general.
(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection **(e)**, the inspector general has authority to:
(1) bring a civil action concerning a possible violation of section 2 of this chapter; or
(2) intervene in a case under section 4 of this chapter.
(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:
(1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or
(2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.
(h) A civil action brought under section 4 of this chapter may be filed in:
(1) a circuit or superior court in Marion county; or

(2) a circuit or superior court in the county in which a defendant or plaintiff resides.

(i) The state is not required to file a bond under this chapter.

IC 5-11-5.5-4

Civil action brought by person on behalf of state; dismissal; service on inspector general and attorney general; intervention by inspector general or attorney general; extension of time

Sec. 4.
(a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:
(1) must be brought in the name of the state; and
(2) may be filed in a circuit or superior court in:
(A) the county in which the person resides;
(B) the county in which a defendant resides; or
(C) Marion County.
(b) Except as provided in section 5 of this chapter, an action brought under this section may be dismissed only if:
(1) the attorney general or the inspector general, if applicable, files a written motion to dismiss explaining why dismissal is appropriate; and
(2) the court issues an order:
(A) granting the motion; and
(B) explaining the court's reasons for granting the motion.
(c) A person who brings an action under this section shall serve:
(1) a copy of the complaint; and
(2) a written disclosure that describes all relevant material evidence and information the person possesses; on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least one hundred twenty (120) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general or the inspector general. The state may elect to intervene and proceed with the action not later than one hundred twenty (120) days after it receives both the complaint and the written disclosure.
(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.
(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:
(1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or
(2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.
(f) The defendant in an action filed under this section is not required to

answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.
(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:
(1) intervene; or
(2) bring another action based on the same facts.
(h) If the person who initially filed the complaint:
(1) planned and initiated the violation of section 2 of this chapter; or
(2) has been convicted of a crime related to the person's violation of section 2 of this chapter; upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

IC 5-11-5.5-5
Responsibilities of inspector general or attorney general as interveners in civil action; venue; complainant as party; dismissal; limitations on complainant's participation; alternative proceedings
Sec. 5.
(a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may move for a change of venue to Marion County if the attorney general or the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes. Except as provided in this section, the person who initially filed the complaint may continue as a party to the action.
(b) The attorney general or the inspector general may dismiss the action after:
(1) notifying the person who initially filed the complaint; and
(2) the court has conducted a hearing at which the person who initially filed the complaint was provided the opportunity to be heard on the motion.
(c) The attorney general or the inspector general may settle the action if a court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable in light of the circumstances. Upon a showing of good cause, the court may:
(1) conduct the settlement hearing in camera; or
(2) lift all or part of the seal to facilitate the investigative process or settlement.
The court may consider an objection to the settlement brought by the person who initially filed the complaint, but is not bound by this objection.
(d) Upon a showing by the attorney general, the inspector general, or the defendant that unrestricted participation by the person who initially filed the complaint:
(1) will interfere with the prosecution of the case by the attorney general or the inspector general; or
(2) will involve the presentation of repetitious or irrelevant evidence, or

evidence introduced for purposes of harassment; the court may impose reasonable limitations on the person's participation, including a limit on the number of witnesses that the person may call, a limit to the amount and type of evidence that the person may introduce, a limit to the length of testimony that the person's witness may present, and a limit to the person's cross-examination of a witness.

(e) If the attorney general or the inspector general elects not to intervene in the action, the person who initially filed the complaint has the right to prosecute the action. Upon request, the attorney general or the inspector general shall be served with copies of all documents filed in the action and may obtain a copy of depositions and other transcripts at the state's expense. **(f)** If the attorney general and the inspector general have elected not to intervene in an action in accordance with section 4 of this chapter, upon a showing of good cause, a court may permit either the attorney general or the inspector general to intervene at a later time. The attorney general may move to intervene at any time. If the attorney general has not moved to intervene, the inspector general may move to intervene by providing written notice to the attorney general of the inspector general's intent to intervene. If the attorney general does not move to intervene earlier than fifteen (15) days after receipt of the notice of intent to intervene, the inspector general may move to intervene. If the attorney general or the inspector general intervenes under this subsection, the attorney general or the inspector general is responsible for prosecuting the action as if the attorney general or the inspector general had intervened in accordance with section 4 of this chapter.

(g) If the attorney general or inspector general shows that a specific discovery action by the person who initially filed the complaint will interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, the court may, following a hearing in camera, stay discovery for not more than sixty (60) days. After the court has granted a sixty (60) day stay, the court may extend the stay, following a hearing in camera, if it determines that the state has pursued the civil or criminal investigation with reasonable diligence and that a specific discovery action by the person who initially filed the complaint will interfere with the state's investigation or prosecution of the civil or criminal matter.

(h) A court may dismiss an action brought under this chapter to permit the attorney general or the inspector general to pursue its claim through an alternative proceeding, including an administrative proceeding or a proceeding brought in another jurisdiction. The person who initially filed the complaint has the same rights in the alternative proceedings as the person would have had in the original proceedings. A finding of fact or conclusion of law made in the alternative proceeding is binding on all parties to an action under this section once the determination made in the alternative proceeding is final under the rules, regulations, statutes, or law governing the alternative proceeding, or if the time for seeking an

appeal or review of the determination made in the alternative proceeding has elapsed.

IC 5-11-5.5-6

Compensation to complainant; exceptions and modifications
Sec. 6.
(a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:
(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.
(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific information contained in:
(A) a transcript of a criminal, a civil, or an administrative hearing;
(B) a legislative, an administrative, or another public report, hearing, audit, or investigation; or
(C) a news media report; the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.
(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.
(4) If the person who initially filed the complaint:
(A) planned and initiated the violation of section 2 of this chapter; or
(B) has been convicted of a crime related to the person's violation of section 2 of this chapter; the person is not entitled to an amount under this section. After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.
(b) If:
(1) the attorney general or the inspector general did not intervene in the action; and
(2) the defendant prevails; the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous.

(c) The state is not liable for the expenses, costs, or attorney's fees of a party to an action brought under this chapter.

IC 5-11-5.5-7

Lack of jurisdiction over certain civil actions brought by individual
Sec. 7.
(a) This section does not apply to an action brought by:
(1) the attorney general;
(2) the inspector general;
(3) a prosecuting attorney; or
(4) a state employee in the employee's official capacity.
(b) A court does not have jurisdiction over an action brought under section 4 of this chapter that is based on information discovered by a present or former state employee in the course of the employee's employment, unless:
(1) the employee, acting in good faith, has exhausted existing internal procedures for reporting and recovering the amount owed the state; and
(2) the state has failed to act on the information reported by the employee within a reasonable amount of time.
(c) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.
(d) A court does not have jurisdiction over an action brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based in information known to the state at the time the action was brought.
(e) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.
(f) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon information contained in:
(1) a transcript of a criminal, a civil, or an administrative hearing;
(2) a legislative, an administrative, or another public report, hearing, audit, or investigation; or
(3) a news media report; unless the person bringing the action has direct and independent knowledge of the information that is the basis of the action, and the person bringing the action has voluntarily provided this information to the state.

IC 5-11-5.5-8

Relief for whistleblowers
Sec. 8.
(a) An employee who has been discharged, demoted, suspended,

threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by the employee's employer because the employee:
(1) objected to an act or omission described in section 2 of this chapter; or
(2) initiated, testified, assisted, or participated in an investigation, an action, or a hearing under this chapter; is entitled to all relief necessary to make the employee whole.
(b) Relief under this section may include:
(1) reinstatement with the same seniority status the employee would have had but for the act described in subsection (a); **(2)** two (2) times the amount of back pay owed the employee;
(3) interest on the back pay owed the employee; and
(4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.
(c) An employee may bring an action for the relief provided in this section in any court with jurisdiction.

IC 5-11-5.5-9

Service of subpoena; statute of limitations; burden of proof; estoppel
Sec. 9.
(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in the state.
(b) A civil action under section 4 of this chapter is barred unless it is commenced:
(1) not later than six (6) years after the date on which the violation is committed; or
(2) not later than three (3) years after the date when facts material to the cause of action are discovered or reasonably should have been discovered by a state officer or employee who is responsible for addressing the false claim. However, an action is barred unless it is commenced not later than ten (10) years after the date on which the violation is committed.
(c) In a civil action brought under this chapter, the state is required to establish:
(1) the essential elements of the offense; and
(2) damages; by a preponderance of the evidence.
(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud or a false statement, the defendant is estopped from denying the elements of the offense in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

IC 5-11-5.5-10

Civil investigative demands; procedure

Sec. 10. (a) If the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to an investigation involving a false claim, the attorney general or the inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:
(1) Produce the documentary material for inspection and copying.
(2) Answer an interrogatory in writing concerning the documentary material or information.
(3) Give oral testimony concerning the documentary material or information.
(b) If a civil investigative demand is a specific demand for a product of discovery, the official issuing the civil investigative demand shall:
(1) serve a copy of the civil investigative demand on the person from whom the discovery was obtained; and
(2) notify the person to whom the civil investigative demand is issued of the date of service.

IC 5-11-5.5-11
Civil investigative demands; specificity and contents; time periods
Sec. 11.
(a) A civil investigative demand issued under this chapter must describe the conduct constituting a violation involving a false claim that is under investigation and the statute or rule that has been violated.
(b) If a civil investigative demand is for the production of documentary material, the civil investigative demand must:
(1) describe each class of documentary material to be produced with sufficient specificity to permit the material to be fairly identified;
(2) prescribe a return date for each class of documentary material that provides a reasonable period of time to assemble and make the material available for inspection and copying; and
(3) identify the official to whom the material must be made available.
(c) If a civil investigative demand is for answers to written interrogatories, the civil investigative demand must:
(1) set forth with specificity the written interrogatories to be answered;
(2) prescribe the date by which answers to the written interrogatories must be submitted; and
(3) identify the official to whom the answers must be submitted.
(d) If a civil investigative demand requires oral testimony, the civil investigative demand must:
(1) prescribe a date, time, and place at which oral testimony will be given;
(2) identify the official who will conduct the examination and the custodian to whom the transcript of the examination will be submitted;
(3) specifically state that attendance and testimony are necessary to the conduct of the investigation;
(4) notify the person receiving the demand that the person has the right to be accompanied by an attorney and any other representative; and

(5) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry.
(e) A civil investigative demand that is a specific demand for a product of discovery may not be returned until at least twenty-one (21) days after a copy of the civil investigative demand has been served on the person from whom the discovery was obtained.
(f) The date prescribed for the giving of oral testimony under a civil investigative demand issued under this chapter must be a date that is not less than seven (7) days after the date on which the demand is received, unless the official issuing the demand determines that exceptional circumstances are present that require an earlier date.
(g) The official who issues a civil investigative demand may not issue more than one (1) civil investigative demand for oral testimony by the same person, unless:
(1) the person requests otherwise; or
(2) the official who issues a civil investigative demand, after conducting an investigation, notifies the person in writing that an additional civil investigative demand for oral testimony is necessary.
IC 5-11-5.5-12

Civil investigative demands; protections from disclosure; objections
Sec. 12.
(a) A civil investigative demand issued under this chapter may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under the standards applicable:
(1) to a subpoena or subpoena duces tecum issued by a court to aid in a grand jury investigation; or **(2)** to a discovery request under the rules of trial procedure; to the extent that the application of these standards to a civil investigative demand is consistent with the purposes of this chapter.
(b) A civil investigative demand that is a specific demand for a product of discovery supersedes any contrary order, rule, or statutory provision, other than this section, that prevents or restricts disclosure of the product of discovery. Disclosure of a product of discovery under a specific demand does not constitute a waiver of a right or privilege that the person making the disclosure may be otherwise entitled to invoke to object to discovery of trial preparation materials.

IC 5-11-5.5-13
Civil investigative demands; service
Sec. 13.
(a) A civil investigative demand issued under this chapter may be served by an investigator or by any other person authorized to serve process.
(b) A civil investigative demand shall be served in accordance with the rules of trial procedure. A court having jurisdiction over a person not located in the state has the same authority to enforce compliance with

this chapter as the court has over a person located in the state.

IC 5-11-5.5-14

Civil investigative demands; response
Sec. 14.
(a) The production of documentary material in response to a civil investigative demand served under this chapter shall be made in accordance with Trial Rule 34.
(b) Each interrogatory in a civil investigative demand served under this chapter shall be answered in accordance with Trial Rule 33.
(c) The examination of a person under a civil investigative demand for oral testimony served under this chapter shall be conducted in accordance with Trial Rule 30.

IC 5-11-5.5-15
Civil investigative demands; possession of responses and transcripts; examination of responses
Sec. 15.
(a) The official who issued the civil investigative demand is the custodian of the documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter.
(b) An investigator who receives documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the official who issued the civil investigative demand. The official shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material.
(c) The official who issued the civil investigative demand may make copies of documentary material, answers to interrogatories, or transcripts of oral testimony as required for official use by the attorney general, the inspector general, or the state police. The material, answers, or transcripts may be used in connection with the taking of oral testimony under this chapter.
(d) Except as provided in subsection (e), documentary material, answers to interrogatories, or transcripts of oral testimony, while in the possession of the official who issued the civil investigative demand, may not be made available for examination to any person other than:
(1) the attorney general or designated personnel of the attorney general's office;
(2) the inspector general or designated personnel of the inspector general's office; or
(3) an officer of the state police who has been authorized by the official who issued the civil investigative demand.
(e) The restricted availability of documentary material, answers to interrogatories, or transcripts of oral testimony does not apply:
(1) if the person who provided:

(A) the documentary material, answers to interrogatories, or oral testimony; or
(B) a product of discovery that includes documentary material, answers to interrogatories, or oral testimony; consents to disclosure;
(2) to the general assembly or a committee or subcommittee of the general assembly; or
(3) to a state agency that requires the information to carry out its statutory responsibility.
Documentary material, answers to interrogatories, or transcripts of oral testimony requested by a state agency may be disclosed only under a court order finding that the state agency has a substantial need for the use of the information in carrying out its statutory responsibility.
(f) While in the possession of the official who issued the civil investigative demand, documentary material, answers to interrogatories, or transcripts of oral testimony shall be made available to the person, or to the representative of the person who produced the material, answered the interrogatories, or gave oral testimony. The official who issued the civil investigative demand may impose reasonable conditions upon the examination of use of the documentary material, answers to interrogatories, or transcripts of oral testimony.
(g) The official who issued the civil investigative demand and any attorney employed in the same office as the official who issued the civil investigative demand may use the documentary material, answers to interrogatories, or transcripts of oral testimony in connection with a proceeding before a grand jury, a court, or an agency. Upon the completion of the proceeding, the attorney shall return to the official who issued the civil investigative demand any documentary material, answers to interrogatories, or transcripts of oral testimony that are not under the control of the grand jury, court, or agency.
(h) Upon written request of a person who produced documentary material in response to a civil investigative demand, the official who issued the civil investigative demand shall return any documentary material in the official's possession to the person who produced documentary material, if:
(1) a proceeding before a grand jury, a court, or an agency involving the documentary material has been completed; or
(2) a proceeding before a grand jury, a court, or an agency involving the documentary material has not been commenced within a reasonable time after the completion of the investigation. The official who issued the civil investigative demand is not required to return documentary material that is in the custody of a grand jury, a court, or an agency.

IC 5-11-5.5-16
Civil investigative demands; sanctions for failure to comply; protective orders
Sec. 16.
(a) A person who has failed to comply with a civil investigative demand is subject to sanctions under Trial Rule 37 to the same extent as a person who has failed to cooperate in discovery.

(b) A person who objects to a civil investigative demand issued under this chapter may seek a protective order in accordance with Trial Rule 26(C).

IC 5-11-5.5-17

Civil investigative demands; confidentiality of responses Sec. 17. Documentary material, answers to written interrogatories, or oral testimony provided in response to a civil investigative demand issued under this chapter are confidential.

IC 5-11-5.5-18
Application of Indiana Rules of Trial Procedure
Sec. 18.
Proceedings under this chapter are governed by the Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial Procedure are inconsistent with this chapter.

IOWA

No Act at this time
Effective February, 2008

KANSAS

No Act at this time
Effective February, 2008

KENTUCKY

No Act at this time
Effective February, 2008

LOUISIANA

Louisiana False Claims Act

Act 1373, § 1

§ 437.1. Short title

This Chapter may be cited as the "Medical Assistance Programs Integrity Law".

§ 437.2. Legislative intent and purpose.

A. This Part is enacted to combat and prevent fraud and abuse committed by some health care providers participating in the medical assistance programs and by other persons and to negate the adverse effects such activities have on fiscal and programmatic integrity.

B. The legislature intends the secretary of the Department of Health and Hospitals, the attorney general, and private citizens of Louisiana to be agents of this state with the ability, authority, and resources to pursue civil monetary penalties, liquidated damages, or other remedies to protect the fiscal and programmatic integrity of the medical assistance programs from health care providers and other persons who engage in fraud, misrepresentation, abuse, or other ill practices, as set forth in this Part, to obtain payments to which these health care providers or persons are not entitled.

§ 437.3. Definitions.

As used in this Part the following terms shall have the following meanings:

(1) "Administrative adjudication" means adjudication and the adjudication process contained in the Administrative Procedure Act, R.S. 49:950, et seq.

(2) "Agent" means a person who is employed by or has a contractual relationship with a health care provider or who acts on behalf of the health care provider.

(3) "Secretary or attorney general" means that either party is authorized to institute a proceeding or take other authorized action as provided in this Part pursuant to a memorandum of understanding between the two so as to notify the public as to whether the secretary or the attorney general is the deciding or controlling party in the proceeding or other authorized matter.

(4) "Billing agent" means an agent who performs any or all of the health care provider's billing functions.

(5) "Billing" or "bills" means submitting, or attempting to submit, a claim for goods, services, or supplies.

(6) "Claim" includes any request or demand, including any and all documents or information required by federal or state law or by rule, made against medical assistance programs funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. A claim may be made through electronic means if authorized by the department. Each claim may be treated as a separate claim or several claims may be combined to form one claim.

(7) "Department" means the Department of Health and Hospitals.

(8) "False or fraudulent claim" means a claim which the health care provider or his billing agent submits knowing the claim to be false, fictitious, untrue, or misleading in regard to any material information. "False or fraudulent claim" shall include a claim which is part of a pattern of incorrect submissions in regard to material information or which is otherwise part of a pattern in violation of applicable federal or state law or rule.

(9) "Good, service, or supply" means any good, item, device, supply, or service for which a claim is made, or is attempted to be made, in whole or part.

(10) "Health care provider" means any person furnishing or claiming to furnish a good, service, or supply under the medical assistance programs, any other person defined as a health care provider by federal or state law or by rule, and a provider-in-fact.

(11) "Ineligible recipient" means an individual who is not eligible to receive health care through the medical assistance programs.

(12) "Knowing" or "knowingly" means that the person has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.

(13) "Managing employee" means a person who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operations of a health care provider. "Managing employee" shall include, but is not limited to, a chief executive officer, president, general manager, business manager, administrator, or director.

(14) "Medical assistance programs" means the Medical Assistance Program (Title XIX of the Social Security Act), commonly referred to as "Medicaid", and other programs operated by and funded in the department which provide payment to health care providers.

(15) "Misrepresentation" means the knowing failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required on a claim or a provider agreement or the making of a false or misleading statement to the department relative to

the medical assistance programs.

(16) "Order" means a final order imposed pursuant to an administrative adjudication.

(17) "Ownership interest" means the possession, directly or indirectly, of equity in the capital or the stock, or the right to share in the profits, of a health care provider.

(18) "Payment" means the payment to a health care provider from medical assistance programs funds pursuant to a claim, or the attempt to seek payment for a claim.

(19) "Property" means any and all property, movable and immovable, corporeal and incorporeal.

(20) "Provider agreement" means a document which is required as a condition of enrollment or participation as a health care provider under the medical assistance programs.

(21) "Provider-in-fact" means an agent who directly or indirectly participates in management decisions, has an ownership interest in the health care provider, or other persons defined as a provider-in-fact by federal or state law or by rule.

(22) "Recipient" means an individual who is eligible to receive health care through the medical assistance programs.

(23) "Recoupment" means recovery through the reduction, in whole or in part, of payment to a health care provider.

(24) "Recovery" means the recovery of overpayments, damages, fines, penalties, costs, expenses, restitution, attorneys' fees, or interest or settlement amounts.

(25) "Rule" means any rule or regulation promulgated by the department in accordance with the Administrative Procedure Act and any federal rule or regulation promulgated by the federal government in accordance with federal law.

(26) “Sanction” shall include but is not limited to any or all of the following:

(a) Recoupment.

(b) Posting of bond, other security, or a combination thereof.

(c) A monetary penalty.

(d) “Secretary” means the secretary of the Department of Health and Hospitals, or his authorized designee.

(27) "Secretary" means the secretary of the Department of Health and Hospitals, or his authorized designee.

(28) "Withhold payment" means to reduce or adjust the amount, in whole or in part, to be paid to a health care provider for a pending or future claim during the time of a criminal, civil, or departmental investigation

or proceeding or claims review of the health care provider.

§ 437.4. Claims review and administrative sanctions.

A.(1) Pursuant to rules and regulations promulgated in accordance with the Administrative Procedure Act, the secretary shall establish a process to review a claim made by a health care provider to determine if the claim should be or should have been paid as required by federal or state law or by rule.

(2) Claims review may occur prior to or after payment is made to a health care provider.

(3) The secretary may withhold payment to a health care provider during claims review if necessary to protect the fiscal integrity of the medical assistance programs.

B. (1) The secretary may establish various types of administrative sanctions pursuant to rules and regulations promulgated in accordance with the Administrative Procedure Act which may be imposed on a health care provider or other person who violates any provision of this Part or any other applicable federal or state law or rule related to the medical assistance programs.

C. (1) The department shall conduct a hearing in compliance with the Administrative Procedure Act at the request of a person who wishes to contest an administrative sanction imposed on him by the secretary.

(2) A party aggrieved of an order may seek judicial review only in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

(3) Judicial review of the order shall be conducted in compliance with the Administrative Procedure Act.

D. All state rules and regulations issued on or before the effective date of this Part shall be deemed to have been issued in compliance with and under the authority of this Section.

§ 437.5. Settlement

A. The secretary or the attorney general may agree to settle a matter for which recovery may be sought on behalf of the medical assistance programs or for a violation of this Part. The terms of the settlement shall be reduced to writing and signed by the parties to the agreement. The terms of the settlement shall be public record.

B. At a minimum, the settlement shall ensure that the recovery agreed to by the parties covers the estimated loss sustained by the medical assistance programs. The settlement shall include the method and means of payment for recovery, including but not limited to, adequate security for the full amount of the settlement.

§ 437.6. Injunctive relief; lis pendens; disclosure of property and liabilities

A. (1) Concurrently with a withholding of payment, a sanction being imposed, or the institution of a criminal, civil, or departmental proceeding against a health care provider or other person, the secretary or the attorney general may bring an action for a temporary restraining order or injunction under Code of Civil Procedure Articles 3601 through 3613 to prevent a health care provider or other person from whom recovery may be sought from transferring property or to protect the business.

(2) To obtain such relief, the secretary or the attorney general shall demonstrate all necessary requirements for the relief to be granted.

(3) If an injunction is granted, the court may appoint a receiver to protect the property and business of the health care provider or other person from whom recovery may be sought. The court shall assess the cost of the receiver to the nonprevailing party.

B. Pursuant to Code of Civil Procedure Articles 3751 through 3753, the secretary or the attorney general may place a notice of pendency of action, lis pendens, on the property of a health care provider or other person during the pendency of a criminal, civil, or departmental proceeding.

C. When requested by the court, the secretary, or the attorney general, a health care provider or other person from whom recovery may be sought shall have an affirmative duty to fully disclose all property and liabilities to the requester.

§ 437.7. Forfeiture of property for payment of recovery

A. In accordance with the provisions of Subsection B of this Section, the court may order the forfeiture of property to satisfy recovery under the following circumstances:

(1) The court may order the health care provider or other person from whom recovery is due to forfeit property which constitutes or was derived directly or indirectly from gross proceeds traceable to the violation which forms the basis for the recovery.

(2) If the secretary or the attorney general shows that property was transferred to a third party to avoid paying of recovery, or in an attempt to protect the property from forfeiture, the court may order the third party to forfeit the transferred property.

B. Prior to the forfeiture of property, a contradictory hearing shall be held during which the secretary or the attorney general shall prove, by clear and convincing evidence, that the property in question is subject to forfeiture pursuant to Subsection A of this Section. No such

contradictory hearing shall be required if the owner of the property in question agrees to the forfeiture.

C. If property is transferred to another person within six months prior to the occurrence or after the occurrence of the violation for which recovery is due or within six months prior to or after the institution of a criminal, civil, or departmental investigation or proceeding, it shall be prima facie evidence that the transfer was to avoid paying recovery or was an attempt to protect the property from forfeiture.

D. The health care provider or other person from whom recovery is due shall have an affirmative duty to fully disclose all property and liabilities, and all transfers of property which meet the criteria of Subsection C of this Section, to the court, the secretary and the attorney general.

§ 437.8. Venue

An action instituted pursuant to R.S. 46:437.6 or 437.7 may be brought in any of the following courts:

(1) The Nineteenth Judicial District Court for the parish of East Baton Rouge.

(2) A district court in the parish in which a health care provider or other person from whom recovery may be sought has its principle [FN1] place of business or is domiciled.

§ 437.9. Privilege; nondischargeability

A. Recovery shall be granted a privilege under state law as to all property owned by the health care provider or other person from whom recovery is due and shall be effective as to third parties only if notice of pendency, lis pendens, is placed on the property, if recorded and reinscribed in accordance with Civil Code Articles 3320 through 3327, or if the conditions of Subsection C of this Section are applicable.

B. As to the property owned by the health provider, the privilege provided in Subsection A of this Section shall rank ahead of any other privilege, mortgage, or secured interest possessed by the health care provider, his agent, or his managing employee except the first mortgage executed upon the property.

C. If property is transferred to a third party to avoid paying of recovery, or in an attempt to protect the property from forfeiture, the privilege provided in Subsection A of this Section shall rank ahead of any other privilege, mortgage, or secured interest on the transferred property obtained or possessed by the person who obtains an ownership interest in the transferred property.

D. Recovery for a violation of R.S. 46:438.2 or R.S. 46:438.3 shall be considered a nondischargeable liability under the provisions of Title 11,

U.S.C. Chapters 7, 11, and 13.

§ 437.10. Continuing liability; assumption of liability

A. A health care provider or person from whom recovery is due shall remain liable for the recovery regardless of any sale, merger, consolidation, dissolution, or other disposition of the health care provider or person, provided the obligation is recorded and reinscribed in accordance with Civil Code Articles 3320 through 3337.

B. Any person who obtains an ownership interest, whether by sale, merger, consolidation, or other disposition, in a health care provider or other person from whom recovery is due shall assume the liability and be responsible for paying the amount of any outstanding recovery. Such person shall remain liable, provided the obligation is recorded and reinscribed in accordance with Civil Code Articles 3320 through 3337.

§ 437.11. Provider agreements

A. The department shall make payments from medical assistance programs funds for goods, services, or supplies rendered to recipients to any person who has a provider agreement in effect with the department, who is complying with all federal and state laws and rules pertaining to the medical assistance programs, and who agrees that no person shall be subjected to discrimination under the medical assistance programs because of race, creed, ethnic origin, sex, age, or physical condition.

B. Each provider agreement shall require the health care provider to comply fully with all federal and state laws and rules pertaining to the medical assistance programs, to licensure, if required, and the practice of medicine, osteopathy, surgery, and midwifery. The provider agreement shall require the health care provider to provide goods, services, or supplies only if medically necessary and that are within the scope and quality of standard care.

C. Each provider agreement shall be a voluntary contract between the department and the health care provider in which the health care provider agrees to comply with federal and state laws and rules pertaining to the medical assistance programs when furnishing goods, services, or supplies to a recipient and the department agrees to pay a sum, determined by fee schedule, payment methodology, or other method, for the goods, services, or supplies provided to the recipient. However, a provider agreement shall not be construed to be a contract for the purposes of R.S. 42:1113(D).

D. **(1)** Unless the provider agreement is terminated by the secretary for cause as provided in Paragraph (2) of this Subsection, a health care provider agreement shall be effective for a stipulated period of time, shall be terminable by either party thirty days after receipt of written notice,

and shall be renewable by mutual agreement.

(2) The secretary may terminate a provider agreement immediately and without written notice if a health care provider is the subject of a sanction or of a criminal, civil, or departmental proceeding.

E. Each health care provider who has a provider agreement with the department shall receive at least one provider number but may receive more than one provider number.

§ 437.12. Provider agreement requirements

A. In addition to the requirements specified in R.S. 46:437.11, the provider agreement developed by the department shall require the health care provider to comply with the following:

(1) At the time of signing the provider agreement, have in his possession a valid professional or facility license or certificate pertinent to the goods, services, or supplies being provided, as required by applicable federal and state laws and rules, and maintain such license or certificate in good standing with the department throughout the effective period of the provider agreement.

(2) Maintain medical assistance programs-related records in a systematic and orderly manner that the department requires and determines are relevant to the goods, services, or supplies being provided.

(3) Retain medical assistance programs-related records for a period of five years to satisfy all necessary inquiries by the department.

(4) Safeguard the use and disclosure of information pertaining to current or former recipients and comply with federal and state laws and rules pertaining to confidentiality of patient information.

(5) Permit the department, the attorney general, the federal government, and any authorized agent of each of these entities access to all medical assistance programs-related records pertaining to goods, services, or supplies billed to the medical assistance programs, including access to all patient records and other health care provider information if the health care provider cannot easily separate records for recipients from other records.

(6) Bill other insurers and third parties, including the Medicare program, before billing the medical assistance programs, if after reasonable inquiry it is known that the recipient is eligible for payment for health care or related services from another insurer or person, and comply with all applicable federal and state laws and rules in regard to this billing.

(7) Report and refund any monies received in error or in excess of the

amount to which the health care provider is entitled from the medical assistance programs.

(8) Be liable for and indemnify, defend, and hold the department harmless from any cause of action or recovery arising out of the negligence or omission of the health care provider in the course of providing goods, services, or supplies to a recipient or a person believed to be a recipient.

(9) At the option of the department, provide proof of liability insurance and maintain such insurance in effect for any period of time during which goods, services, or supplies are furnished to recipients.

(10)(a) Accept payment from the medical assistance programs as payment in full, and prohibit the health care provider from billing or collecting any additional amount from the recipient or the recipient's responsible party except, and only to the extent the department permits or requires, a co-payment, coinsurance, or a deductible to be paid by the recipient for the goods, services, or supplies provided.

(b) The payment-in-full policy shall not apply to goods, services, or supplies provided to a recipient if the goods, services, or supplies are not covered by the medical assistance programs or the recipient is determined not to be covered by medical assistance programs.

(11) Agree to be subject to claims review.

B. A provider agreement shall provide that, if the health care provider sells or transfers a business interest or practice that substantially constitutes the entity named as the health care provider in the provider agreement, or sells or transfers a facility that is of substantial importance to the entity named as the health care provider in the provider agreement, the health care provider shall maintain and make available to the department medical assistance programs-related records that relate to the sale or transfer of the business interest, practice, or facility in the same manner as though the sale or transaction had not taken place, unless the health care provider enters into an agreement with the purchaser of the business interest, practice, or facility to fulfill this requirement and provides a copy of this agreement to the department.

C. A provider agreement shall provide that any sale, merger, consolidation, or other disposition of a health care provider shall be subject to any and all outstanding debts and liabilities owed or which may be owed to the medical assistance programs.

D. A provider agreement shall provide that, if the department withholds payment or is entitled to recovery, such withholding or assessment of recovery may be imposed on any and all provider numbers in which the

health care provider has an interest or in which he may have an interest.

§ 437.13. Powers and duties of the department

A. The department shall:

(1) Make payment timely at the established rate for goods, services, or supplies furnished to a recipient by the health care provider upon receipt of a properly completed and properly supported claim.

(2) Require certification on the claim form that the goods, services, or supplies have been completely furnished to a recipient eligible to receive the goods, services, or supplies and that, with the exception of those goods, services, or supplies specified by the department, the amount billed does not exceed the health care provider's usual and customary charge for the same goods, services, or supplies.

(3) Not demand repayment from the health care provider in any instance in which the medical assistance programs overpayment is attributable to error of the department in the determination of eligibility of a recipient.

B. The department may:

(1) Adopt, and include in the provider agreement, such other requirements and stipulations on either party as the department finds necessary to properly and efficiently administer the medical assistance programs.

(2)(a) Revoke any provider agreement as the result of a change of ownership in the named health care provider.

(b) Require a health care provider to give the department sixty days written notice before making any change in ownership of the person named in the provider agreement as the health care provider.

(3) Require, as a condition of participating in the medical assistance programs and before entering into the provider agreement, the following:

(a) An on-site inspection of the health care provider's service location by department representatives or other personnel designated by the secretary to assist in this function.

(b) A letter of credit, a surety bond, or a combination thereof, from the health care provider not to exceed fifty thousand dollars. The letter of credit, surety bond, or combination thereof may be required only if either of the following conditions is met:

(i) A letter of credit, surety bond, or any combination thereof is required

for each health care provider in that category of health care provider.

(ii) The health care provider is the subject of a sanction or of a criminal, civil, or departmental proceeding.

(c) The submission of information concerning the professional, business, and personal background of the health care provider, any person having an ownership interest in the health care provider, and any agent of the health care provider. Such information shall include:

(i) Proof of holding a valid license or operating certificate, as applicable, if required by federal or state law or by rule or by a local jurisdiction in which the health care provider is located.

(ii) Any prior violation, fine, suspension, termination, or other administrative action taken under federal or state law or rule or the laws or rules of any other state relative to medical assistance programs, Medicare, or a regulatory body.

(iii) Any prior violation of the rules or regulations of any other public or private insurer.

(iv) Full and accurate disclosure of any financial or ownership interest that the health care provider, or a person with an ownership interest in that health care provider, may hold in any other health care provider or health care related entity or any other entity that is licensed by the state to provide health or residential care and treatment to persons.

(v) If a group health care provider, identification of all members of the group and attestation that all members of the group are enrolled in or have applied to enroll in the medical assistance programs.

C. Upon receipt of a completed, signed, and dated application, and after any necessary investigation by the department, which may include the Department of Public Safety and Corrections, office of state police background checks, the department shall either:

(1) Enroll the applicant as a Medicaid provider.

(2) Deny the application if, based on the grounds listed in R.S. 46:437.14, the secretary determines that it is in the best interest of the medical assistance programs to do so, specifying the reasons for denial.

§ 437.14. Grounds for denial or revocation of enrollment

A. The department may deny or revoke enrollment in the medical assistance programs to a health care provider if any of the following are found to be applicable to the health care provider, his agent, a managing

employee, or any person having an ownership interest equal to five percent or greater in the health care provider:

(1) Misrepresentation.

(2) Previous or current exclusion, suspension, termination from, or the involuntary withdrawing from participation in, the medical assistance programs, any other state's Medicaid program, Medicare, or any other public or private health or health insurance program.

(3) Conviction under federal or state law of a criminal offense relating to the delivery of any goods, services, or supplies, including the performance of management or administrative services relating to the delivery of the goods, services, or supplies, under the medical assistance programs, any other state's Medicaid program, Medicare, or any other public or private health or health insurance program.

(4) Conviction under federal or state law of a criminal offense relating to the neglect or abuse of a patient in connection with the delivery of any goods, services, or supplies.

(5) Conviction under federal or state law of a criminal offense relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(6) Conviction under federal or state law of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(7) Conviction under federal or state law of a criminal offense punishable by imprisonment of a year or more which involves moral turpitude, or acts against the elderly, children, or infirmed.

(8) Conviction under federal or state law of a criminal offense in connection with the interference or obstruction of any investigation into any criminal offense listed in Paragraphs (3) through (9) of this Subsection.

(9) Sanction pursuant to a violation of federal or state laws or rules relative to the medical assistance programs, any other state's Medicaid program, Medicare, or any other public health care or health insurance program.

(10) Violation of licensing or certification conditions or professional standards relating to the licensure or certification of health care providers or the required quality of goods, services, or supplies provided.

(11) Failure to pay recovery properly assessed or pursuant to an

approved repayment schedule under the medical assistance programs.

(12) Failure to meet any condition of enrollment.

B. Before signing a provider agreement and at the discretion of the department, a person may become eligible to receive payment from the medical assistance programs from the time the goods, services, or supplies were furnished, if:

(1) The goods, services, or supplies provided were otherwise compensable.

(2) The person met all other requirements of a health care provider at the time the goods, services, or supplies were provided.

(3) The person agrees to abide by the provisions of the provider agreement to be effective from the date the goods, services, or supplies were provided.

SUBPART B. CIVIL CAUSES OF ACTION

§ 438.1. Civil actions authorized

A. The secretary or the attorney general may institute a civil action in the courts of this state to seek recovery from persons who violate the provisions of this Part.

B. An action to recover costs, expenses, fees, and attorney fees shall be ancillary to, and shall be brought and heard in the same court as, the civil action brought under the provision of Subsection A of this Section.

C. (1) A prevailing defendant may only seek recovery for costs, expenses, fees, and attorney fees if the court finds, following a contradictory hearing, that either of the following apply:

(a) The action was instituted by the secretary or attorney general pursuant to Subsection A of this Section after it should have been determined by the secretary or attorney general to be frivolous, vexatious, or brought primarily for the purpose of harassment.

(b) The secretary or attorney general proceeded with the action instituted pursuant to Subsection A of this Section after it should have been determined by the secretary or attorney general that proceeding would be frivolous, vexatious, or for the purpose of harassment.

(2) Recovery awarded to a prevailing defendant shall be awarded only for those reasonable, necessary, and proper costs, expenses, fees, and attorney fees actually incurred by the prevailing defendant.

D. An action to recover costs, expenses, fees, and attorney fees may be brought no later than sixty days after the rendering of judgment by the

district court, unless the district court decision is appealed. If the district court decision is appealed, such action may be brought no later than sixty days after the rendering of the final opinion on appeal by the court of appeal or, if applicable, by the Supreme Court.

§ 438.2. Illegal remuneration

A. No person shall solicit, receive, offer, or pay any remuneration, including but not limited to kickbacks, bribes, rebates, or bed hold payments, directly or indirectly, overtly or covertly, in cash or in kind, for the following:

(1) In return for referring an individual to a health care provider, or for referring an individual to another person for the purpose of referring an individual to a health care provider, for the furnishing or arranging to furnish any good, supply, or service for which payment may be made, in whole or in part, under the medical assistance programs.

(2) In return for purchasing, leasing, or ordering, or for arranging for or recommending purchasing, leasing, or ordering, any good, supply, or service, or facility for which payment may be made, in whole or in part, under the medical assistance programs.

(3) To a recipient of goods, services, or supplies, or his representative, for which payment may be made, in whole or in part, under the medical assistance programs.

(4) To obtain a recipient list, number, name, or any other identifying information.

B. An action brought pursuant to the provisions of this Section shall be instituted within one year of when the department knew that the prohibited conduct occurred. Such prohibited conduct shall be referred to in this Part as "illegal remuneration".

C. By rules and regulations promulgated in accordance with the Administrative Procedure Act, the secretary may provide for additional "safe harbor" exceptions to which the provisions of this Section shall not apply.

D. The following are "safe harbor" exceptions to which the provisions of this Section shall not apply:

(1) A discount or other reduction in price obtained by a health care provider under the medical assistance programs if the reduction in price is properly disclosed to the department and is reflected in the claim made by the health care provider.

(2) Any amount paid by an employer to an employee, who has a bona fide employment relationship with such employer, for the provision of covered goods, services, or supplies.

(3) Any discount amount paid by a vendor of goods, services, or supplies to a person authorized to act as a purchasing agent for a group of health care providers who are furnishing goods, services, or supplies paid or

reimbursed under the medical assistance programs provided the following criteria are met:

(a) The person acting as the purchasing agent has a written contract with each health care provider specifying the amount to be paid to the purchasing agent, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such health care provider under the contract, or a combination of both.

(b) The health care provider discloses the information contained in the required written contract to the secretary in such form or manner as required under rules and regulations promulgated by the secretary in accordance with the Administrative Procedure Act.

(4) Any other "safe harbor" exception created by federal or state law or by rule.

§ 438.3. False or fraudulent claim; misrepresentation

A. No person shall knowingly present or cause to be presented a false or fraudulent claim.

B. No person shall knowingly engage in misrepresentation to obtain, or attempt to obtain, payment from medical assistance programs funds.

C. No person shall conspire to defraud, or attempt to defraud, the medical assistance programs through misrepresentation or by obtaining, or attempting to obtain, payment for a false or fraudulent claim.

D. (1) No person shall knowingly submit a claim for goods, services, or supplies which were medically unnecessary or which were of substandard quality or quantity.

(2) If a managed care health care provider or a health care provider operating under a voucher system under the medical assistance programs fails to provide medically necessary goods, services, or supplies or goods, services, or supplies which are of substandard quality or quantity to a recipient, and those goods, services, or supplies are covered under the managed care contract or voucher contract with the medical assistance programs, such failure shall constitute a violation of Paragraph (1) of this Subsection.

(3) "Substandard quality" in reference to services applicable to medical care as used in this Subsection shall mean substandard as to the appropriate standard of care as used to determine medical malpractice, including but not limited to, the standard of care provided in R.S. 9:2794.

F. Each violation of this Section may be treated as a separate violation or may be combined into one violation at the option of the secretary or the attorney general.

G. No action shall be brought under this Section unless the amount of alleged actual damages is one thousand dollars or more.

H. No action brought pursuant to this Section shall be instituted later than ten years after the date upon which the alleged violation occurred.

§ 438.4. Illegal acts regarding eligibility and recipient lists

A. No person shall knowingly make, use, or cause to be made or used a false, fictitious, or misleading statement on any form used for the purpose of certifying or qualifying any person for eligibility for the medical assistance programs or to receive any good, service, or supply under the medical assistance programs which that person is not eligible to receive.

B. No unauthorized person, or no authorized person for an unauthorized purpose, shall obtain a recipient list, number, name, or any other identifying information, nor shall that person use, possess, or distribute such information.

C. An action brought pursuant to the provisions of this Section shall be instituted within one year of when the department knew that the prohibited conduct occurred.

§ 438.5. Civil monetary penalty

A. In a civil action instituted in the courts of this state pursuant to the provisions of this Part, the secretary or the attorney general may seek a civil monetary penalty provided in R.S. 46:438.6(C) from any of the following:

(1) A health care provider or other person sanctioned by order pursuant to an administrative adjudication.

(2) A health care provider or other person determined by a court to have violated any provision of this Part.

(3) A health care provider or other person who has violated a settlement agreement entered into pursuant to this Part.

(4) A health care provider or other person who has been charged with a violation of R.S. 14:70.1, R.S. 14:133, or R.S. 46:114.2.

(5) A health care provider or other person who has been found liable in a civil action filed in federal court pursuant to 18 U.S.C. 1347, et seq., 42 U.S.C. 1359nn(h)(6), or 42 U.S.C. 1320a-7(b).

(6) A health care provider or other person who has pled guilty to, pled nolo contendere to, or has been convicted in federal court of criminal conduct arising out of circumstances which would constitute a violation of this Part.

B. (1) If a health care provider is sanctioned by order pursuant to an administrative adjudication and if judicial review of the order is sought, a civil suit may be filed for imposition and recovery of the civil monetary

penalty during the pendency of such judicial review. The reviewing court may consolidate both actions and hear them concurrently.

(2) If judicial review of an order is sought, the secretary or the attorney general shall file the action for recovery of the civil monetary penalty within one year of service on the secretary of the petition seeking judicial review of the order.

(3) If no judicial review of an order is sought, the secretary or the attorney general may file the action for recovery of the civil monetary penalty within one year of the date of the order.

(4) Any action brought under the provisions of this Subsection shall be filed in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

C. In the instance of a state criminal action, the action for recovery of the civil monetary penalty may be brought as part of the criminal action or shall be brought within one year of the date of the criminal conviction or final plea.

D. (1) In the case of a civil judgment rendered in federal court, the action for recovery of the civil monetary penalty may be brought once the judgment becomes enforceable and no later than one year after written notification to the secretary of the enforceable judgment.

(2) In the case of a criminal conviction or plea in federal court, the action under this Section may be brought once the conviction or plea is final and no later than one year after written notification to the secretary of the rendering of the conviction or final plea.

(3) Any action brought under the provisions of this Subsection shall be filed in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

E. If an action is brought pursuant to this Part, the request for the imposition of a civil monetary penalty shall only be considered if made part of the original or amended petition.

§ 438.6. Recovery

A. Actual damages.

(1) Actual damages incurred as a result of a violation of the provisions of this Part shall be recovered only once by the medical assistance programs and shall not be waived by the court.

(2) Except as provided by Paragraph (3) of this Subsection, actual damages shall equal the difference between what the medical assistance programs paid, or would have paid, and the amount that should have been paid had not a violation of this Part occurred plus interest at the maximum rate of legal interest provided by Civil Code Article 2924 from the date the damage occurred to the date of repayment.

(3) If the violator is a managed care health care provider or a health care

provider under a voucher program, actual damages shall be determined in accordance with the violator's provider agreement.

B. Civil fine.

(1) Any person who is found to have violated R.S. 46:438.2 shall be subject to a civil fine in an amount not to exceed ten thousand dollars per violation, or an amount equal to three times the value of the illegal remuneration, whichever is greater.

(2) Except as limited by this Section, any person who is found to have violated R.S. 46:438.3 shall be subject to a civil fine in an amount not to exceed three times the amount of actual damages sustained by the medical assistance programs as a result of the violation.

C. Civil monetary penalty.

(1) In addition to the actual damages provided in Subsection A of this Section and the civil fine imposed pursuant to Subsection B of this Section, one or more of the following civil monetary penalties may be imposed on the violator:

(a) Up to ten thousand dollars for each false or fraudulent claim, misrepresentation, illegal remuneration, or other prohibited act as contained in R.S. 46:438.2, R.S. 46:438.3, or R.S. 46:438.4.

(b) Payment of interest on the amount of the civil fine imposed pursuant to Subsection B of this Section at the maximum rate of legal interest provided by Civil Code Article 2924 from the date the damage occurred to the date of repayment.

(2) Prior to the imposition of a civil monetary penalty, the court shall consider if there are extenuating circumstances as provided in R.S. 46:438.7.

D. Costs, expenses, fees, and attorney fees.

(1) Any person who is found to have violated this Subpart shall be liable for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees.

(2) All awards of costs, expenses, fees, and attorney fees are subject to review by the court using a reasonable, necessary, and proper standard of review.

(3) The secretary or attorney general shall promptly remit awards for those costs, expenses, and fees incurred by the various clerks of court or sheriffs involved in the investigations or proceedings to the appropriate clerk or sheriff.

E. Damages **(1)** If recovery is due from a health care provider under the provisions of Subsections A and B of this Section, such recovery shall constitute civil liquidated damages for breach of the conditions and requirements of participation in the medical assistance programs which are and shall be construed by the courts to be remedial, but not retroactive, in nature.

(2) Any award of civil liquidated damages, costs, expenses, and

attorneys' fees shall be in addition to criminal penalties and to the civil monetary penalty provided in Subsection C of this Section.

§ 438.7. Waivers; extenuating circumstances

If a waiver is requested by the secretary or the attorney general, the court may waive any recovery, except for actual damages, required to be imposed under the provisions of this Subpart if all of the following extenuating circumstances are found to be applicable:

(1) The violator furnished all the information known to him about the specific allegation to the secretary or attorney general no later than thirty days after the violator first obtained the information.

(2) The violator cooperated fully with all federal or state investigations concerning the specific allegation.

(3) At the time the violator furnished the information concerning the specific allegation to the department or the attorney general, no criminal, civil, or departmental investigation or proceeding had been commenced as to the alleged violation.

§ 438.8. Burden of proof; prima facie evidence; standard of review

A. The burden of proof in an action instituted pursuant to this Part shall be on the medical assistance programs and by a preponderance of the evidence, except that the defendant shall carry the burden of proving that goods, services, or supplies were actually provided to an eligible recipient in the quantity and quality submitted on a claim. In all other aspects, the burden of proof shall be as set forth in the Code of Civil Procedure and other applicable laws.

B. Proof by a preponderance of the evidence of a false or fraudulent claim or illegal remuneration shall be deemed to exist under the following circumstances:

(1) If the defendant has pled guilty to, been convicted of, or entered a nolo contendere plea to a criminal charge in any federal or state court to charges arising out of the same circumstances as would be a violation of this Subpart.

(2) If an order has been rendered against a defendant finding the defendant to have violated this Subpart.

C. (1) The submission of a certified or true copy of an order, civil judgment, or criminal conviction or plea shall be prima facie evidence of the same.

(2) The submission of the bill of information or of the indictment and the minutes of the court shall be prima facie evidence as to the circumstances underlying a criminal conviction or plea.

D. (1) In determining whether a pattern of incorrect submissions exists in regard to an alleged false or fraudulent claim, the court shall give consideration as to whether the total amount of the incorrect submissions

by a health care provider is material in relation to the total claims submitted by the health care provider.

(2) "Material" as used in this Subsection shall have the same meaning as defined by rules and regulation promulgated by the secretary in accordance with the Administrative Procedure Act which incorporate the same definition of "material" as recognized by the American Institute of Certified Public Accountants.

SUBPART C. QUI TAM ACTION

§ 439.1. Qui Tam action, civil action filed by private person

A. A private person may institute a civil action in the courts of this state on behalf of the medical assistance programs and himself to seek recovery, except for the civil monetary penalty provided in R.S. 46:438.6(C), for a violation of R.S. 46:438.2, R.S. 46:438.3, or R.S. 46:438.4 pursuant to the provisions of this Subpart. The institutor shall be known as a "Qui Tam plaintiff" and the civil action shall be known as a "Qui Tam action".

B. (1) A Qui Tam plaintiff shall be an original source of the information which serves as the basis for the alleged violation. More than one person may serve as a Qui Tam plaintiff in a Qui Tam action arising out of the same information and allegations provided each person qualifies as an original source.

(2) For purposes of this Subpart, "original source" means a person who has direct and independent knowledge of the alleged violation and who has voluntarily provided the information to the secretary or attorney general before filing a Qui Tam action with the court.

C. No Qui Tam action shall be instituted later than one year after the date a Qui Tam complaint is received by the secretary or the attorney general, whichever occurs first, in accordance with R.S. 46:439.2.

D. The burden of proof in a Qui Tam action instituted pursuant to this Subpart shall be the same as that set forth in R.S. 46:438.8.

E. (1) No court shall have jurisdiction over a Qui Tam action based upon a disclosure of allegations or transactions in a criminal, civil, or administrative hearing or as the result of disclosure of a governmental audit report, investigation, or hearing unless the person bringing the action is an original source of the information.

(2) No court shall have jurisdiction over a Qui Tam action based upon a disclosure through the media unless the person bringing the action is an original source of the information and that fact is confirmed by a person with knowledge of who provided the information.

F. (1) A person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a Qui Tam action if the person has or had a duty or obligation to report,

investigate, or pursue allegations of wrongdoing or misconduct by health care providers.

(2) A person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a Qui Tam action if the person has or had access to records of the state through the normal course and scope of his employment relative to activities of health care providers.

G. No employer of a Qui Tam plaintiff shall discharge, demote, suspend, threaten, harass, or discriminate against a Qui Tam plaintiff at any time arising out of the fact that the Qui Tam plaintiff brought an action pursuant to this Subpart unless the court finds that the Qui Tam plaintiff has instituted or proceeded with an action that is frivolous, vexatious, or harassing.

H. The court shall allow the secretary or the attorney general to intervene and proceed with the Qui Tam action in the district court at any time during the Qui Tam action proceedings.

I. Notwithstanding any other law to the contrary, a Qui Tam complaint and information filed with the secretary or attorney general shall not be subject to discovery or become public record until judicial service of the Qui Tam action is made on any of the defendants, except that the information contained therein may be given to other governmental entities or their authorized agents for review and investigation. Such entities and their authorized agents shall maintain the confidentiality of the information provided to them under this Subsection.

§ 439.2. Qui Tam action procedures.

A. The following procedures shall be applicable to a Qui Tam action:

(1) The complaint shall be captioned: "Medical Assistance Programs Ex Rel.: [insert name of Qui Tam plaintiff(s)] v. [insert name of defendant(s)]".

(2)(a) A copy of the Qui Tam complaint and written disclosure of substantially all material evidence and information each Qui Tam plaintiff possesses shall be filed with the secretary or the attorney general.

(b) The Qui Tam complaint and written disclosure of substantially all material evidence and information shall be filed with the secretary or the attorney general within one year of the date the Qui Tam plaintiff knew or should have known of the information forming the basis of the complaint. No Qui Tam action shall be instituted by a Qui Tam plaintiff if he fails to timely file a complaint with the secretary or the attorney general.

(3)(a) At least thirty days after filing with the secretary or the attorney general, whichever occurs first, the Qui Tam complaint and information may be filed with the appropriate state district court. On the same date as

the Qui Tam action is filed, the Qui Tam plaintiff shall serve the secretary and the attorney general with notice of the filing.

(b) If more than one Qui Tam action arising out of the same information and allegations is filed, the court shall dismiss all Qui Tam actions where the complaint and information filed with the secretary or attorney general were filed thirty days or more after the first Qui Tam complaint and information which serves as the basis for the alleged violation were filed with the secretary or attorney general.

(4)(a) The complaint and information filed with the court shall be made under seal, shall remain under seal for at least ninety days from the date of filing, and shall be served on the defendant when the seal is removed.

(b) For good cause shown, the secretary or the attorney general may request one extension of the ninety-day time period for the complaint and information to remain under seal and unserved on the defendant. This request shall be supported by affidavit or other submission in camera and under seal.

B. (1) If the secretary or the attorney general elects to intervene in the action, the secretary or the attorney general shall not be bound by any act of a Qui Tam plaintiff. The secretary or the attorney general shall control the Qui Tam action proceedings on behalf of the state and the Qui Tam plaintiff may continue as a party to the action.

(2) The Qui Tam plaintiff and his counsel shall cooperate fully with the secretary or the attorney during the pendency of the Qui Tam action.

(3) If requested by the secretary or the attorney general and notwithstanding the objection of the Qui Tam plaintiff, the court may dismiss the Qui Tam action provided the Qui Tam plaintiff has been notified by the secretary or the attorney general of the filing of the motion to dismiss and the court has provided the Qui Tam plaintiff a contradictory hearing on the motion.

(4) If the secretary or the attorney general does not intervene, the Qui Tam plaintiff may proceed with the Qui Tam action unless the secretary or the attorney general shows that proceeding would adversely effect the prosecution of any pending criminal actions or criminal investigations into the activities of the defendant. Such a showing shall be made to the court in camera and neither the Qui Tam plaintiff or the defendant shall be informed of the information revealed in camera. In which case, the Qui Tam action shall be stayed for no more than one year.

(5) If the Qui Tam plaintiff objects to a settlement of the Qui Tam action proposed by the secretary or the attorney general, the court may authorize the settlement only after a hearing to determine whether the proposed settlement is fair, adequate, and reasonable under the circumstances.

C. If a Qui Tam plaintiff fails to comply with any provision of this Subpart, after a contradictory hearing, the court may dismiss the Qui Tam plaintiff on its own motion or on motion made by the secretary or attorney general.

D. A defendant shall have thirty days from the time a Qui Tam complaint is served on him to file a responsive pleading.

E. The Qui Tam plaintiff and the defendant shall serve all pleadings and papers filed, as well as discovery, in the Qui Tam action on the secretary and the attorney general.

F. (1) Whether or not the secretary or the attorney general proceeds with the action, upon showing by the secretary or the attorney general that certain actions of discovery by the Qui Tam plaintiff or defendant would interfere with a criminal, civil, or departmental investigation or proceeding arising out of the same facts, the court shall stay the discovery for a period of not more than ninety days.

(2) Upon a further showing that federal or state authorities have pursued the criminal, civil, or departmental investigation or proceeding with reasonable diligence and any proposed discovery in the Qui Tam action would unduly interfere with the criminal, civil, or departmental investigation or proceeding, the court may stay the discovery for an additional period, not to exceed one year.

(3) Such showings shall be conducted in camera and neither the defendant nor the Qui Tam plaintiff shall be informed of the information presented to the court.

(4) If discovery is stayed pursuant to this Subsection, the trial and any motion for summary judgment in the Qui Tam action shall likewise be stayed.

§ 439.3. Qui Tam action procedures

Notwithstanding any other provision of this Subpart, the secretary or the attorney general may elect to pursue an administrative or civil action against a Qui Tam defendant through any alternative remedy available to the secretary or the attorney general.

§ 439.4. Recovery awarded to a Qui Tam plaintiff

A. (1) Except as provided by Subsection D of the Section and Paragraph (3) of this Subsection, if the secretary or the attorney general intervenes in the action brought by a Qui Tam plaintiff, the Qui Tam plaintiff shall receive at least ten percent, but not more than twenty percent, of recovery, exclusive of the civil monetary penalty provided in R.S. 46:439.6(C).

(2) In making a determination of award to the Qui Tam plaintiff the court shall consider the extent to which the Qui Tam plaintiff substantially contributed to investigations and proceedings related to the Qui Tam action.

(3) If the court finds the allegations in the Qui Tam action to be based primarily on disclosures of specific information other than information

provided by the Qui Tam plaintiff, the court may award less than ten percent of recovery, exclusive of the civil monetary penalty provided in R.S. 46:438.6(C), taking into account the significance of the information and the role of the Qui Tam plaintiff in advancing the Qui Tam action to judgment or settlement.

B. Except as provided by Subsection D of the Section, if the secretary or the attorney general does not intervene in the Qui Tam action, the Qui Tam plaintiff shall receive an amount, not to exceed thirty percent of recovery, which the court decides is reasonable for the Qui Tam plaintiff pursuing the action to judgment or settlement.

C. (1) In addition to all other recovery to which he is entitled and if he prevails in the Qui Tam action, the Qui Tam plaintiff shall be entitled to an award against the defendant for costs, expenses, fees, and attorney fees, subject to review by the court using a reasonable, necessary, and proper standard of review.

(2) If the secretary or the attorney general does not intervene and the Qui Tam plaintiff conducts the action, the court shall award costs, expenses, fees, and attorney fees to a prevailing defendant if the court finds that the allegations made by the Qui Tam plaintiff were meritless or brought primarily for the purposes of harassment. A finding by the court that Qui Tam allegations were meritless or brought primarily for the purposes of harassment may be used by the prevailing defendant in the Qui Tam action or any other civil proceeding to recover losses or damages sustained as a result of the Qui Tam plaintiff filing and pursuing such a Qui Tam action.

D. Whether or not the secretary or the attorney general intervenes, if the court finds that the action was brought by a person who participated in the violation which is the subject of the action, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the Qui Tam plaintiff would otherwise receive under Subsections A or B of this Section, taking into account the role that Qui Tam plaintiff played in advancing the case to judgment or settlement and any relevant circumstances pertaining to the Qui Tam plaintiff's participation in the violation. A person who planned the violation shall not be entitled to recovery.

E. When more than one party serves as a Qui Tam plaintiff, the share of recovery each receives shall be determined by the court. In no case, however, shall the total award to multiple Qui Tam plaintiffs be greater than the total award allowed to a single Qui Tam plaintiff under Subsection A or B of this Section.

F. In no instance shall the secretary, the medical assistance programs, the attorney general, or the state be liable for any costs, expenses, fees, or attorney fees incurred by the Qui Tam plaintiff or for any award entered against the Qui Tam plaintiff.

G. The percentage of the share awarded to or settled for by the Qui Tam plaintiff shall be determined using the total amount of the award of or

settlement of the liquidated damages. However, the medical assistance programs must be made whole through the payment of any and all actual damages prior to the disbursement of any funds related to the percentage of the liquidated damages to be received by the Qui Tam plaintiff.

SUBPART D. FRAUD AND ABUSE DETECTION AND PREVENTION

§ 440.1. Medical Assistance Programs Fraud Detection Fund.

A. The Medical Assistance Programs Fraud Detection Fund, hereafter referred to as the "fund", is created in the state treasury as a special fund. The monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund and interest earned on the investment of monies in the fund shall be credited to the fund. All unexpended and unencumbered monies in the fund at the end of each fiscal year shall remain in the fund.

B. After compliance with the requirements of Article VII Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, all monies received by the state pursuant to a civil award granted or settlement under the provisions of this Part, except for the amount to make the medical assistance programs whole, shall be deposited into the fund:

C. Except as provided in this Subsection, the monies in the fund shall not be used to replace, displace, or supplant state general funds appropriated for the daily operation of the department or the medical assistance programs and may be appropriated by the legislature for the following purposes only:

(1) To pay costs or expenses incurred by the department or the attorney general relative to an action instituted pursuant to this Part.

(2) To enhance fraud and abuse detection and prevention activities related to the medical assistance programs.

(3) To pay rewards for information concerning fraud and abuse as provided in Subpart B of this Part.

(4) To provide a source of revenue for the Medical Assistance Program in the event of a change in federal policy which results in an increase in state participation or a shortfall in state general fund due to a decrease in the official forecast, as defined in R.S. 39:2(24), during a fiscal year.

§ 440.2. Rewards for fraud and abuse information.

A. The secretary may provide a reward of up to two thousand dollars to an individual who submits information to the secretary which results in

recovery pursuant to the provisions of this Part, provided such individual is not himself subject to recovery under this Part.

B. The secretary shall grant rewards only to the extent monies are appropriated for this purpose from the Medical Assistance Programs Fraud Detection Fund. The secretary shall determine the amount of a reward, not to exceed two thousand dollars per individual per action, and establish a process to grant the reward in accordance with rules and regulations promulgated in accordance with the Administrative Procedure Act.

s 440.3. Whistleblower protection and cause of action.

A. No employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought. Such an employee may seek any and all relief for his injury to which he is entitled under state or federal law.

B. No individual shall be threatened, harassed, or discriminated against in any manner by a health care provider or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought except that a health care provider may arrange for a recipient to receive goods, services, or supplies from another health care provider if the recipient agrees and the arrangement is approved by the secretary. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law.

C. (1) An employee of a private entity may bring his action for relief against his employer or the health care provider in the same court as the action or actions were brought pursuant to this Part or as part of an action brought pursuant to this Part.

(2) A person aggrieved of a violation of Subsection A or B of this Section shall be entitled to exemplary damages.

D. A Qui Tam plaintiff shall not be entitled to recovery pursuant to this Section if the court finds that the Qui Tam plaintiff instituted or proceeded with an action that was frivolous, vexatious, or harassing.

Act 1373, s 2

Section 2. R.S. 46:442 is hereby repealed.

Approved July 15, 1997.

[FN1] In par. (2) of R.S. 46:437.8, spelling "principle" is as it appears in

the enrolled bill (Acts 1997, No. 1373).

§ 440.3. Whistleblower protection and cause of action.

A. No employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought. Such an employee may seek any and all relief for his injury to which he is entitled under state or federal law.
B. No individual shall be threatened, harassed, or discriminated against in any manner by a health care provider or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought except that a health care provider may arrange for a recipient to receive goods, services, or supplies from another health care provider if the recipient agrees and the arrangement is approved by the secretary. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law.
C. (1) An employee of a private entity may bring his action for relief against his employer or the health care provider in the same court as the action or actions were brought pursuant to this Part or as part of an action brought pursuant to this Part.
(2) A person aggrieved of a violation of Subsection A or B of this Section shall be entitled to exemplary damages.
D. A qui tam plaintiff shall not be entitled to recovery pursuant to this Section if the court finds that the qui tam plaintiff instituted or proceeded with an action that was frivolous, vexatious, or harassing.

CREDIT(S)
Added by Acts 1997, No. 1373, § 1.
HISTORICAL AND STATUTORY NOTES
1999 Main Volume
Pursuant to the statutory revision authority of the Louisiana State Law Institute, "qui tam" was decapitalized in subsec. D as enacted by Acts 1997, No. 1373, § 1.

NOTES OF DECISIONS
Intent of law 2
Prohibited actions 1
1. Prohibited actions Surgical center's alleged effort to limit referral of Medicaid patients to its facility was not prohibited under Medical Assistance Programs Integrity Law, and thus Law's whistleblower provision did not apply to center's physician who reported center's

alleged effort. Mixon v. Iberia Surgical, L.L.C., App. 3 Cir.2007, 956 So.2d 76, 2006-878 (La.App. 3 Cir. 4/18/07). Health 294

2. Intent of law Whistleblower provision of Medical Assistance Programs Integrity Law is intended to protect individuals reporting violations under the Law from threats, harassment, or discrimination. Mixon v. Iberia Surgical, L.L.C., App. 3 Cir.2007, 956 So.2d 76, 2006-878 (La.App. 3 Cir. 4/18/07). Health 266 LSA-R.S. 46:440.3, LA R.S. 46:440.3 Titles 1 to 8, 10 to 12, 14 to 21, 23, 26 to 32, 40, and 43 to 46 of the Revised Statutes, the Code of Civil Procedure, the Code of Criminal Procedure, the Code of Evidence, and the Children's Code are current through the 2007 Regular Session. All other statutes are current through the 2006 First Extraordinary, Regular, and Second Extraordinary Sessions.

MAINE

No Act at this time
Effective February, 2008

MARYLAND

No Act at this time
Effective February, 2008

MASSACHUSETTS

Massachusetts False Claims Act

§ M.G.L.A. 12 Section 5A

SECTION 18. Chapter 12 of the General Laws is hereby amended by inserting after section 5 the following 15 sections:--

Section 5A. **(a)** For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meaning:--

"Claim", any request or demand, whether pursuant to a contract or otherwise, for money or property which is made to an officer, employee, agent or other representative of the commonwealth, political subdivision thereof or to a contractor, subcontractor, grantee, or other person if the commonwealth or any political subdivision thereof provides any portion of the money or property which is requested or demanded, or if the commonwealth or any political subdivision thereof will reimburse directly or indirectly such contractor, subcontractor, grantee, or other person for any portion of the money or property which is requested or demanded.

"False claims law", pursuant to sections 5B to 5O, inclusive.

"False claims action", an action filed by the office of the attorney general or a relator pursuant to this section.

"Knowing and knowingly", possessing actual knowledge of relevant information, acting with deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information and no proof of specific intent to defraud is required.

"Original source", 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, without public disclosure, before filing an action under this section which is based on such information.

"Person", any natural person, corporation, partnership, association, trust or other business or legal entity.

"Political subdivision", any city, town, county or other governmental entity authorized or created by state law, including public corporations and authorities.

"Relator", an individual who brings an action under paragraph (2) of section 5C.

Section 5B. Any person who:

(1) knowingly presents, or causes to be presented, 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 obtain payment or approval of a claim by the commonwealth or any political subdivision thereof;

(3) conspires to defraud the commonwealth or any political subdivision thereof through the allowance or payment of a fraudulent claim;

(4) has possession, custody, or control of property or money used, or to be used, by the commonwealth or any political subdivision thereof and knowingly delivers, or causes to be delivered to the commonwealth, less property than the amount for which the person receives a certificate or receipt with the intent to willfully conceal the property;

(5) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the commonwealth or any political subdivision thereof and with the intent of defrauding the commonwealth or any political subdivision thereof, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the commonwealth or any political subdivision thereof, knowing that said officer or employee may not lawfully sell or pledge the property;

(7) enters into an agreement, contract or understanding with one or more officials of the commonwealth or any political subdivision thereof knowing the information contained therein is false;

(8) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or to transmit money or property to the commonwealth or political subdivision thereof; or

(9) is a beneficiary of an inadvertent submission of a false claim to the commonwealth or political subdivision thereof, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the commonwealth or political subdivision within a reasonable time after discovery of the false claim shall be liable to the commonwealth or political subdivision for a civil penalty of not less than $5,000 and not more than $10,000 per violation, plus three times the amount of damages, including consequential damages, that the commonwealth or political subdivision sustains because of the act of that person. A person violating sections 5B to 5O, inclusive, shall also be liable to the commonwealth or any political subdivision for the expenses of the civil action brought to recover any such penalty or damages, including without limitation reasonable attorney's fees, reasonable expert's fees and the costs of investigation, as set forth below. Costs recoverable under said sections 5B to 5O, inclusive, shall also include the costs of any

review or investigation undertaken by the attorney general, or by the state auditor or the inspector general in cooperation with the attorney general.

(10) Notwithstanding the provisions of paragraphs (1) to (9), inclusive, if the court finds that:

(i) the person committing the violation of said paragraphs (1) to (9) furnished an official of the office of the attorney general responsible for investigating false claims law violations with all the information known to such person about the violation within 30 days after the date on which the person first obtained the information;

(ii) such person fully cooperated with any commonwealth investigation of such violation; and

(iii) at the time such person furnished the commonwealth with the information about the violation, no civil action or administrative action had commenced under sections 5B to 5O, inclusive, or no criminal prosecution had commenced with respect to such violation, and such person did not have actual knowledge of the existence of an investigation into such violation, the court may reduce the assessment of damages to the amount of damages, including consequential damages, that the commonwealth or any political subdivision thereof sustains because of the act of a person.

(11) A corporation, partnership or other person is liable to the commonwealth under sections 5B to 5O, inclusive, for the acts of its agent where the agent acted with apparent authority, regardless of whether the agent acted, in whole or in part, to benefit the principal and regardless of whether the principal adopted or ratified the agent's claims, representation, statement or other action or conduct.

(12) Sections 5B to 5O, inclusive shall not apply to claims, records or statements made or presented to establish, limit, reduce, or evade liability for the payment of tax to the commonwealth, or any other governmental authority.

(13) A person who has engaged in conduct described in paragraphs (1) to (9), inclusive, prior to payment shall only be entitled to payment from the commonwealth of the actual amount due less the excess amount falsely or fraudulently claimed.

Section 5C. (1) The attorney general shall investigate violations under sections 5B to 5O, inclusive, involving state funds or funds from any political subdivision. If the attorney general finds that a person has violated or is violating said sections 5B to 5O, inclusive, the attorney general may bring a civil action in superior court against the person.

(2) An individual, hereafter referred to as relator, may bring a civil action in superior court for a violation of said sections 5B to 5O, inclusive, on behalf of the relator and the commonwealth or any political subdivision thereof. The action shall be brought in the name of the commonwealth or

the political subdivision thereof. The action may be dismissed only if the attorney general gives written reasons for consenting to the dismissal and the court approves the dismissal. Notwithstanding any general or special law to the contrary, it shall not be a cause for dismissal or a basis for a defense that the relator could have brought another action based on the same or similar facts under any other law or administrative proceeding.

(3) When a relator brings an action pursuant to said sections 5B to 5O, inclusive, a copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the attorney general pursuant to Rule 4(d)(3) of the Massachusetts Rules of Civil Procedure. The complaint shall be filed under seal and shall remain so for 120 days. Notwithstanding any other general or special law or procedural rule to the contrary, service on the defendant shall not be required until the period provided in paragraph (5). The attorney general may, for good cause shown, ask the court for extensions of no more than 90 days during which the complaint shall remain under seal. Any such motions may be supported by affidavits or other submissions under seal. The court shall not grant more than two requests for extensions unless the attorney general can demonstrate extraordinary circumstances requiring a further extension. The attorney general may elect to intervene and proceed with the action on behalf of the commonwealth or political subdivision within the 120 day period or during any extension, after he receives both the complaint and the material evidence and information. Any information or documents furnished by the relator to the attorney general in connection with an action or investigation under said sections 5B to 5O, inclusive, shall be exempt from disclosure under section 10 of chapter 66.

(4) Before the expiration of the initial 120 day period or any 90 day extensions obtained under paragraph (3), the attorney general shall; (i) assume control of the action, in which case the action shall be conducted by the attorney general; or (ii) notify the court that he declines to take over the action, in which case the relator shall have the right to conduct the action.

(5) If the attorney general decides to proceed with the action, the complaint shall be unsealed and served promptly thereafter. The defendant shall not be required to respond to any complaint filed under said sections 5B to 5O, inclusive, until 20 days after the complaint is unsealed and served upon the defendant pursuant to rule 4 of the Massachusetts rules of civil procedure.

(6) When a relator brings an action pursuant to this section, no person other than the attorney general may intervene or bring a related action based on the facts underlying the pending action.

Section 5D. **(1)** If the attorney general proceeds with the action, he shall have primary responsibility for prosecuting the action, and shall not be bound by any act of the relator. The relator shall have the right to

continue as a party to the action, subject to the limitations in sections 5B to 5O, inclusive.

(2) The attorney general may dismiss the action notwithstanding the objections of the relator if the relator has been notified by the attorney general of the filing of the motion and the court has provided the relator with an opportunity for a hearing on the motion. Upon a showing of good cause, such hearing may be held in camera.

(3) The attorney general may settle the action with the defendant notwithstanding the objections of the relator if the court determines, after a hearing, that the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the attorney general that unrestricted participation during the course of the litigation by the relator initiating the action would interfere with or unduly delay the attorney general's prosecution of the case, or would be repetitious, irrelevant or for purposes of harassment, the court may, in its discretion, impose limitations on the relator's participation, including but not limited to: **(i)** limiting the number of witnesses the relator may call; **(ii)** limiting the length of the testimony of such witnesses; **(iii)** limiting the relator's cross examination of witnesses; or **(iv)** otherwise limiting the participation by the relator in the litigation.

(5) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the relator would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the relator in the litigation.

(6) If the attorney general elects not to proceed with the action, the relator who initiated the action shall have the right to conduct the action. If the attorney general so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the attorney general's expense. When a relator proceeds with the action, the court, without limiting the status and rights of the relator initiating the action, may nevertheless permit the attorney general to intervene at a later date upon a showing of good cause.

(7) Whether or not the attorney general proceeds with the action, upon a showing by the attorney general that certain acts of discovery by the relator initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same or similar facts, the court may stay such discovery for a period of not more than 60 days. Such showing by the attorney general shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the attorney general has pursued the criminal or civil investigation or proceedings with reasonable diligence and may stay any proposed discovery in the civil action that will interfere with the ongoing criminal or civil investigations or proceedings.

Section 5E. Notwithstanding the provisions of section 5C, the attorney general may elect to pursue its claim through any alternate remedy available to the attorney general, including any administrative proceeding, to determine a civil penalty. If any such alternate remedy is pursued in another proceeding, a relator shall have the same rights in such proceeding as said relator would have had if the action had continued under said section 5C. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under sections 5B to 5O, inclusive. For purposes of this section, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the commonwealth, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

Section 5F. (1) If the attorney general proceeds with an action brought by a relator pursuant to section 5C, the relator shall receive at least 15 per cent but not more than 25 per cent of the proceeds recovered and collected in the action or in settlement of the claim depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(2) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, auditor or inspector general hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 per cent of the proceeds, taking into account the significance of the information and the role of the relator bringing the action in advancing the case to litigation.

(3) Any payment to a relator pursuant to this section shall be made only from the proceeds recovered and collected in the action or in settlement of the claim. Any such relator shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, including reasonable attorney's fees and costs. All such expenses, shall be awarded against the defendant.

(4) If the attorney general does not proceed with an action pursuant to section 5C, the relator bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages on behalf of the commonwealth or any political subdivision thereof. The amount shall be not less than 25 per cent nor more than 30 per cent of the proceeds recovered and collected in the action or settlement of the claim, and shall be paid out of such proceeds. The relator shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, including reasonable attorney's fees and costs. All such expenses shall be

awarded against the defendant.

(5) Whether or not the attorney general proceeds with the action, if the court finds that the action was brought by a relator who planned, initiated or knowingly participated in the violation of sections 5B to 5O, inclusive, then the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action which the relator would otherwise receive pursuant to paragraphs (1) to (4), inclusive, taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator bringing the action is convicted of criminal conduct arising from his role in the violation of this section, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the attorney general to continue the action.

Section 5G. **(1)** No court shall have jurisdiction over an action brought pursuant to section 5C against the governor, lieutenant governor, the attorney general, the treasurer, secretary of state, the auditor, a member of the general court, the inspector general or a member of the judiciary, if the action is based on evidence or information known to the commonwealth when the action was brought.

(2) An individual may not bring an action pursuant to paragraph (2) of said section 5C that is based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the commonwealth or any political subdivision thereof is already a party.

(3) No court shall have jurisdiction over an action pursuant to sections 5B to 5O, inclusive, based upon the public disclosure of allegations or transactions in a criminal, civil or administrative hearing; in a legislative, administrative, auditor's or inspector general's report, hearing, audit or investigation; or from the news media, unless the action is brought by the attorney general, or the relator is an original source of the information. No court shall have jurisdiction over an action pursuant to said sections 5B to 5O, inclusive, brought by a person who knew or had reason to know that the attorney general, the state auditor or the inspector general already had knowledge of the situation.

(4) An individual who is or was employed by the commonwealth or any political subdivision thereof as an auditor, investigator, attorney, financial officer, or contracting officer who otherwise performed such functions for the commonwealth or who discovered or learned of the allegations or the underlying facts from such persons, may not bring an action pursuant paragraph (2) of section 5C that is based upon allegations or transactions that the relator discovered or learned of in such capacity. For the purposes of this paragraph, the term "in such capacity" shall refer to any matter within the scope of such person's duties or job description.

Section 5H. **(1)** All money recovered by the commonwealth, as a result of actions brought by the attorney general or a person pursuant to

sections 5B to 5O, inclusive, other than costs and attorney's fees awarded pursuant to paragraph (2), shall be credited by the state treasurer to the False Claims Prosecution Fund, established by section 2YY of chapter 29.

(2) Costs and attorney's fees awarded to a relator by final judicial order in an action under this section shall be paid directly by the defendant to the relator.

Section 5I. (1) If the attorney general initiates an action or assumes control of an action brought by a person pursuant to sections 5B to 5O, inclusive, the attorney general shall be awarded his reasonable attorney's fees and expenses incurred in the litigation, including costs, if he prevails in the action. Any such award shall be deposited in the False Claims Prosecution Fund established by said section 2YY of said chapter 29.

(2) If the attorney general does not proceed with an action pursuant to sections 5B to 5O, inclusive, and the defendant is the prevailing party, the court may award the defendant reasonable attorneys' fees and costs against the relator upon a written finding that such action was pursued in bad faith or was wholly insubstantial, frivolous, and advanced for the purpose of causing the defendant undue burden, unnecessary expense or harassment.

(3) No liability shall be incurred by the commonwealth, the affected agency or the attorney general for any expenses, attorney's fees or other costs incurred by any person in bringing or defending an action under said sections 5B to 5O, inclusive.

Section 5J. **(1)** No employer shall make, adopt or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting to further a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed pursuant to said sections 5B to 5O, inclusive. No employer shall require as a condition of employment, during the term of employment, or at the termination of employment, that any employee agree to, accept or sign any agreement that limits or denies the employee's rights to bring an action or provide information to a government or law enforcement agency pursuant to said sections 5B to 5O, inclusive. Any such agreement shall be void.

(2) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms or conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed pursuant to sections 5B to 5O, inclusive.

(3) Notwithstanding any general or special law to the contrary, an employer who violates paragraph (2) shall be liable for such damages or

equitable relief as a court shall deem appropriate, including: reinstatement with the same seniority status such employee would have had but for the employer's violation of sections 5B to 5O, inclusive, two times the amount of back pay, interest on the back pay, and compensation for any special damage sustained as a result of the employer's violation of said sections 5B to 5O, inclusive. In addition, the defendant shall be required to pay litigation costs and reasonable attorney's fees. An employee may bring an action in the appropriate superior court or the superior court of the county of Suffolk for the relief provided in this section.

(4) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his employer because of participation in conduct which directly or indirectly resulted in a false claim being submitted to the commonwealth or a political subdivision thereof shall be entitled to the remedies pursuant to paragraph (3) only if both of the following occurred:

(i) the employee has been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place; and

(ii) the employee voluntarily disclosed information prior to being dismissed to a government or law enforcement agency or acts in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed.

Section 5K. (1) A civil action pursuant to sections 5B to 5O, inclusive, for a violation of section 5B may not be brought **(i)** more than six years after the date on which the violation occurred; or **(ii)** more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official within the office of the attorney general charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. A civil action pursuant to sections 5B to 5O, inclusive, may be brought for acts or omissions that occurred prior to the effective date of this section, subject to the limitations period set forth in this section.

(2) Notwithstanding any other law or rule of procedure or evidence, a final judgment rendered in favor of the commonwealth in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same act, transaction or occurrence as in the criminal proceedings and which is brought under section 5B.

Section 5L. In any action brought pursuant to sections 5B to 5O, inclusive, the party bringing the action shall be required to prove all

essential elements of the cause of action, including damages, by a preponderance of the evidence.

Section 5M. The attorney general may promulgate any rules, regulations or guidelines that, in the attorney general's judgment, are necessary and appropriate to the effective administration of this chapter.

Section 5N. **(1)**

Notwithstanding any general or special law, procedural rule or regulation to the contrary, the attorney general, whenever he has reason to believe that any person may be in possession, custody or control of any documentary material or information relevant to a false claims law investigation, may, before commencing a civil proceeding under sections 5B to 5O, inclusive, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person **(i)** to produce such documentary material for inspection and copying; **(ii)** to answer written interrogatories, in writing and under oath; **(iii)** to give oral testimony under oath; or **(iv)** to furnish any combination of such material, answers or testimony.

(2) Service of any such demand may be made by **(i)** delivering a copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; **(ii)** delivering a copy thereof to the principal place of business in the commonwealth of the person to be served; or **(iii)** mailing by registered or certified mail a copy thereof addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(3) Each such demand requesting documentary material or oral testimony shall **(i)** state the time and place of the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; **(ii)** state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated; **(iii)** describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified; **(iv)** prescribe a return date within which the documentary material is to be produced; **(v)** identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying; and **(vi)** if such demand is for the giving of oral testimony, notify the person receiving the demand of the right to be accompanied by an attorney and any other representative, prescribe a date, time and place at which oral testimony shall be commenced, identify the assistant attorney general who shall conduct the examination and to whom the transcript of such examination shall be

submitted, specify that such attendance and testimony are necessary to the conduct of the investigation, and describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand. Notice of the time and place of taking oral testimony shall be given by the attorney general at least ten days prior to the date of such taking of testimony or examination, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present which warrant such taking of testimony within a lesser period of time.

(4) The oral examination of all persons pursuant to sections 5B to 5O, inclusive, shall be conducted before a person duly authorized to administer oaths by the law of the commonwealth. Rule 30(e) of the Massachusetts Rules of Civil Procedure shall be applicable to oral examinations conducted pursuant to said sections 5B to 5O, inclusive.

(5) Any person compelled to appear for oral testimony under a civil investigative demand issued under said sections 5B to 5O may be accompanied, represented and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a motion may be filed for an order compelling such person to answer such question.

(6) The production of documentary material in response to a civil investigative demand served under sections 5B to 5O, inclusive, shall be made under a sworn certificate, in such form as the demand designates, by **(i)** in the case of a natural person, the person to whom the demand is directed, or **(ii)** in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody or control of the person to whom the demand is directed has been produced and made available to the members of the attorney general's staff identified in the demand.

(7) Each written interrogatory served under sections 5B to 5O, inclusive, shall be answered separately and fully in writing under the penalties of perjury. The person upon whom the interrogatories have been served shall serve the answers and objections, if any, upon the attorney general within 14 days after service of the interrogatories.

(8) Any documentary material or other information produced by any person pursuant to sections 5B to 5O, inclusive, shall not, unless

otherwise ordered by a justice of the superior court for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general and any officer or employee of the commonwealth who is working under their direct supervision with respect to the false claims law investigation, unless with the consent of the person producing the same. Such documentary material or information may be disclosed by the attorney general in court proceedings or in papers filed in court. Nothing in this section shall preclude the attorney general from disclosing information and evidence secured pursuant to sections 5B to 5O, inclusive, to officials of the United States, the commonwealth or any political subdivision thereof charged with responsibility for enforcement of federal, state or local laws respecting fraud or false claims upon federal, state or local governments. Prior to any such disclosure the attorney general shall obtain a written agreement from such officials to abide by the restrictions of this section.

(9) At any time prior to the date specified in the civil investigative demand, or within 21 days after the demand has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business, or in Suffolk county.

(10) Whenever any person fails to comply with any civil investigative demand issued under sections 5B to 5O, inclusive, the attorney general may file, in the superior court of the county in which such person resides, is found, or transacts business, a motion for the enforcement of the civil investigative demand. The Massachusetts Rules of Civil Procedure shall apply to any such motion. Any final order entered pursuant to such petition may also include the assessment of a civil penalty of not more than $5,000 for each act or instance of noncompliance.

(11) All such information and documentary materials as are obtained by the attorney general pursuant to sections 5B to 5O, inclusive, shall not be public records and are exempt from disclosure under section 10 of chapter 66 or any other law.

(12) For purposes of sections 5B to 5O, inclusive, "documentary material" shall include the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart or other document or graphic representation, or data stored in or accessible through a computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data.

(13) Nothing in sections 5B to 5O, inclusive, shall be construed to authorize the attorney general to compel the production of information or documents from the state auditor or from the inspector general, unless otherwise authorized by law. Nothing in this chapter shall bar the

attorney general from referring matters or disclosing information or documents to the state auditor or to the inspector general for purposes or any review or investigation they may deem appropriate.

Section 5O. Nothing in sections 5B to 5M, inclusive, shall be construed to relieve an agency of its reporting requirements regarding matters within that agency under chapter 647 of the acts of 1989.

MICHIGAN

11 (MCL 400.611)

A bill to amend 1977 PA 72, entitled "The medicaid false claim act," by amending the title and section 11 (MCL 400.611), the title as amended by 1982 PA 518, and by adding sections 10a, 10b, and 10c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE
An act to prohibit fraud in the obtaining of benefits or payments in connection with the medical assistance program; to prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this act; to provide for the appointment of investigators by the attorney general; to ratify prior appointments of attorney general investigators; to provide for civil actions to recover money received by reason of fraudulent conduct; to provide for receiverships of residential health care facilities; to prohibit retaliation; to provide for certain civil fines; and to prescribe remedies and penalties.

Sec. 10a. **(1)** Any person may bring a civil action in the name of this state under this section to recover losses that this state suffers from a violation of this act. A suit filed under this section shall not be dismissed unless the attorney general has been notified and had an opportunity to appear and oppose the dismissal. The attorney general waives the opportunity to oppose the dismissal if it is not exercised within 28 days of receiving notice.

(2) If a person other than the attorney general initiates an action under this section, the complaint shall remain under seal and the clerk shall not issue the summons for service on the defendant until after the time for the attorney general's election under subsection (3) expires. At the time of filing the complaint, the person shall serve a copy of the complaint on the attorney general and shall disclose, in writing, substantially all material evidence and information in the person's possession supporting the complaint to the attorney general.

(3) The attorney general may elect to intervene in an action under this section. Before the expiration of the later of 90 days after service of the complaint and related materials or any extension of the 90 days that is requested by the attorney general and granted by the court, the attorney general shall notify the court and the person initiating the action of 1 of the following:

(a) That the attorney general will proceed with the action for this state and have primary responsibility for proceeding with the action.
(b) That the attorney general declines to take over the action and the person initiating the action has the right to proceed with the action.

(4) If an action is filed under this section, a person other than the attorney general shall not intervene in the action or bring another action on behalf of this state based on the facts underlying the action.

(5) If the attorney general elects to proceed with the action under subsection (3) or (6), the attorney general has primary responsibility for prosecuting the action and may do all of the following:

(a) Agree to dismiss the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the motion to dismiss.

(b) Settle the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the settlement and if the court determines that the settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good cause, the settlement hearing may be held in camera.

(c) Request the court to limit the participation of the person initiating the action. If the attorney general demonstrates that unrestricted participation by the person initiating the action during the litigation would interfere with or unduly delay the attorney general's prosecution of the case or would be repetitious, irrelevant, or unduly harassing, the court may do any of the following:
(i) Limit the number of the person's witnesses.
(ii) Limit the length of the testimony of the person's witnesses.
(iii) Limit the person's cross-examination of witnesses.
(iv) Otherwise limit the person's participation in the litigation.

(6) If the attorney general notifies the court that he or she declines to take over the action under subsection (3), the person who initiated the action may proceed with the action. At the attorney general's request and expense, the attorney general shall be provided with copies of all pleadings filed in the action and copies of all deposition transcripts. Notwithstanding the attorney general's election not to take over the action, the court may permit the attorney general to intervene in the action at any time upon a showing of good cause and, subject to subsection (7), without affecting the rights or status of the person initiating the action.

(7) Upon a showing, conducted in camera, that actions of the person initiating the action during discovery would interfere with the attorney

general's investigation or prosecution of a criminal or civil matter, the court may stay the discovery for not more than 90 days. The court may extend the stay upon a further showing that the attorney general is pursuing the investigation or proceeding with reasonable diligence and the discovery would interfere with the ongoing investigation or proceeding.

(8) As an alternative to an action permitted under this section, the attorney general may pursue a violation of this act through any alternate remedy available to this state, including an administrative proceeding. If the attorney general pursues an alternate remedy, a person who initiated an action under this section shall have equivalent rights in that proceeding to the rights that the person would have had if the action had continued under this section to the extent consistent with the law governing that proceeding. Findings of fact and conclusions of law that become final in an alternative proceeding shall be conclusive on the parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(9) Subject to subsections (10) and (11), if a person other than the attorney general prevails in an action that the person initiates under this section, the court shall award the person necessary expenses, costs, reasonable attorney fees, and, based on the amount of effort involved, the following percentage of the monetary proceeds resulting from the action or any settlement of the claim:
(a) If the attorney general intervenes, 15% to 25%.
(b) If the attorney general does not intervene, 25% to 30%.
(10) If the court finds an action under this section to be based primarily on disclosure of specific information that was not provided by the person bringing the action, such as information from a criminal, civil, or administrative hearing in a state or federal department or agency, a legislative report, hearing, audit, or investigation, or the news media, and the attorney general proceeds with the action, the court shall award the person bringing the action no more than 10% of the monetary recovery in addition to reasonable attorney fees, necessary expenses, and costs.

(11) If the court finds that the person bringing an action under this section planned, initiated, or participated in the conduct upon which the action is brought, then the court may reduce or eliminate, as it considers appropriate, the share of the proceeds of the action that the person would otherwise be entitled to receive. A person who is convicted of criminal conduct arising from a violation of this act shall not initiate or remain a party to an action under this section and is not **e**ntitled to share in the monetary proceeds resulting from the action or any settlement under this section.

(12) A person other than the attorney general shall not bring an action under this section that is based on allegations or transactions that are already the subject of a civil suit, a criminal investigation or prosecution, or an administrative investigation or proceeding to which this state or the federal government is already a party. The court shall dismiss an action brought in violation of this section.

(13) Unless the person is the original source of the information, a person, other than the attorney general, shall not initiate an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation, or from the news media. The person is the original source if he or she had direct and independent knowledge of the information on which the allegations are based and voluntarily provided the information to the attorney general before filing an action based on that information under this section.

(14) This state and the attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bringing an action under this section. Any amount awarded to a person initiating an action to enforce this act is payable solely from the proceeds of the action or settlement.

(15) If a person proceeds with an action under this section after being notified that the attorney general has declined to intervene and the court finds that the claim was frivolous, as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591, the court shall award the prevailing defendant actual and reasonable attorney fees and expenses and, in addition, shall impose a civil fine of not more than $10,000.00. The civil fine shall be deposited into the Michigan medicaid benefits trust fund established in section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

Sec. 10b. **(1)** The attorney general may recover all costs this House Bill No. 4577 as amended December 1, 2005 state incurs in the litigation and recovery of medicaid restitution under this act, including the cost of investigation and attorney fees. The attorney general shall retain the amount received for activities under this act, excluding amounts for restitution, court costs, and fines, not to exceed the amount of this state's funding match for the medicaid fraud control unit.

(2) The attorney general shall not retain amounts under this section until all the restitution awarded in the proceeding has been paid.

(3) Costs that the attorney general recovers in excess of the state's funding match for the medicaid fraud control unit shall be deposited in

the Michigan Medicaid benefits trust fund established in section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

Sec. 10c. **(1)** An employer shall not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee in the terms and conditions of employment because the employee initiates, assists in, or participates in a proceeding or court action under this act or because the employee cooperates with or assists in an investigation under this act. This prohibition does not apply to an employment action against an employee who the court finds brought a frivolous claim, as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591; the court finds to have planned initiated, or participated in the conduct upon which the action is brought; or is convicted of criminal conduct arising from a violation of this act.

(2) An employer who violates this section is liable to the employee for all of the following:
(a) Reinstatement to the employee's position without loss of seniority.
(b) Two times the amount of lost back pay.
(c) Interest on the back pay.
(d) Compensation for any special damages.
(e) Any other relief necessary to make the employee whole.
Sec. 11. (1) Except as provided in subsection (2), an action brought in connection with a Medicaid matter under this act shall be filed in Ingham county and may be prosecuted to final judgment in satisfaction there.

(2) A person may bring a civil action under section 10a in any county in which venue is proper. If the attorney general elects to intervene under section 10a (3) or (6) and the court grants the request, upon motion by the attorney general, the court shall transfer the action to the circuit court in Ingham County.
(3) Process issued by a court in which an action is filed may be served anywhere in the state.

MINNESOTA

No Act at this time
Effective February, 2008

MISSISSIPPI

No Act at this time
Effective February, 2008

MISSOURI

No Act at this time
Effective February, 2008

MONTANA

MONTANA CODE ANNOTATED
TITLE 17. STATE FINANCE
CHAPTER 8. DISBURSEMENT AND EXPENDITURE
PART 4. FALSE CLAIMS

17-8-401. Short titles. [Sections 1 through 12] may be cited as the "Montana False Claims Act".

17-8-402. Definitions. As used in [sections 1 through 12], the following definitions apply:
(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.
(2) "Government attorney" means:
(a) the chief attorney for a governmental entity; or
(b) the attorney general with respect to the state, except a unit of the university system.
(3) "Governmental entity" means:
(a) the state;
(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or
(c) a unit of the Montana university system.
(4) "Knowingly" means that a person, with respect to information, does any of the following:
(a) has actual knowledge of the information;
(b) acts in deliberate ignorance of the truth or falsity of the information; or
(c) acts in reckless disregard of the truth or falsity of the information.
(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

17-8-403. False claims -- procedures -- penalties. **(1)** A person causing damages in excess of $500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:
(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;
(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;
(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;
(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering

or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;
(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;
(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;
(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors; or
(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.
(2) In a civil action brought under [section 5 or 6], a court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:
(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.
(b) The person fully cooperated with any investigation of the act by the government attorney.
(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.
(3) Liability under this section is joint and several for any act committed by two or more persons.
(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.
(5) A private citizen may not file a complaint or civil action:
(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;
(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;
(c) that is based upon the public disclosure of allegations or transactions

in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure, or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

Section 4. Limitation of actions. A complaint or civil action may not be filed under [section 5 or 6] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever occurs first.

Section 5. Investigation and civil action by government attorney. A government attorney may investigate an alleged violation of [section 3] and file a civil action.

Section 6. Complaint by private citizen -- civil action.

(1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file a complaint with the government attorney that includes a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and complaint, the government attorney may elect to file a civil action and may, for good cause shown, move the court for extensions of the time for filing an action.

(3) If the government attorney files a civil action, the private citizen may enter the action as a co plaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decision-making. If the government attorney does not file a civil action within the time allowed under subsection (2), the private citizen may file a civil action.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees

must be awarded under [sections 10 and 11] as if the government attorney had not intervened.
(5) After a private citizen files a civil action, no other private citizen may file a civil action based on the facts underlying the pending action.

Section 7. Dismissal of private citizen's civil action. On the motion of a government attorney, the court may dismiss a private citizen's civil action for good cause. If an intervening government attorney seeks dismissal of a private citizen's civil action, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.
Section 8. Settlement. An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.
Section 9. Burden of proof -- effect of criminal conviction. **(1)** The plaintiff in an action under [section 5 or 6] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.
(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section 5 or 6] that involves the same event or events as the criminal proceeding.
Section 10. Distribution of damages and civil penalty. If an action is settled or the governmental entity or private citizen prevails in an action:
(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a co plaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;
(2) filed by a private citizen either as plaintiff or as co plaintiff, except as provided in subsection (3), the private citizen is entitled to between 15% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;
(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;
(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state.

Section 11. Costs and attorney fees. A governmental entity in an action in which its government attorney filed a civil action or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or co plaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a civil action and who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were co plaintiffs.

Section 12. Prohibitions on employers -- employee remedies. **(1)** A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 5 or 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement
agency pertaining to a violation of [section 3].

3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

Section 13. Repealer. Section 17-8-231, MCA, is repealed.

Section 14. Applicability. [This act] applies to causes of action arising after [the effective date of this act].

NEBRASKA

No Act at this time
Effective February, 2008

NEVADA

Nevada Submission of False Claims to State or Local Government

NRS § 357.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 357.020 and 357.030 have the meanings ascribed to them in those sections.

(Added to NRS by 1999, 824)

NRS 357.020 "Claim" defined. "Claim" means a request or demand for money, property or services made to:

1. An officer, employee or agent of this state or of a political subdivision of this state; or

2. A contractor, grantee or other recipient of money from the state or a political subdivision of this state if any part of the money, property or services requested or demanded was provided by the state or political subdivision.

(Added to NRS by 1999, 824)

NRS 357.030 "Political subdivision" defined. "Political subdivision" means a county, city, assessment district or any other local government as defined in NRS 354.474.

(Added to NRS by 1999, 824)

LIABILITY

NRS 357.040 Liability for damages and civil penalty for certain acts.

1. Except as otherwise provided in NRS 357.050, a person who, with or without specific intent to defraud, does any of the following listed acts is liable to the state or a political subdivision, whichever is affected, for three times the amount of damages sustained by the state or political subdivision because of the act of that person, for the costs of a civil action brought to recover those damages and for a civil penalty of not less than $2,000 or more than $10,000 for each act:

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

(b) Knowingly makes or uses, or causes to be made or used, a false record or statement to obtain payment or approval of a false claim.

(c) Conspires to defraud by obtaining allowance or payment of a false claim.

(d) Has possession, custody or control of public property or money and knowingly delivers or causes to be delivered to the state or a political

subdivision less money or property than the amount for which he receives a receipt.

(e) Is authorized to prepare or deliver a receipt for money or property to be used by the state or a political subdivision and knowingly prepares or delivers a receipt that falsely represents the money or property.

(f) Knowingly buys, or receives as security for an obligation, public property from a person who is not authorized to sell or pledge the property.

(g) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state or a political subdivision.

(h) Is a beneficiary of an inadvertent submission of a false claim and, after discovering the falsity of the claim, fails to disclose the falsity to the state or political subdivision within a reasonable time.

2. As used in this section, a person acts knowingly with respect to information if he:

(a) Has knowledge of the information;

(b) Acts in deliberate ignorance of whether the information is true or false; or

(c) Acts in reckless disregard of the truth or falsity of the information.

(Added to NRS by 1999, 824)

NRS 357.050 Limitation of damages and waiver of penalty for cooperation of defendant.

In a civil action pursuant to this chapter, the court may give judgment for not less than twice or more than three times the amount of damages sustained, and no civil penalty, if it finds that:

1. The person against whom the judgment is entered:

(a) Furnished all information known to him concerning the act, within 30 days after becoming aware of the information, to the attorney general; and

(b) Fully cooperated with any investigation of the act by the state or political subdivision; and

2. At the time the information was furnished, no criminal prosecution or civil or administrative proceeding had commenced with respect to the act and the person had no knowledge of the existence of any investigation with respect to the act.

(Added to NRS by 1999, 825)

NRS 357.060 Joint and several liability.

Liability pursuant to this chapter is joint and several for an act done by two or more persons.

(Added to NRS by 1999, 825)

CIVIL ACTIONS

NRS 357.070 Investigation and action by attorney general.

The attorney general may investigate any alleged liability pursuant to this chapter and may bring a civil action pursuant to this chapter against the person liable.

(Added to NRS by 1999, 825)

NRS 357.080 Maintenance of action by private plaintiff; limitations; complaint under seal; copy of complaint and written disclosure of evidence to be sent to attorney general.

1. Except as otherwise provided in this section and NRS 357.090 and 357.100, a private plaintiff may maintain an action pursuant to this chapter on his own account and that of the state if money, property or services provided by the state are involved, or on his own account and that of a political subdivision if money, property or services provided by the political subdivision are involved, or on his own account and that of both the state and a political subdivision if both are involved. After such an action is commenced, it may be dismissed only with leave of the court, taking into account the public purposes of this chapter and the best interests of the parties.

2. If a private plaintiff brings an action pursuant to this chapter, no other person may bring another action pursuant to this chapter based on the same facts.

3. An action may not be maintained by a private plaintiff pursuant to this chapter:

(a) Against a member of the legislature or the judiciary, an elected officer of the executive department of the state government, or a member of the governing body of a political subdivision, if the action is based upon evidence or information known to the state or political subdivision at the time the action was brought.

(b) If the action is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding for a monetary penalty to which the state or political subdivision is already a party.

4. A complaint filed pursuant to this section must be placed under seal and so remain until the attorney general has elected whether to intervene. No service may be made upon the defendant until the complaint is unsealed.

5. On the date the private plaintiff files his complaint, he shall send a copy of the complaint to the attorney general by mail with return receipt requested. He shall send with each copy of the complaint a written disclosure of substantially all material evidence and information he possesses.

NRS 357.090 Action based on information public employee discovered during public employment prohibited in certain circumstances.

No action may be maintained pursuant to NRS 357.080 that is based upon information discovered by a present or former employee of the state or a political subdivision during his employment, unless he first in good faith exhausted internal procedures for reporting and seeking recovery of the proceeds of the fraudulent activity through official channels and the state or political subdivision failed to act on the information provided for at least 6 months.

NRS 357.100 Action based upon certain public disclosures may only be brought by attorney general or original source of information.

1. No action may be maintained pursuant to this chapter that is based upon the public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in an investigation, report, hearing or audit conducted by or at the request of a house of the legislature, an auditor or the governing body of a political subdivision, or from the news media, unless the action is brought by the attorney general or an original source of the information.

2. As used in this section, original source means a person:

(a) Who has direct and independent knowledge of the information on which the allegations were based;

(b) Who voluntarily provided the information to the state or political subdivision before bringing an action based on the information; and

(c) Whose information provided the basis or caused the making of the investigation, hearing, audit or report that led to the public disclosure.

NRS 357.110 Attorney general may elect to intervene in action by private plaintiff; motion to extend time for election; unsealing of complaint.

1. Within 120 days after receiving a complaint and disclosure, the attorney general may intervene and proceed with the action or he may, for good cause shown, move the court to extend the time for his election whether to proceed. The motion may be supported by affidavits or other submissions in chambers.

2. If the attorney general elects to intervene, the complaint must be unsealed. If the attorney general elects not to intervene, the private plaintiff may proceed and the complaint must be unsealed.

NRS 357.120 Effect of intervention of attorney general in action by private plaintiff; motion to dismiss; settlement.

1. If the attorney general intervenes, the private plaintiff remains a party to an action pursuant to NRS 357.080.

2. The attorney general may move to dismiss the action for good cause. The private plaintiff must be notified of the filing of the motion and is entitled to oppose it and present evidence at the hearing.

3. Except as otherwise provided in this subsection, the attorney general may settle the action. If the attorney general intends to settle the action, he shall notify the private plaintiff of that fact. Upon the request of the private plaintiff, the court shall determine whether settlement of the action is consistent with the public purposes of this chapter and shall not approve the settlement of the action unless it determines that such settlement is consistent with the public purposes of this chapter.

NRS 357.130 Effect of declination of attorney general to intervene in action by private plaintiff; authority for and effect of election by attorney general to intervene subsequently in such action.

1. If the attorney general elects not to intervene in an action pursuant to NRS 357.080, the private plaintiff has the same rights in conducting the action as the attorney general would have had. A copy of each pleading or other paper filed in the action, and a copy of the transcript of each deposition taken, must be mailed to the attorney general if the attorney general so requests and pays the cost thereof.

2. Upon timely application, the attorney general may intervene in an action in which he has previously declined to intervene, if the interest of the state or a political subdivision in recovery of the money or property involved is not being adequately represented by the private plaintiff.

3. If the attorney general so intervenes, the private plaintiff retains primary responsibility for conducting the action and any recovery must be apportioned as if the attorney general had not intervened.

NRS 357.140 Response by defendant.

The defendant is entitled to 30 days in which to respond after a complaint filed pursuant to NRS 357.080 is unsealed and served upon him.

NRS 357.150 Stay of discovery by private plaintiff; extension.

1. The court may stay discovery by a private plaintiff for not more than 60 days if the attorney general shows that the proposed discovery would interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, whether or not the attorney general participates in the action.

2. The court may extend the stay upon a further showing that the attorney

general has pursued the civil or criminal investigation or proceeding with reasonable diligence and the proposed discovery would interfere with its continuation. Discovery may not be stayed for a total of more than 6 months over the objection of the private plaintiff, except for good cause shown by the attorney general.

3. A showing made pursuant to this section must be made in chambers.

NRS 357.160 Court-imposed limitation upon participation of private plaintiff in action.

Upon a showing by the attorney general that unrestricted participation by a private plaintiff would interfere with or unduly delay the conduct of an action, or would be repetitious, irrelevant or solely for harassment, the court may limit his participation by, among other measures, limiting:

1. The number of witnesses he may call;

2. The length of the testimony of the witnesses; or

3. His cross-examination of witnesses.

NRS 357.170 Limitation of actions; standard of proof; effect of certain findings of guilt in criminal proceeding on action.

1. An action pursuant to this chapter may not be commenced more than 3 years after the date of discovery of the fraudulent activity by the attorney general or more than 5 years after the fraudulent activity occurred, whichever is earlier. Within those limits, an action may be based upon fraudulent activity that occurred before October 1, 1999.

2. In an action pursuant to this chapter, the standard of proof is a preponderance of the evidence. A finding of guilt in a criminal proceeding charging false statement or fraud, whether upon a verdict of guilty or a plea of guilty or nolo contendere, estops the person found guilty from denying an essential element of that offense in an action pursuant to this chapter based upon the same transaction as the criminal proceeding.

NRS 357.180 Award of expenses and attorney's fees.

1. If the attorney general or a private plaintiff prevails in or settles an action pursuant to NRS 357.080, the private plaintiff is entitled to a reasonable amount for expenses that the court finds were necessarily incurred, including reasonable costs, attorney’s fees and the fees of expert consultants and expert witnesses. Those expenses must be awarded against the defendant, and may not be allowed against the state or a political subdivision.

2. If the defendant prevails in the action, the court may award him reasonable expenses and attorney’s fees against the party or parties who participated in the action if it finds that the action was clearly frivolous or vexatious or brought solely for harassment.

DISTRIBUTION OF RECOVERY

NRS 357.190 "Recovery" defined.

As used in NRS 357.190 to 357.230, inclusive, "recovery" includes civil penalties and does not include any allowance of expenses or attorney's fees.

NRS 357.200 Distribution to special account in state general fund if attorney general initiated action.

If the attorney general initiates an action pursuant to this chapter, 33 percent of any recovery must be paid into the state general fund to the credit of a special account, for use by the attorney general as appropriated or authorized by the legislature in the investigation and prosecution of false claims.

NRS 357.210 Distribution to private plaintiff in certain actions.

1. If the attorney general intervenes at the outset in an action pursuant to NRS 357.080, the private plaintiff is entitled, except as otherwise provided in NRS 357.220, to receive not less than 15 percent or more than 33 percent of any recovery, according to the extent of his contribution to the conduct of the action.

2. If the attorney general does not intervene in the action at the outset, the private plaintiff is entitled, except as otherwise provided in NRS 357.220, to receive not less than 25 percent or more than 50 percent of any recovery, as the court determines to be reasonable.

NRS 357.220 Distribution to private plaintiff in action based upon information obtained by public employee during public employment.

1. If the action is one described in NRS 357.090, the present or former employee of the state or political subdivision is not entitled to any minimum percentage of any recovery, but the court may award him no more than 33 percent of the recovery if the attorney general intervenes in the action at the outset, or no more than 50 percent if the attorney general does not intervene, according to the significance of his information, the extent of his contribution to the conduct of the action and the response to his efforts to report the false claim and gain recovery through other official channels.

2. If the private plaintiff is a present or former employee of the state or a political subdivision and benefited financially from the fraudulent activity, he is not entitled to any minimum percentage of any recovery, but the court may award him no more than 33 percent of the recovery if the attorney general intervenes in the action at the outset, or no more than 50 percent if the attorney general does not intervene, according to the significance of his information, the extent of his contribution to the conduct of the action, the extent of his involvement in the fraudulent

activity, his attempts to avoid or resist the activity and the other circumstances of the activity.

NRS 357.230 Distribution of unapportioned portion to general fund of state or political subdivision, or both.

The portion of any recovery not apportioned pursuant to NRS 357.200, 357.210 and 357.220 must be paid into the state general fund if the money, property or services were provided only by the state, or into the general fund of the political subdivision if they were provided only by a political subdivision. If the action involved both the state and a political subdivision, the court shall apportion the remaining portion of any recovery between them according to the respective values of the money, property or services provided by each.

MISCELLANEOUS PROVISIONS

NRS 357.240 Employer prohibited from forbidding employee from making certain disclosures or acting in furtherance of action relating to false claim and from taking any retaliatory action against employee for such disclosures or actions.

1. An employer shall not adopt or enforce any rule or policy forbidding an employee to disclose information to the state, a political subdivision or a law enforcement agency or to act in furtherance of an action pursuant to this chapter, including investigation for, bringing or testifying in such an action.2. An employer shall not discharge, demote, suspend, threaten, harass, deny promotion to or otherwise discriminate against an employee in the terms or conditions of his employment because of lawful acts done by him on his own behalf or on behalf of others in disclosing information to the state, a political subdivision or a law enforcement agency in furtherance of an action pursuant to this chapter, including investigation for, bringing or testifying in such an action.

NRS 357.250 Liability of employer for violations of NRS 357.240; entitlement of employee to remedies.

1. An employer who violates subsection 2 of NRS 357.240 is liable to the affected employee in a civil action for all relief necessary to make him whole, including, without limitation, reinstatement with the same seniority as if the discrimination had not occurred or damages in lieu of reinstatement if appropriate, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discrimination and punitive damages if appropriate. The employer is also liable for expenses recoverable pursuant to NRS 357.180, costs and attorney’s fees.

2. An employee is entitled to the remedies provided in subsection 1 only if:

(a) He voluntarily disclosed information to the state or a political subdivision or voluntarily acted in furtherance of an action pursuant to this chapter; and

(b) He was harassed, threatened with termination or demotion, or otherwise coerced by his employer into any participation in fraudulent activity.

NEW HAMPSHIRE

NEW HAMPSHIRE

§ 167:61-b False Claims Against the Department; Definitions.

I. Any person shall be liable to the state for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages that the state sustains because of the act of that person, who:
(a) Knowingly presents, or causes to be presented, to an officer or employee of the department, a false or fraudulent claim for payment or approval.
(b) 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 department.
(c) Conspires to defraud the department by getting a false or fraudulent claim allowed or paid.
(d) Has possession, custody, or control of property or money used, or to be used, by the department and, intending to defraud the department or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt.
(e) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the department.
(f) Is a beneficiary of an inadvertent submission of a false claim to the department, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the department within a reasonable time after discovery of the false claim.
II. (a) Notwithstanding the damages provisions of paragraph I, the court may assess not less than 2 or more than 3 times the amount of damages that the state sustains because of the act of the person and no civil penalty, if the court finds that a person who has violated paragraph I:
(1) Furnished officials of the state responsible for investigating false claims violations with all information known to the person about the violation within 30 days after the date on which the defendant first obtained the information;
(2) Fully cooperated with any state investigation of such violation; and
(3) At the time the person furnished the state with the information about the
violation, no criminal prosecution, civil action, or administrative action had commenced under this chapter with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.
(b) A person violating paragraph I shall also be liable to the state for the costs and attorneys' fees arising from any civil action brought to recover the penalty or damages.
III. Liability under this section shall be joint and several for any act

committed by 2 or more persons.
IV. This section shall not apply to any controversy involving damages to the department of less than $5,000 in value. For purposes of this paragraph, "controversy" means the aggregate of any one or more false claims submitted by the same person.
V. In RSA 167:61-b through RSA 167:61-e:
(a) "Claim" means any request or demand, whether under a contract or otherwise, for money or property that is made to an officer, employee, agent, or other representative of the department or to a contractor, grantee, or other person, if the department provides any portion of the money or property that is requested or demanded, or if the department will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.
(b) (1) "Knowing" and "knowingly" means that a person, with respect to information:
(A) Has actual knowledge of the information;
(B) Acts in deliberate ignorance of the truth or falsity of the information; or
(C) Acts in reckless disregard of the truth or falsity of the information.
(2) No proof of specific intent to defraud is required for an act to be knowing.
(c) "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 state before filing an action under RSA 167:61-c that is based on the information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure.
(d) "Person" means any natural person, corporation, firm, association, organization, partnership, business, or trust.
(e) "Relator" means an individual who brings an action under RSA 167:61-c.
VI. In any action brought under RSA 167:61-c, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.
VII. An action for false claims under RSA 167:61-c shall not be brought:
(a) More than 6 years after the date on which the violation of RSA 167:61-b is committed; or
(b) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official within the office of the attorney general charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.
effective January 1, 2005.

167:61-c Actions by Attorney General and Private Persons.

I. The attorney general shall investigate violations under RSA 167:61-b.

If the attorney general finds that a person has violated or is violating RSA 167:61-b, the attorney general may bring a civil action in superior court against the person.

II.(a) An individual, hereafter referred to as "relator," may bring a civil action for a violation of RSA 167:61-b, I on behalf of the relator and for the state. The action shall be brought in the name of the state.

(b) When a relator brings an action under this section, no person other than the state may intervene or bring a related action based on the facts underlying the pending action. **(c)** A copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the state in accordance with the New Hampshire rules of civil procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(d) The state may, for good cause shown, move the court for one or more extensions of the 60-day time period during which the complaint shall remain under seal. Any such motion may be supported by affidavits or other submissions filed under seal.

(e) Before the expiration of the 60-day period or any extension obtained, the state shall:

(1) Proceed with the action, in which case the action shall be conducted by the state; or

(2) Notify the court that it declines to take over the action, in which case the action shall be dismissed.

III. The defendant shall not be required to respond to any complaint filed under this section until after the complaint is unsealed and served upon the defendant in accordance with the New Hampshire rules of civil procedure.

IV. Notwithstanding any provision of RSA 275-E to the contrary, any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, 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 superior court for the relief provided in this paragraph. For purposes of this paragraph, "employee" has the same meaning as in RSA 275-E:1, I.

RSA 167:61-d effective January 1, 2005.

167:61-d Rights of Parties to Actions.

I. If the state proceeds with an action under RSA 167:61-c, the state shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the relator bringing the action. The relator shall have the right to continue as a party to the action, subject to the following limitations:

(a) The state may dismiss the action notwithstanding the objections of the relator initiating the action if the court determines, after a hearing on the motion that dismissal should be allowed.
(b) The state may settle the action with the defendant notwithstanding the objections of the relator initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.
II. Notwithstanding RSA 167:61-c, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the relator initiating the action shall have the same rights in the proceeding as the relator would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section.
III. The parties to the action shall receive court approval of any settlements reached.
RSA 167:61-e effective January 1, 2005.

167:61-e Award to Relator.

I. If the state proceeds with an action brought by a relator under RSA 167:61-c, the relator shall, except as otherwise provided in this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the relator bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information furnished by the relator and the role of the relator bringing the action in advancing the case to litigation. Any payment to a relator under this paragraph shall be made from the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus

reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

II. If the court finds that the action was brought by a relator who planned and initiated the violation of RSA 167:61-b upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the relator would otherwise receive under paragraph I, taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator bringing the action is convicted of criminal conduct arising from the relator's role in the violation of RSA 167:61-b, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the state to continue the action represented by the attorney general.

III. No court shall have jurisdiction over an action brought under RSA 167:61-c:

(a) Against any department official or any division, board, bureau, commission or agency within the department;

(b) When the relator is a present or former employee of the state and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the state failed to act on the information provided within a reasonable period of time; **(c)** That is based upon allegations or transactions that are the subject of a civil or criminal investigation, civil suit, or an administrative civil money penalty proceeding, in which the state is already a party; or

(d) That is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the relator bringing the action is an original source of the information.

IV. The state shall not be liable for expenses or fees, including attorneys' fees, that a relator incurs in bringing an action under RSA 167:61-c and shall not elect to pay those expenses or fees.

NEW JERSEY

(1) supplementing Title 2A of the New Jersey Statutes and amending 2 P.L.1968, c.413.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) Sections 1 through 15 of this act shall be known and may be cited as the "New Jersey False Claims Act."

2. (New section) As used in this act: "Attorney General" means the Attorney General of the State of New Jersey, or his designee. "Claim" means a request or demand, under a contract or otherwise, for money, property, or services that is made to any employee, officer, or agent of the State, or to any contractor, grantee, or other recipient if the State provides any portion of the money, property, or services requested or demanded, or if the State will reimburse the contractor, grantee, or other recipient for any portion of the money, property, or services requested or demanded. The term does not include claims, records, or statements made in connection with State tax laws. "Knowing" or "knowingly" means, with respect to information, that a person:

(1) has actual knowledge of the information; or

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. Innocent mistake shall be a defense to an action under this act. (New section) Any person who commits any of the following acts shall be jointly and severally liable to the State for a civil penalty of not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et 36 seq.), as may be adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410, for each false claim, plus three times the amount of damages which the State sustains because of the act of that person:

(a.) Knowingly presents or causes to be presented to an employee, officer or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false claim for payment or approval;

S232 ADLER, VITALE

(b.) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the State;

(c.) Conspires to defraud the State by getting a false claim 4 allowed or paid by the State;

(d.) Has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(e.) Is authorized to make or deliver a document certifying receipt of

property used or to be used by the State and knowingly makes or delivers a receipt that falsely represents the property used or to be used;
(f.) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
(g.) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State.
(4.)(New section) The court may reduce the treble damages authorized under section 3 of this act to not less than twice the amount of damages which the State sustains and may order that no civil penalty be imposed if the court finds all of the following:
(a.) The person committing the violation furnished officials of the State responsible for investigating false claims violations with all information known to such person about the violation within days after the date on which the person first obtained the information;
(b.) The person fully cooperated with any official investigation 30
of the violation; and
(c.) At the time such person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.
5. (New section) a. The Attorney General shall investigate a violation of this act. If the Attorney General finds that a person has violated or is violating this act, the Attorney General may bring a civil action in Superior Court against the person.
(b) A person may bring a civil action in Superior Court for a violation of this act for the person and for the State. Civil actions instituted under this act shall be brought in the name of the State of New Jersey**.**
(c) A complaint filed by a person under this act shall remain under seal for up to 60 days and shall not be served on the defendant until the court so orders. Once filed, the action may be voluntarily dismissed by the person bringing the action if the Attorney General gives written consent to the dismissal along with the reason for consenting, and the court approves the dismissal.
(d) A complaint alleging a false claim filed under this act shall be so designated when filed, in accordance with the Rules Governing the Courts of the State of New Jersey. Immediately upon filing of the complaint, the plaintiff shall serve by registered mail, return receipt requested, the Attorney General with a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses. The Attorney General may elect to intervene and proceed with the action on behalf of the State within 60 days after it receives both the complaint and the material evidence and information.
(e) If a person brings an action under this act and the action is based upon the facts underlying a pending investigation by the Attorney General, the Attorney General may take over the action on behalf of the

State. In order to take over the action, the Attorney General shall give the person written notification within 30 days after notice of the action is served on the Attorney General that the Attorney General is conducting an investigation of the facts of the action and will take over the action.

(f) The Attorney General may, for good cause shown, request that the court extend the time during which the complaint remains under seal. Any such motion may be supported by affidavits or other submissions in camera. No more than three motions for an extension, each for a request of no more than a 90-day period, shall be considered.

(g.) Before the expiration of the 60 day period or any extensions obtained under subsection f., the Attorney General shall:

(1) file a pleading with the court that he intends to proceed with the action, in which case the action is conducted by the Attorney General and the seal shall be lifted; or

(2) file a pleading with the court that he declines to proceed with the action, in which case the seal shall be lifted and the person bringing the action shall have the right to conduct the action.

(h.) The defendant's answer to any complaint filed under this act shall be filed in accordance with the Rules Governing the courts of the State of New Jersey after the complaint is unsealed and served upon the defendant.

(i.) When a person files an action under this act, no other person except the State may intervene or bring a related action based on the facts underlying the pending action.

6. (New section) a. If the Attorney General proceeds with the action, the Attorney General shall have primary responsibility for prosecuting the action, and shall not be bound by any act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to limitations specified in this act.

(b.) The Attorney General may move to dismiss the action for good cause shown, notwithstanding the objections of the person bringing the action, provided that the person bringing the action has been notified by the Attorney General and the court has provided the person bringing the action with the opportunity for a hearing.

(c.) Nothing in this act shall be construed to limit the authority of the Attorney General or the person bringing the action to settle the action, if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(d.) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to:

(1) Limiting the number of witnesses the person may call;

(2) Limiting the length of the testimony of the person's witnesses;

(3) Limiting the person's cross-examination of witnesses; or

(4) Otherwise limiting the participation by the person in the litigation.

(e.) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f.) If the Attorney General decides not to proceed with the action, the seal shall be lifted and the person who initiated the action shall have the right to conduct the action. If the Attorney General so requests, the Attorney General shall be served at the expense of the Attorney General with copies of all pleadings and motions filed in the action and copies of all deposition transcripts. When a person proceeds with the action, the court, without limiting the rights of the person initiating the action, may permit the Attorney General to intervene and take over the action on behalf of the State at a later date upon showing of good cause.

(g.) Whether or not the Attorney General proceeds with the action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the action would interfere with an investigation by the State or the prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera by the Attorney General that the criminal or civil investigation or proceeding has been pursued with reasonable diligence and any proposed discovery in the civil action will interfere with an ongoing criminal or civil investigation or proceeding.

(h.) The application of one civil remedy under this act shall not preclude the application of any other remedy, civil, administrative or criminal, under this act or any other provision of law. Civil and administrative remedies under this act are supplemental, not mutually exclusive. If after the filing of a complaint under section 5 of this act, the Attorney General decides to pursue an alternate administrative recovery action under subsection (e) of section 17 of P.L.1968, c.413 (C.30:4D-17), the plaintiff shall have the same rights in the administrative recovery action as the plaintiff would have had if the action had continued in Superior Court. Any finding of fact or conclusion of law made in the proceeding under subsection (e) of section 17 of P.L.1968, c.413 (C. 30:4D-17) that has become final shall be conclusive on all parties to an action initiated under section 5 of this act. As used in this subsection, the term "final" means that the finding of fact or conclusion of law has
been finally determined on appeal to the appropriate court, all time for filing such an appeal with respect to the finding or conclusion has expired, or the finding or conclusion is not subject to judicial review.

(7.) (New section) a. If the Attorney General proceeds with and prevails in an action brought by a person under this act, except as provided in subsection b., the court shall order the distribution to the person of at least 15% but not more than 25% of the proceeds recovered under any judgment obtained by the Attorney General under this act or of the proceeds of any settlement of the claim, depending upon the extent to

which the person substantially contributed to the prosecution of the action.

(b.) If the Attorney General proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing; a legislative, administrative, or inspector general report, hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds recovered under a judgment or received in settlement of a claim under this act, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c.) The Attorney General shall receive a fixed 10% of the proceeds in any action or settlement of the claim that it brings, which shall only be used to support its ongoing investigation and prosecution of false claims pursuant to the provisions of this act.

(d.) If the Attorney General does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25% and not more than 30% of the proceeds of the action or settlement of a claim under this act.

(e.) Following any distributions under subsections a., b., c. or d. of this section the State entity injured by the submission of a false claim shall be awarded an amount not to exceed its compensatory damages. Any remaining proceeds, including civil penalties. awarded under this act, shall be deposited in the General Fund.

(f.) Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

(g.) Whether or not the Attorney General proceeds with the action, if the court finds that the action was brought by a person who knowingly planned and initiated the violation of this act upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under this section to no more than 10%, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his role in the violation of this act the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the Attorney General to continue the action.

8. (New section) a. If the Attorney General initiates an action under this act or assumes control of an action brought by a person under this act, the Attorney General shall be awarded its reasonable attorney's fees, expenses, and costs.

(b.) If the court awards proceeds to the person bringing the action under

this act, the person shall also be awarded an amount for reasonable attorney's fees, expenses, and costs. Payment for reasonable attorney's fees, expenses, and costs shall be made from the recovered proceeds before the distribution of any award.

(c.) If the Attorney General does not proceed with an action under this act and the defendant is the prevailing party, the court may award the defendant reasonable attorney's fees, expenses, and costs against the person bringing the action if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(d) No liability shall be incurred by the State or the Attorney General for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this act.

9. (New section) a. No member of the Legislature, a member of the Judiciary, a senior Executive branch official, or a member of a county or municipal governing body may be civilly liable if the basis for an action is premised on evidence or information known to the State when the action was brought. For purposes of this subsection, the term “senior Executive branch official” means any person employed in the Executive branch of government holding a position having substantial managerial, policy-influencing or policy-executing responsibilities.

(b.) A person may not bring an action under this act based upon allegations or transactions that are the subject of a pending action or administrative proceeding in the State.

(c.) No action brought under this act shall be based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing or audit conducted by or at the request of the Legislature or by the news media, unless the action is brought by the Attorney General, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term “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 State before filing an action under this act based on the information.

10. (New section) a. No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a State or law enforcement agency or from acting to further a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under this act.

(b.) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a State or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this act.

(c.) An employer who violates subsection b. of this section shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees associated with an action brought under this section. An employee may bring an action in the Superior Court for the relief provided in this subsection.

(d.) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his employer because of participation in conduct which directly or indirectly resulted in a false claim being submitted to the State shall be entitled to the remedies under subsection c. of this section if, and only if, both of the following occurred:

(1) The employee voluntarily disclosed information to a State or law enforcement agency or acts in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed.

(2) The employee had been harassed, threatened with 18 termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.

11. (New section) A civil action under this act may not be brought:

a. More than six years after the date on which the violation of
the act is committed; or

b. More than three years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

12. (New section) In any action brought under this act, the State or the person bringing the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

13. (New section) All moneys recovered by the Attorney General in accordance with the provisions of this act shall be deposited in the General Fund.

14. (New section) a. If the Attorney General has reason to believe that a person has engaged in, or is engaging in, an act or practice which violates this act, or any other relevant statute or regulation, the Attorney General or the Attorney General's designee may administer oaths and affirmations, and request or compel the attendance of witnesses or the production of documents. The Attorney General may issue, or designate another to issue, subpoenas to compel the attendance of witnesses and the production of books, records, accounts, papers and documents. Witnesses shall be

entitled to receive the same fees and mileage as persons summoned to testify in the courts of the State. If a person subpoenaed pursuant to this section shall neglect or refuse to obey the command of the subpoena, a judge of the Superior Court may, on proof by affidavit of service of the subpoena, of payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring that person before the judge, who is authorized to proceed against the person as for a contempt of court.

b. If the matter that the Attorney General seeks to obtain by request is located outside the State, the person so required may make it available to the Attorney General or the Attorney General's representative to examine the matter at the place where it is located. The Attorney General may designate representatives, including officials of the state in which the matter is located, to inspect the matter on behalf of the Attorney General, and the Attorney General may respond to similar requests from officials of other states.

c. If a licensed professional, an owner, administrator or employee of licensed professional, included but not limited to an owner, administrator or employee of any hospital, an insurance company, agent, broker, solicitor or adjuster, or any other person licensed or certified by a licensing authority of this State, or an agent, representative or employee of any of them is found to have violated any provision of this section, the Attorney General shall notify the appropriate licensing authority of the violation so that the licensing authority may take appropriate administrative action.

d. State investigators shall not be subject to subpoena in civil actions by any court of this State to testify concerning any matter of which they have knowledge pursuant to a pending false claims investigation by the State, or a pending claim for civil penalties initiated by the State.

15. (New section) This act shall not be construed as waiving the sovereign immunity of the State and its officers and employees as otherwise provided by law.

16. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to read as follows:

17. (a) Any person who willfully obtains benefits under this act to which he is not entitled or in a greater amount than that to which he is entitled and any provider who willfully receives medical assistance payments to which he is not entitled or in a greater amount than that to which he is entitled is guilty of a high misdemeanor and, upon conviction thereof, shall be liable to a penalty of not more than $10,000.00 or to imprisonment for not more than 3 years or both.

(b) Any provider, or any person, firm, partnership, corporation or entity, who:

(1) Knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any cost study, claim

form, or any document necessary to apply for or receive any benefit or payment under this act; or
(2) At any time knowingly and willfully makes or causes to be made any false statement, written or oral, of a material fact for use in determining rights to such benefit or payment under this act; or
(3) Conceals or fails to disclose the occurrence of an event which
(i) affects his initial or continued right to any such benefit or payment, or
(ii) affects the initial or continued right to any such benefit or payment of any provider or any person, firm, partnership, corporation or other entity in whose behalf he has applied for or is receiving such benefit or payment with an intent to fraudulently secure benefits or payments not authorized under this act or in greater amount than that which is authorized under this act; or
(4) Knowingly and willfully converts benefits or payments or any part thereof received for the use and benefit of any provider or any person, firm, partnership, corporation or other entity to a use other than the use and benefit of such provider or such person, firm, partnership, corporation or entity; is guilty of a high misdemeanor and, upon conviction thereof, shall be liable to a penalty of not more than $10,000.00 for the first and each subsequent offense or to imprisonment for not more than three years or both.
(c) Any provider, or any person, firm, partnership, corporation or entity who solicits, offers, or receives any kickback, rebate or bribe in connection with:
(1) The furnishing of items or services for which payment is or may be made in whole or in part under this act; or
(2) The furnishing of items or services whose cost is or may be reported in whole or in part in order to obtain benefits or payments under this act; or
(3) The receipt of any benefit or payment under this act, is guilty of a high misdemeanor and, upon conviction thereof, shall be liable to a penalty of not more than $10,000.00 or to imprisonment for not more than 3 years or both. This subsection shall not apply to (A) a discount or other reduction in price under this act if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made under this act; and (B) any amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.
(d) Whoever knowingly and willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify either upon initial certification or ecertification as a hospital, skilled nursing facility, intermediate care facility, or health agency, thereby entitling them to receive payments under this act, shall be guilty of a high misdemeanor and shall be liable to a penalty of not more than $3,000.00 or imprisonment for not more than 1 year or both.
(e) Any person, firm, corporation, partnership, or other legal entity who violates the provisions of any of the foregoing subsections of this section

or any provisions of section 3 of P.L. ,c. (C.) (pending before the Legislature as this bill), shall, in addition to any other penalties provided by law, be liable to civil penalties of payment of interest on the amount of the excess benefits or payments at the maximum legal rate in effect on the date the payment was made to said person, firm, corporation, partnership or other legal entity for the period from the date upon which payment was made to the date upon which repayment is made to the State, (2) payment of an amount not to exceed three-fold the amount of such excess benefits or payments, and (3) payment in the sum of [$2,000.00] not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et 26 seq.), as it may be adjusted for inflation pursuant to the federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410 for each excessive claim for assistance, benefits or payments.

(f) Any person, firm, corporation, partnership or other legal entity, other than an individual recipient of medical services reimbursable by the Division of Medical Assistance and Health Services, who, without intent to violate this act, obtains medical assistance or other benefits or payments under this act in excess of the amount to which he is entitled, shall be liable to a civil penalty of payment of interest on the amount of the excess benefits or payments at the maximum legal rate in effect on the date the benefit or payment was made to said person, firm, corporation, partnership, or other legal entity for the period from September 15, 1976 or the date upon which payment was made, whichever is later, to the date upon which repayment is made to the State, provided, however, that no such person, firm, corporation, partnership or other legal entity shall be liable to such civil penalty when excess medical assistance or other benefits or payments under this act are obtained by such person, firm, corporation, partnership or other legal entity as a result of error made by the Division of Medical Assistance and Health Services, as determined by said division; provided, further, that if preliminary notification of an overpayment is not given to a provider by the division within 180 days after completion of the field audit as defined by regulation, no interest shall accrue during the period beginning 180 days after completion of the field audit and ending on the date preliminary notification is given to the provider.

(g) All interest and civil penalties provided for in this act and all medical assistance and other benefits to which a person, firm, corporation, partnership, or other legal entity was not entitled shall be recovered in an administrative procedure held pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1, et seq.), except that recovery actions against minors or incompetents shall be initiated in a court of competent jurisdiction.

(h) Upon the failure of any person, firm, corporation, partnership or other legal entity to comply within 10 days after service of any order of the director or his designee directing payment of any amount found to be due pursuant to subsection (g) of this section, or at any time prior to any final agency adjudication not involving a recipient or former recipient of

benefits under this act, the director may issue a certificate to the clerk of the superior court that such person, firm, corporation, partnership or other legal entity is indebted to the State for the payment of such amount. A copy of such certificate shall be served upon the person, firm, corporation, partnership or other legal entity against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person, firm, corporation, partnership or other legal entity so indebted, and of the State, a designation of the statute under which such amount is found to be due, the amount due, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the director or his designee.

(i) In order to satisfy any recovery claim asserted against a provider under this section, whether or not that claim has been the subject of final agency adjudication, the division or its fiscal agents is authorized to withhold funds otherwise payable under this act to the provider.

(j) The Attorney General may, when requested by the commissioner or his agent, apply ex parte to the Superior Court to compel any party to comply forthwith with a subpoena issued under this act. Any party who, having been served with a subpoena issued pursuant to the provisions of this act, fails either to attend any hearing, or to appear or be examined, to answer any question or to produce any books, records, accounts, papers or documents, shall be liable to a penalty of $500.00 for each such failure, to be recovered in the name of the State in a summary civil proceeding to be initiated in the Superior Court. The Attorney General shall prosecute the actions for the recovery of the penalty prescribed in this section when requested to do so by the commissioner or his agent and when, in the judgment of the Attorney General, the facts and law warrant such prosecution. Such failure on the part of the party shall be punishable as contempt of court by the court in the same manner as like failure is punishable in an action pending in the court when the matter is brought before the court by motion filed by the Attorney General and supported by affidavit stating the circumstances.

(cf: P.L.1979, c.365, s.16)

17. This act shall take effect on the 60th day after enactment.

STATEMENT 17

This bill will establish the "New Jersey False Claims Act," which will authorize a person to bring a civil action in New Jersey Superior Court against any other person who knowingly causes the State to pay a false claim. Any person who knowingly presents a false claim and deceives the State for the purposes of getting a false claim paid will be subject to a civil penalty for each false claim of not less than $5,500 and not more than $11,000, as is also currently allowed under the federal False Claims Act (31 U.S.C. s.3729 et 26 seq.). The minimum and maximum civil penalties will be subject to future adjustments that follow the inflation adjustment procedures prescribed in the Federal Civil

Penalties Inflation Adjustment Act 29 of 1990. Civil penalties also will include an additional amount equal to three times the amount of damages which the State sustains because of the act or omission. Under the bill, any person may bring an action in Superior Court on behalf of the State. A copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses will be served on the Attorney General. The complaint will be sealed for up to 60 days and will not be served on the defendant until the court so orders. Once the Attorney General receives the complaint, the Attorney General has 60 days, barring any extensions, to notify the court that the Attorney General either intends to proceed with the action at which time the seal is lifted, or declines to take over the action, in which case the seal will be lifted and the person bringing the action may proceed with the action. If the Attorney General proceeds with the case the Attorney General will have primary responsibility for prosecuting the action but the person bringing the action will have the right to continue as a party to the action. The Attorney General may move to dismiss the action for good cause, provided the person bringing the action has been notified and given an opportunity for a hearing. If the Attorney General proceeds with the action and prevails, the person bringing this action will be entitled to at least 15% but not more than 25% of the proceeds recovered under the judgment, depending upon the extent to which the person substantially contributed to the prosecution of the action. If the Attorney General does not proceed with the case, the person bringing a successful action will receive an amount which the court decides is reasonable for collecting the penalty and damages which will be not less than 25% and not more than 30% of the proceeds recovered under the judgment or by way of a settlement. The State entity injured by the submission of the false claim will receive an award not to exceed the compensatory damages. The Attorney General will receive a fixed 10% of the proceeds in any action or settlement of the claim that it brings, which will only be used to support its ongoing investigation and prosecution of false claims. Any remaining proceeds will be deposited in the General Fund. Members of the Judiciary and Legislative branches, and senior executive branch officials will be exempt from the provisions of this bill. This bill provides that a civil action under the act may not be brought more than six years after the date the violation of the act was committed or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last. In addition the bill provides that the public entity or the person bringing the action will have the burden to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

The bill also amends N.J.S.A.30:4D-17, an existing Medicaid fraud statute, so that civil penalties for Medicaid fraud committed under that statute are consistent with those under the False Claims Act, and are supplemental to the penalties under the False Claims Act.

NEW MEXICO

N.M. S.A. 1978 § 27-14-1

AN ACT RELATING TO MEDICAID; PROVIDING FOR CIVIL ACTION AGAINST THE FILING OF FALSE CLAIMS UNDER THE MEDICAID PROGRAM; PROVIDING FOR QUI TAM AWARDS; ENACTING THE MEDICAID FALSE CLAIMS ACT
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This may be cited as the "Medicaid False Claims Act".

Section 2. PURPOSE.--The purpose of the Medicaid False Claims Act is to deter persons from causing or assisting to cause the state to pay Medicaid claims that are false and to provide remedies for obtaining treble damages and civil recoveries for the state when money is obtained from the state by reason of a false claim.

Section 3. DEFINITIONS.--As used in the Medicaid False Claims Act:
A. "Claim" means a written or electronically submitted request for payment of health care services pursuant to the Medicaid program;
B. "department" means the human services department;
C. "Medicaid" means the federal-state program administered by the human services department pursuant to Title 19 or Title 21 of the federal Social Security Act;
D. "Medicaid recipient" means an individual on whose behalf a person claims or receives a payment from the Medicaid program, regardless of whether the individual was eligible for the Medicaid program; and
E. "qui tam" means an action brought under a statute that allows a private person to sue for a recovery, part of which the state will receive.

Section 4. FALSE CLAIMS AGAINST THE STATE--LIABILITY FOR CERTAIN ACTS.--A person commits an unlawful act and shall be liable to the state for three times the amount of damages that the state sustains as a result of the act if the person:
A. presents, or causes to be presented, to the state a claim for payment under the Medicaid program knowing that such claim is false or fraudulent;
B. presents, or causes to be presented, to the state a claim for payment under the Medicaid program knowing that the person receiving a Medicaid benefit or payment is not authorized or is not eligible for a benefit under the Medicaid program;
C. makes, uses or causes to be made or used a record or statement to obtain a false or fraudulent claim under the Medicaid program paid for or approved by the state knowing such record or statement is false;

D. conspires to defraud the state by getting a claim allowed or paid under the medicaid program knowing that such claim is false or fraudulent;
E. makes, uses or causes to be made or used a record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state, relative to the medicaid program, knowing that such record or statement is false;
F. knowingly applies for and receives a benefit or payment on behalf of another person, except pursuant to a lawful assignment of benefits, under the medicaid program and converts that benefit
or payment to his own personal use;
G. knowingly makes a false statement or misrepresentation of material fact concerning the conditions or operation of a health care facility in order that the facility may qualify for certification or recertification required by the medicaid program; or
H. knowingly makes a claim under the medicaid program for a service or product that was not provided.

Section 5. DOCUMENTARY MATERIAL IN POSSESSION OF STATE AGENCY

A. The department shall have access to all documentary materials of persons and medicaid recipients to which a state agency has access. Documentary material provided pursuant to this subsection is provided to allow investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.
B. Except for disclosure to any person under investigation or who is the subject of allegations made pursuant to the Medicaid False Claim Act or as ordered by a court for good cause shown, the department shall not produce for inspection or copying or otherwise disclose the contents of documentary material obtained pursuant to this section to a person other than:
(1) an authorized employee of the attorney general;
(2) an agency of this state, the United States or another state;
(3) a district attorney, city attorney or county attorney of this state;
(4) the United States attorney general; or
(5) a state or federal grand jury.
Section 6. IMMUNITY. Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material pursuant to the Medicaid False Claims Act to a person identified in Subsection B of Section 5 of that act.
Section 7. CIVIL ACTION FOR FALSE CLAIMS. —
A. The department shall diligently investigate suspected violations. If the department finds that a person has violated or is violating the provisions of the Medicaid False Claims Act, the department may bring a civil action pursuant to Subsection F of this section.
B. A private civil action may be brought by an affected person for a violation of the Medicaid False Claims Acton behalf of the person bringing suit and for the state. The action shall be brought in the name of the state. The action may be dismissed if the court and the department, pursuant to

Subsection F of this section, give written consent to the dismissal and their reasons for consenting.

C. For private civil actions, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the department. The complaint shall be filed in writing and shall remain under seal for at least sixty days. The complaint shall not be served on the defendant until the expiration of sixty days or any extension approved. Within sixty days after receiving a copy of the complaint, the department shall conduct an investigation of the factual allegations and legal contentions made in the complaint, shall make a written determination of whether there is substantial evidence that a violation has occurred and shall provide the person against which a complaint has been made with a copy of the determination. If the department determines that there is not substantial evidence that a violation has occurred, the complaint shall be dismissed.

D. The department may, for good cause shown, move the court for extensions of time during which the complaint remains under seal. Any such motion may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to a complaint filed pursuant to this section until twenty days after the complaint is unsealed and served to the defendant. The complaint shall be deemed unsealed at the expiration of the sixty-day period in the absence of a court-approved extension.

E. Before the expiration of the sixty-day period or any extensions obtained, the department, pursuant to Subsection F of this section, shall:

(1) proceed with the action, in which case the action shall be conducted by the department; or

(2) notify the court and the person who brought the action that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action if the department determined that there is substantial evidence that a violation of the Medicaid False Claims Act has occurred.

F. The department shall notify the attorney general prior to filing a civil action pursuant to the Medicaid False Claims Act and shall not proceed with the action except with the written approval of the attorney general. The attorney general shall, within twenty working days from the notification by the department, notify the department whether it may proceed with the civil action. Failure by the attorney general to notify the department of its determination within the specified time period shall be construed as consent to proceed. The department shall, after filing the civil action, notify the attorney general of any proposed dismissal or settlement and the department shall not proceed with the dismissal or settlement except with the written approval of the attorney general.

Section 8. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS. —

A. If the department proceeds with the action, it shall have the exclusive responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person bringing the action shall have the right to continue as a nominal party to the action and shall not have the right to participate in the litigation except as a witness.

B. The department may dismiss the action, pursuant to Subsection F of Section 7 of the Medicaid False Claims Act, notwithstanding the objections of the person bringing the action if the person has been notified by the department of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
C. The department may settle the action with the defendant, pursuant to Subsection F of Section 7 of the Medicaid False Claims Act, notwithstanding the objections of the person bringing the action if the court determines, after the hearing, that the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.
D. If the state elects not to proceed with the action, the person bringing the action shall have the right to conduct the action. If the department requests, it shall be served with copies of the pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the department's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person bringing the action, may allow the department to intervene at a later date upon a showing of good cause.
E. Whether or not the department proceeds with the action, upon a showing by the department that certain actions of discovery by the person bringing the action would interfere with the department's investigation or prosecution of a civil matter arising out of the same facts, the court may stay such discovery for a period not to exceed sixty days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the department has pursued the civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing civil investigation or proceedings.

Section 9. AWARD TO QUI TAM PLAINTIFF. —
A. If the department proceeds with an action brought by a person pursuant to the Medicaid False Claims Act, the person shall, subject to the limitations in this subsection, receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information other than information provided by the party bringing the action relating to allegations or transactions in a criminal, civil or administrative hearing or from the news media, the court shall award a sum as it considers appropriate; provided that the sum does not exceed ten percent of the proceeds and takes into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. A payment to a person pursuant to this subsection shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. In determining the amount of reasonable attorney fees and costs, the court

shall consider whether such fees and costs were necessary to the prosecution of the action, were incurred for activities that were duplicative of the activities of the department in prosecuting the case or were repetitious, irrelevant or for purposes of harassment or caused the defendant undue burden or unnecessary expense. All such expenses, fees and costs shall be awarded against the defendant.

B. If the department does not proceed with an action pursuant to the Medicaid False Claims Act, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil recovery and damages recoverable by the state. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and shall be paid out of such proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. In determining the amount of reasonable attorney fees and costs, the court shall consider whether such fees and costs were necessary to the prosecution of the action, were incurred for activities, which were repetitious, irrelevant or for purposes of harassment or caused the defendant undue burden or unnecessary expense. All such expenses, fees and costs shall be awarded against the defendant.

C. Whether or not the department proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the party would otherwise receive pursuant to Subsection A or B of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of the Medicaid False Claims Act, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action represented by the department. If the department does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney fees and costs if the defendant prevails in the action and the court finds that the claim of the party bringing the action was:

(1) filed for an improper purpose;

(2) not warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; or

(3) was based on allegations or factual contentions not supported.

Section 10. CERTAIN ACTIONS BARRED.—

A. A court shall not have jurisdiction of an action brought pursuant to the Medicaid False Claims Act against a department official if the action is substantially based on evidence or information known to the department when the action was brought.

B. A person shall not bring an action pursuant to the Medicaid False Claims Act that is substantially based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the department is already a party.
C. A court shall not have jurisdiction over an action pursuant to the Medicaid False Claims Act substantially 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 department or the person bringing the action is an original source of the information. For the purposes of this subsection, "original source" means the person bringing suit that has independent knowledge, including knowledge based on the person's own investigation of the defendant's conduct, of the information on which the allegations are based and has voluntarily provided or verified the information on which the allegations are based or has voluntarily provided the information to the department before filing an action pursuant to this section that is based on the information.

Section 11. DEPARTMENT NOT LIABLE FOR CERTAIN EXPENSES.--The department shall not be liable for expenses that a person incurs in bringing an action pursuant to the Medicaid False Claims Act.

Section 12. EMPLOYEE PROTECTION.--Any employee who is discharged, demoted, suspended, threatened, harassed or otherwise discriminated against in the terms and conditions of employment by the employer because of lawful acts done by the employee on behalf of the employee or others in disclosing information to the department or in furthering a false claims action pursuant to the Medicaid False Claims Act, including investigation for, initiation of, testimony for or assistance in an action filed or to be filed pursuant to that act, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status that the employee would have had but for the discrimination, two 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 attorney fees. An employee may bring an action in the appropriate court of the state for the relief provided in this subsection.

Section 13. FALSE CLAIMS AND REPORTING PROCEDURE. —
A. A civil action shall be brought within the limitations set forth in Section 37-1-4 NMSA 1978.
B. In any action brought pursuant to the Medicaid False Claims Act, the department or the person bringing the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

C. Notwithstanding any other provision of law, a final judgment rendered in favor of the department in any criminal proceeding charging

fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall preclude the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought pursuant to the Medicaid False Claims Act.

Section 14. APPLICATION OF OTHER LAW.--The application of a civil remedy pursuant to this law does not preclude the application of other laws, statutes or regulatory remedy, except that a person may not be liable for a civil remedy pursuant to the Medicaid False Claims Act and civil damages or recovery pursuant to the Medicaid Fraud Act if the civil remedy and the civil damages or recoveries are assessed for the same conduct by another government agency.

Section 15. USE OF FUNDS.—
A. Damages collected pursuant to the Medicaid False Claims Act on behalf of the state shall be remitted to the state treasurer for deposit in the general fund to be used for the state's Medicaid program.
B. Penalties, legal fees or costs of investigation recovered pursuant to the Medicaid False Claims Act on behalf of the state shall be remitted to the state treasurer for deposit in the general fund to be used for the state's Medicaid program.
C. Pursuant to Subsection C of Section 30-44-8 NMSA 1978, penalties recovered pursuant to the Medicaid False Claims Act on behalf of the state may be claimed by the attorney general pursuant to procedures established by the department and the attorney general.

New Mexico Fraud Against Taxpayers Act

N. M. S. A. 1978, § 44-9-1

§ 44-9-1. Short title

This act may be cited as the "Fraud Against Taxpayers Act".

§ 44-9-2. Definitions

As used in the Fraud Against Taxpayers Act:

A. "claim" means a request or demand for money, property or services when all or a portion of the money, property or services requested or demanded issues from or is provided or reimbursed by the state;

B. "employer" includes an individual, corporation, firm, association, business, partnership, organization, trust and the state and any of its agencies, institutions or political subdivisions;

C. "knowingly" means that a person, with respect to information, acts:

(1) with actual knowledge of the truth or falsity of the information;

(2) in deliberate ignorance of the truth or falsity of the information; or

(3) in reckless disregard of the truth or falsity of the information;

D. "person" means an individual, corporation, firm, association, organization, trust, business, partnership, limited liability company, joint venture or any legal or commercial entity; and

E. "state" means the state of New Mexico or any of its branches, agencies, departments, boards, commissions, officers, institutions or instrumentalities, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority.

§ 44-9-3. False claims; liability; penalties; exception

A. A person shall not:

(1) knowingly present, or cause to be presented, to an employee, officer or agent of the state or to a contractor, grantee or other recipient of state funds a false or fraudulent claim for payment or approval;

(2) knowingly make or use, or cause to be made or used, a false, misleading or fraudulent record or statement to obtain or support the approval of or the payment on a false or fraudulent claim;

(3) conspire to defraud the state by obtaining approval or payment on a false or fraudulent claim;

(4) conspire to make, use or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state;

(5) when in possession, custody or control of property or money used or to be used by the state, knowingly deliver or cause to be delivered less property or money than the amount indicated on a certificate or receipt;

(6) when authorized to make or deliver a document certifying receipt of property used or to be used by the state, knowingly make or deliver a receipt that falsely represents a material characteristic of the property;

(7) knowingly buy, or receive as a pledge of an obligation or debt, public

property from any person that may not lawfully sell or pledge the property;

(8) knowingly make or use, or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state; or

(9) as a beneficiary of an inadvertent submission of a false claim and having subsequently discovered the falsity of the claim, fail to disclose the false claim to the state within a reasonable time after discovery.

B. Proof of specific intent to defraud is not required for a violation of Subsection A of this section.

C. A person who violates Subsection A of this section shall be liable for:

(1) three times the amount of damages sustained by the state because of the violation;

(2) a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) for each violation;

(3) the costs of a civil action brought to recover damages or penalties; and

(4) reasonable attorney fees, including the fees of the attorney general or state agency counsel.

D. A court may assess not less than two times the amount of damages sustained by the state if the court finds all of the following:

(1) the person committing the violation furnished the attorney general with all information known to that person about the violation within thirty days after the date on which the person first obtained the information;

(2) at the time that the person furnished the attorney general with information about the violation, a criminal prosecution, civil action or administrative action had not been commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation; and

(3) the person fully cooperated with any investigation by the attorney general.

E. This section does not apply to claims, records or statements made pursuant to the provisions of Chapter 7 NMSA 1978.

§ 44-9-4. Investigation by the attorney general; delegation; civil action

A. The attorney general shall diligently investigate suspected violations of Section 3 of the Fraud Against Taxpayers Act, and if the attorney general finds that a person has violated or is violating that section, the attorney general may bring a civil action against that person pursuant to the Fraud Against Taxpayers Act.

B. The attorney general may in appropriate cases delegate the authority to investigate or to bring a civil action to the state agency to which a false claim was made, and when this occurs, the state agency shall have every power conferred upon the attorney general pursuant to the Fraud Against Taxpayers Act.

§ 44-9-5. Civil action by qui tam plaintiff; state may intervene

A. A person may bring a civil action for a violation of Section 3 of the Fraud Against Taxpayers Act on behalf of the person and the state. The action shall be brought in the name of the state. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind the Fraud Against Taxpayers Act.

B. A complaint filed by a qui tam plaintiff shall be filed in camera in district court and shall remain under seal for at least sixty days. No service shall be made on a defendant and no response is required from a defendant until the seal has been lifted and the complaint served pursuant to the rules of civil procedure.

C. On the same day as the complaint is filed, the qui tam plaintiff shall serve the attorney general with a copy of the complaint and written disclosure of substantially all material evidence and information the qui tam plaintiff possesses. The attorney general on behalf of the state may intervene and proceed with the action within sixty days after receiving the complaint and the material evidence and information. Upon a showing of good cause and reasonable diligence in the state's investigation, the state may move the court for an extension of time during which the complaint shall remain under seal.

D. Before the expiration of the sixty-day period or any extensions of time granted by the court, the attorney general shall notify the court that the state:

(1) intends to intervene and proceed with the action; in which case, the seal shall be lifted and the action shall be conducted by the attorney general on behalf of the state; or

(2) declines to take over the action; in which case, the seal shall be lifted and the qui tam plaintiff may proceed with the action.

E. When a person brings an action pursuant to this section, no person other than the attorney general on behalf of the state may intervene or bring a related action based on the facts underlying the pending action.

§ 44-9-6. Rights of the qui tam plaintiff and the state

A. If the state proceeds with the action, it shall have the primary responsibility of prosecuting the action and shall not be bound by an act of the qui tam plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations of this section.

B. The state may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and to present evidence at a hearing.

C. The state may settle the action with the defendant notwithstanding any objection by the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate and reasonable under all of the circumstances.

D. Upon a showing by the state that unrestricted participation during the course of the litigation by the qui tam plaintiff would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant or for the purpose of harassment, the court may, in its discretion, impose limitations on the qui tam plaintiff's participation, such as:

(1) limiting the number of witnesses the qui tam plaintiff may call;

(2) limiting the length of testimony of such witnesses;

(3) limiting the qui tam plaintiff's cross examination of witnesses; or

(4) otherwise limiting the qui tam plaintiff's participation in the litigation.

E. Upon a showing by a defendant that unrestricted participation during the course of litigation by the qui tam plaintiff would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

F. If the state elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the attorney general so

requests, the qui tam plaintiff shall serve the attorney general with copies of all pleadings filed in the action and all deposition transcripts in the case, at the state's expense. When the qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the attorney general to intervene at a later date upon a showing of good cause.

G. Whether or not the state proceeds with the action, upon a showing by the attorney general on behalf of the state that certain actions of discovery by the qui tam plaintiff would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. The showing by the state shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceeding with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

H. Notwithstanding the provisions of Section 5 of the Fraud Against Taxpayers Act, the attorney general may elect to pursue the state's claim through any alternate remedy available to the state, including an administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued, the qui tam plaintiff shall have the same rights in such a proceeding as the qui tam plaintiff would have had if the action had continued pursuant to this section. A finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under the Fraud Against Taxpayers Act. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing an appeal with respect to the finding or conclusion has expired or if the finding or conclusion is not subject to judicial review.

§ 44-9-7. Awards to qui tam plaintiff and the state

A. Except as otherwise provided in this section, if the state proceeds with an action brought by a qui tam plaintiff and the state prevails in the action, the qui tam plaintiff shall receive:
(1) at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action; or
(2) no more than ten percent of the proceeds of the action or settlement if the court finds that the action was based primarily on disclosures of specific information, not provided by the qui tam plaintiff, relating to

allegations or transactions in a criminal, civil, administrative or legislative hearing, proceeding, report, audit or investigation or from the news media, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation. However, if the attorney general determines and certifies in writing that the qui tam plaintiff provided a significant contribution in advancing the case, then the qui tam plaintiff shall receive the share of proceeds set forth in Paragraph (1) of this subsection.

B. If the state does not proceed with an action brought by a qui tam plaintiff and the state prevails in the action, the qui tam plaintiff shall receive an amount that is not less than twenty-five percent or more than thirty percent of the proceeds of the action or settlement, as the court deems reasonable for collecting the civil penalty and damages.

C. Whether or not the state proceeds with an action brought by a qui tam plaintiff:

(1) if the court finds that the action was brought by a person that planned or initiated the violation of Section 3 of the Fraud Against Taxpayers Act upon which the action was based, the court may reduce the share of the proceeds that the person would otherwise receive under Subsection A or B of this section, taking into account the role of the person as the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation; or

(2) if the person bringing the action is convicted of criminal conduct arising from that person's role in the violation of Section 3 of the Fraud Against Taxpayers Act upon which the action was based, that person shall be dismissed from the civil action and shall not receive a share of the proceeds. The dismissal shall not prejudice the right of the state to continue the action.

D. Any award to a qui tam plaintiff shall be paid out of the proceeds of the action or settlement, if any. The qui tam plaintiff shall also receive an amount for reasonable expenses incurred in the action plus reasonable attorney fees that shall be paid by the defendant.

E. The state is entitled to all proceeds collected in an action or settlement not awarded to a qui tam plaintiff. The state is also entitled to reasonable expenses incurred in the action plus reasonable attorney fees, including the fees of the attorney general or state agency counsel that shall be paid by the defendant. Proceeds and penalties collected by the state shall be deposited as follows:

(1) proceeds in the amount of the false claim paid and attorney fees and costs shall be returned to the fund or funds from which the money, property or services came;

(2) civil penalties shall be deposited in the current school fund pursuant to Article 12, Section 4 of the constitution of New Mexico; and

(3) all remaining proceeds shall be deposited as follows:

(a) one-half into a fund for the use of the attorney general in furtherance of the obligations imposed upon that office by the Fraud Against Taxpayers Act; and

(b) one-half into the general fund.

§ 44-9-8. Award of attorney fees and costs to defendant

If the state does not proceed with the action and the qui tam plaintiff conducts the action, the court may award a defendant reasonable attorney fees and costs if the defendant prevails and the court finds the action clearly frivolous, clearly vexatious or brought primarily for the purpose of harassment.

§ 44-9-9. Certain actions barred

A. No court shall have jurisdiction over an action brought pursuant to Section 5 of the Fraud Against Taxpayers Act by a present or former employee of the state unless the employee, during employment with the state and in good faith, exhausted existing internal procedures for reporting false claims and the state failed to act on the information provided within a reasonable period of time.

B. No court shall have jurisdiction over an action brought pursuant to Section 5 of the Fraud Against Taxpayers Act against an elected or appointed state official, a member of the state legislature or a member of the judiciary if the action is based on evidence or information known to the state agency to which the false claim was made or to the attorney general when the action was filed.

C. Unless the attorney general determines and certifies in writing that the action is in the interest of the state, no court shall have jurisdiction over an action brought pursuant to Section 5 of the Fraud Against Taxpayers Act when that action is based on allegations or transactions that are the subject of a criminal, civil or administrative proceeding in which the state is a party.

D. Upon motion of the attorney general, a court may, in its discretion, dismiss an action brought pursuant to Section 5 of the Fraud Against Taxpayers Act if the elements of the alleged false or fraudulent claim have been publicly disclosed in the news media or in a publicly disseminated governmental report at the time the complaint is filed.

§ 44-9-10. State not liable

The state shall not be liable for expenses or fees that a qui tam plaintiff may incur in investigating or bringing an action pursuant to the Fraud Against Taxpayers Act.

§ 44-9-11. Employer interference with employee disclosure; private action for retaliation

A. An employer shall not make, adopt or enforce a rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act.

B. An employer shall not discharge, demote, suspend, threaten, harass, deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the lawful acts of the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act.

C. An employer that violates Subsection B of this section shall be liable to the employee for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay, compensation for any special damage sustained as a result of the violation and, if appropriate, punitive damages. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.

§ 44-9-12. Limitation of actions; estoppel; standard of proof

A. A civil action pursuant to the Fraud Against Taxpayers Act may be brought at any time. A civil action pursuant to the Fraud Against Taxpayers Act may be brought for conduct that occurred prior to the effective date of that act, but not for conduct that occurred prior to July 1, 1987.

B. Notwithstanding any other provision of law, a final judgment rendered in a criminal proceeding charging fraud or false statement, whether upon a guilty verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of a fraud

against taxpayers action where the criminal proceeding concerns the same transaction that is the subject of the fraud against taxpayers action.

C. In an action brought pursuant to the Fraud Against Taxpayers Act, the state or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

§ 44-9-13. Joint and several liability

Liability shall be joint and several for any act committed by two or more persons in violation of the Fraud Against Taxpayers Act.

44-9-14. Remedy not exclusive. The remedies provided for in the Fraud Against Taxpayers Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

NEW YORK

NEW YORK FALSE CLAIMS ACT

§ 187. Short title.
This article shall be known and may be cited as the "New York false claims act".

§ 188. Definitions.
As used in this article, the following terms shall mean:
1. "Claim" means any request or demand, whether under a contract or otherwise, for money or property which is made to any employee, officer, or agent of the state or a local government, or to any contractor, grantee or other recipient, if the state or a local government provides any portion of the money or property which is requested or demanded or will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
2. "False claim" means any claim which is, either in whole or part, false or fraudulent.
3. "Knowing and knowingly" means that with respect to a claim, or information relating to a claim, a person:
(a) has actual knowledge of such claim or information;
(b) acts in deliberate ignorance of the truth or falsity of such claim or information; or
(c) acts in reckless disregard of the truth or falsity of such claim or information. Proof of specific intent to defraud is not required, provided, however that acts occurring by mistake or as a result of mere negligence are not covered by this article.
4. "Local government" means any county, city, town, village, school district, board of cooperative educational services, local public benefit corporation or other municipal corporation or political subdivision of the state.
5. "Original source" means a person who has direct and independent knowledge of the information on which allegations are based, and has voluntarily provided the information to the state or a local government before filing an action under this article which is based on the information.
6. "Person" means any natural person, partnership, corporation, association or any other legal entity or individual, other than the state or a local government.
7. "State" means the state of New York and any state department, board, bureau, division, commission, committee, public benefit corporation,

public authority, council, office or other governmental entity performing a governmental or proprietary function for the state.

§ 189. Liability for certain acts

1. Subject to the provisions of subdivision two of this section, any person who:

(a) knowingly presents, or causes to be presented, to any employee, officer or agent of the state or a local government, a false or fraudulent claim for payment or approval;

(b) 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 state or a local government;

(c) conspires to defraud the state or a local government by getting a false or fraudulent claim allowed or paid;

(d) has possession, custody, or control of property or money used, or to be used, by the state or a local government and, intending to defraud the state or a local government or willfully to conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;

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

(f) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a local government knowing that the officer or employee lawfully may not sell or pledge the property; or

(g) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a local government; shall be liable: **(i)** to the state for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, plus three times the amount of damages which the state sustains because of the act of that person; and **(ii)** to any local government for three times the amount of damages sustained by such local government because of the act of that person.

2. The court may assess not more than two times the amount of damages sustained because of the act of the person described in subdivision one of

this section, if the court finds that:

(a) the person committing the violation of this section had furnished all information known to such person about the violation, to those officials responsible for investigating false claims violations on behalf of the state and any local government that sustained damages, within thirty days after the date on which such person first obtained the information;

(b) such person fully cooperated with any government investigation of such violation; and

(c) at the time such person furnished information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

3. A person who violates this section shall also be liable for the costs, including attorneys' fees, of a civil action brought to recover any such penalty or damages.

4. This section shall not apply to claims, records, or statements made under the tax law.

§ 190. Civil actions for false claims

1. Civil enforcement actions. The attorney general shall have the authority to investigate violations under section one hundred eighty-nine of this article. If the attorney general believes that a person has violated or is violating such section, then the attorney general may bring a civil action on behalf of the people of the state of New York or on behalf of a local government against such person. A local government also shall have the authority to investigate violations that may have resulted in damages to such local government under section one hundred eighty-nine of this article, and may bring a civil action on its own behalf to recover damages sustained by such local government as a result of such violations. No action may be filed pursuant to this subdivision against the federal government, the state or a local government, or any officer or employee thereof acting in his or her official capacity. The attorney general shall consult with the office of Medicaid inspector general prior to filing any action related to the Medicaid program.

2. Qui tam civil actions. **(a)** Any person may bring a qui tam civil action for a violation of section one hundred eighty-nine of this article on behalf of the people of the state of New York or a local government. No action may be filed pursuant to this subdivision against the federal government, the state or a local government, or any officer or employee thereof acting in his or her official capacity.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state pursuant to subdivision one of section three hundred seven of the civil practice law and rules. The complaint shall be filed in supreme court in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. If the allegations in the complaint allege a violation of section one hundred eighty-nine of this article involving damages to a local government, then the attorney general may at any time provide a copy of such complaint and written disclosure to the attorney for such local government; provided, however, that if the allegations in the complaint involve damages only to a city with a population of one million or more, or only to the state and such a city, then the attorney general shall provide such complaint and written disclosure to the corporation counsel of such city within thirty days. The state may elect to supersede or intervene and proceed with the action, or to authorize a local government that may have sustained damages to supersede or intervene, within sixty days after it receives both the complaint and the material evidence and information; provided, however, that if the allegations in the complaint involve damages only to a city with a population of one million or more, then the attorney general may not supersede or intervene in such action without the consent of the corporation counsel of such city. The attorney general shall consult with the office of the medicaid inspector general prior to superseding or intervening in any action related to the medicaid program. The attorney general may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under this subdivision. Any such motions may be supported by affidavits or other submissions in camera.

(c) Prior to the expiration of the sixty day period or any extensions obtained under paragraph (b) of this subdivision, the attorney general shall notify the court that he or she:

(i) intends to file a complaint against the defendant on behalf of the people of the state of New York or a local government, and thereby be substituted as the plaintiff in the action and convert the action in all respects from a qui tam civil action brought by a private person into a civil enforcement action by the attorney general under subdivision one of this section;

(ii) intends to intervene in such action, as of right, so as to aid and assist the plaintiff in the action; or

(iii) if the action involves damages sustained by a local government, intends to grant the local government permission to: **(A)** file and serve a complaint against the defendant, and thereby be substituted as the plaintiff in the action and convert the action in all respects from a qui tam civil action brought by a private person into a civil enforcement action by the local government under subdivision one of this section; or **(B)**

intervene in such action, as of right, so as to aid and assist the plaintiff in the action.

The attorney general shall provide the local government with a copy of any such notification at the same time the court is notified.

(d) If the state notifies the court that it intends to file a complaint against the defendant and thereby be substituted as the plaintiff in the action, or to permit a local government to do so, such complaint must be filed within thirty days after the notification to the court.

(e) If the state notifies the court that it intends to intervene in the action, or to permit a local government to do so, then such motion for intervention shall be filed within thirty days after the notification to the court.

(f) If the state declines to participate in the action or to authorize participation by a local government, the qui tam action may proceed subject to judicial review under this section, the civil practice law and rules, and other applicable law.

3. Time to answer. If the state decides to participate in a qui tam action or to authorize the participation of a local government, the court shall order that the qui tam complaint be unsealed and served at the time of the filing of the complaint or intervention motion by the state or local government. After the complaint is unsealed, or if a complaint is filed by the state or a local government pursuant to subdivision one of this section, the defendant shall be served with the complaint and summons pursuant to article three of the civil practice law and rules. A copy of any complaint which alleges that damages were sustained by a local government shall also be served on such local government. The defendant shall be required to respond to the summons and complaint within the time allotted under rule three hundred twenty of the civil practice law and rules.

4. Related actions. When a person brings a qui tam action under this section, no person other than the attorney general, or a local government attorney acting pursuant to subdivision one of this section or paragraph (b) of subdivision two of this section, may intervene or bring a related civil action based upon the facts underlying the pending action, unless such other person has first obtained the permission of the attorney general to intervene or to bring such related action; provided, however, that nothing in this subdivision shall be deemed to deny persons the right, upon leave of court, to file briefs amicus curiae.

5. Rights of the parties of qui tam actions. **(a)** If the attorney general elects to convert the qui tam civil action into an attorney general enforcement action, then the state shall have the primary responsibility for prosecuting the action. If the attorney general elects to intervene in

the qui tam civil action then the state and the person who commenced the action, and any local government which sustained damages and intervenes in the action, shall share primary responsibility for prosecuting the action. If the attorney general elects to permit a local government to convert the action into a civil enforcement action, then the local government shall have primary responsibility for investigating and prosecuting the action. If the action involves damages to a local government but not the state, and the local government intervenes in the qui tam civil action, then the local government and the person who commenced the action shall share primary responsibility for prosecuting the action. Under no circumstances shall the state or a local government be bound by an act of the person bringing the original action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (b) of this subdivision. Under no circumstances shall the state be bound by the act of a local government that intervenes in an action involving damages to the state. If neither the attorney general nor a local government intervenes in the qui tam action then the qui tam plaintiff shall have the responsibility for prosecuting the action, subject to the attorney general's right to intervene at a later date upon a showing of good cause.

(b)(i) The state may move to dismiss the action notwithstanding the objections of the person initiating the action if the person has been served with the motion to dismiss and the court has provided the person with an opportunity to be heard on the motion. If the action involves damages to both the state and a local government, then the state shall consult with such local government before moving to dismiss the action. If the action involves damages sustained by a local government but not the state, then the local government may move to dismiss the action notwithstanding the objections of the person initiating the action if the person has been served with the motion to dismiss and the court has provided the person with an opportunity to be heard on the motion.

(ii) The state or a local government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after an opportunity to be heard, that the proposed settlement is fair, adequate, and reasonable with respect to all parties under all the circumstances. Upon a showing of good cause, such opportunity to be heard may be held in camera.

(iii) Upon a showing by the attorney general or a local government that the original plaintiff's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case, or would be repetitious or irrelevant, or upon a showing by the defendant that the original qui tam plaintiff's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden, the court may, in its discretion,

impose limitations on the original plaintiff's participation in the case, such as:

(A) limiting the number of witnesses the person may call;

(B) limiting the length of the testimony of such witnesses;

(C) limiting the person's cross-examination of witnesses; or

(D) otherwise limiting the participation by the person in the litigation.

(c) Notwithstanding any other provision of law, whether or not the attorney general or a local government elects to supersede or intervene in a qui tam civil action, the attorney general and such local government may elect to pursue any remedy available with respect to the criminal or civil prosecution of the presentation of false claims, including any administrative proceeding to determine a civil money penalty or to refer the matter to the office of the Medicaid inspector general for Medicaid related matters. If any such alternate civil remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section.

(d) Notwithstanding any other provision of law, whether or not the attorney general elects to supersede or intervene in a qui tam civil action, or to permit a local government to supersede or intervene in the qui tam civil action, upon a showing by the state or local government that certain actions of discovery by the person initiating the action would interfere with the state's or a local government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the period of such stay upon a further showing in camera that the state or a local government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

6. Awards to qui tam plaintiff. **(a)** If the attorney general elects to convert the qui tam civil action into an attorney general enforcement action, or to permit a local government to convert the action into a civil enforcement action by such local government, or if the attorney general or a local government elects to intervene in the qui tam civil action, then the person or persons who initiated the qui tam civil action collectively shall be entitled to receive between fifteen and twenty-five percent of the proceeds recovered in the action or in settlement of the action. The court shall determine the percentage of the proceeds to which a person commencing a qui tam civil action is entitled, by considering the extent to which the plaintiff substantially contributed to the prosecution of the

action. Where the court finds that the action was based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person or persons bringing the action in advancing the case to litigation.

(b) If the attorney general or a local government does not elect to intervene or convert the action, and the action is successful, then the person or persons who initiated the qui tam action which obtains proceeds shall be entitled to receive between twenty-five and thirty percent of the proceeds recovered in the action or settlement of the action. The court shall determine the percentage of the proceeds to which a person commencing a qui tam civil action is entitled, by considering the extent to which the plaintiff substantially contributed to the prosecution of the action.

(c) With the exception of a court award of costs, expenses or attorneys' fees, any payment to a person pursuant to this paragraph shall be made from the proceeds.

7. Costs, expenses, disbursements and attorneys' fees. In any action brought pursuant to this article, the court may award the attorney general, on behalf of the people of the state of New York, and any local government that participates as a party in the action, and any person who is a qui tam plaintiff, an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees, plus costs pursuant to article eighty-one of the civil practice law and rules. All such expenses, fees and costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the state or a local government or the qui tam civil action plaintiff prevails in the action

8. Exclusion from recovery. If the court finds that the qui tam civil action was brought by a person who planned or initiated the violation of section one hundred eighty-nine of this article upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise be entitled to receive under subdivision six of this section, taking into account the role of such person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the qui tam civil action is convicted of criminal conduct arising from his or her role in the violation of section one hundred eighty-nine of this article, that person shall be dismissed from the qui tam civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the attorney

general to supersede or intervene in such action and to civilly prosecute the same on behalf of the state or a local government.

9. Certain actions barred. No court shall have jurisdiction over a qui tam civil action brought pursuant to subdivision two of this section:

(a) based on allegations or transactions which are the subject of a pending civil action or an administrative action in which the state or a local government is already a party;

(b) derived from public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media, unless the person who initiated the action is an original source of the information;

(c) if the agency has reached a binding settlement or other agreement with the person who submitted such false claims resolving the matter and such agreement has been approved in writing by the attorney general, or by the local government attorney if the matter involves allegations of false claims submitted to a local government; or

(d) against a member of the legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state when the action was brought.

10. Liability. Neither the state nor any local government shall be liable for any expenses which any person incurs in bringing a qui tam civil action under this article.

§ 191. Remedies of employees

1. Any employee of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action brought under this article, including the investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to:

(a) an injunction to restrain continued discrimination;

(b) reinstatement to the position such employee would have had but for the discrimination or to an equivalent position;

(c) reinstatement of full fringe benefits and seniority rights;

(d) payment of two times back pay, plus interest; and

(e) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

2. An employee described in subdivision one of this section may bring an action in the appropriate Supreme Court for the relief provided in this section.

§ 192. Limitation of actions, burden of proof

1. A civil action under this article shall be commenced no later than:

(a) six years after the date on which the violation of section one hundred eighty-nine of this article is committed; or

(b) three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state or local government charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. Notwithstanding any other provision of law, for the purposes of this article, an action under this article is commenced by the filing of the complaint in the Supreme Court.

2. In any action brought under this article, the state, a local government that participates as a party in the action, or the person bringing the qui tam civil action, shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

§ 193. Other law enforcement authority and duties

This article shall not:

1. preempt the authority, or relieve the duty, of other law enforcement agencies to investigate and prosecute suspected violations of law;

2. prevent or prohibit a person from voluntarily disclosing any information concerning a violation of this article to any law enforcement agency; or

3. limit any of the powers granted elsewhere in this chapter and other laws to the attorney general or state agencies or local governments to

investigate possible violations of this article and take appropriate action against wrongdoers.

§ 194. Regulations

The attorney general is authorized to adopt such rules and regulations as is necessary to effectuate the purposes of this article.

NEW YORK CITY FALSE CLAIM ACT

§7-801. Short title.
This chapter shall be known as the "New York City false claims act."

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to creating civil penalties and a private right of action for false or fraudulent claims.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers'' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

Section 2. Title 7 of the administrative code of the city of New York is hereby amended by adding a new chapter 8 to read as follows:

§7-802. Definitions. For purposes of this chapter, the following terms shall mean:

1. "City" means the city of New York, and any city agency, department, division or bureau, and any board, committee, institution, agency of government, local development corporation or public benefit corporation, the majority of whose members are appointed by city officials.

2. "Civil enforcement action" means a legal action brought pursuant to section 7-804 of this chapter for the commission of any act or acts described in subdivision a of section 7-803 of this chapter.

3. "Claim" means any request or demand, whether under a contract or otherwise, for money or property which is made to any employee, officer, or agent of the city, or to any contractor, grantee or other recipient, if the city provides the money or property which is requested

or demanded or will reimburse such contractor, grantee or other recipient for the money or property which is requested or demanded. "Claim" also encompasses any record or statement used in presenting an obligation to pay or transmit money or property either directly or indirectly to the city.

4. "False claim" means any claim, or information relating to a claim, which is false or fraudulent.

5. "Knowing" and "knowingly" mean that with respect to information, a person: **(i)** has actual knowledge of the falsity of the information, or **(ii)** acts in deliberate ignorance of the truth or falsity of the information, or **(iii)** acts in reckless disregard of the truth or falsity of the information. Proof of specific intent to defraud is not required.

6. "Person" means any natural person, corporation, partnership, firm, organization, association or other legal entity or individual, other than the city.

7. "State" means the state of New York and any state department, agency, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office or other entity performing governmental or proprietary function for the state.

§7-803. False claims. a. Any person who:

1. knowingly presents, or causes to be presented, to any city officer or employee, a false claim for payment or approval by the city;

2. knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the city;

3. conspires to defraud the city by getting a false claim allowed or paid by the city;

4. has possession, custody, or control of property or money used, or to be used, directly or indirectly, by the city and, intending to defraud the city or willfully conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;

5. is authorized to make or deliver a document certifying receipt of property used, or to be used, directly or indirectly, by the city and, intending to defraud the city, 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 city knowing that such officer or employee lawfully may not sell or pledge the property; or

7. knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease, directly or indirectly, an obligation to pay or transmit money or property to the city; shall be liable to the city for three times the amount of damages which the city sustains because of the act or acts of such person, and a civil penalty of between five thousand and fifteen thousand dollars for each violation of this

section, except that any party to a civil enforcement action commenced may request the court to assess, and the court may agree to so assess, not more than two times the amount of damages sustained because of the act or acts of such person if all of the following circumstances are found

(i) The person committing the violation of section 7-803 of this chapter had furnished all information known to such person about such act or acts to **(a)** the commissioner of investigation or **(b)** the corporation counsel or a city agency head, who shall refer such information to the commissioner of investigation, and has furnished such information within thirty days of the date on which such person first obtained the information;

(ii). such person fully cooperated with any government investigation of such violation; and

(iii). at the time such person furnished information about the violation, no criminal or civil action or proceeding, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

(a) A person who violates this section shall also be liable for the costs, expenses and attorneys' fees of a civil enforcement action and for the cost of the city's investigation.

§7-804. Civil actions for false claims. (a) If the corporation counsel finds that a person has violated or is violating the provisions of section 7-803 of this chapter, he or she may institute a civil enforcement action against that person in any court of competent jurisdiction.

(b) 1. Any person may submit a proposed civil complaint to the city alleging violations of section 7-803. Proposed civil complaints shall be signed and verified and shall include all material evidence and information possessed by such person in support of the allegations in such proposed civil complaints. The city shall diligently investigate all such proposed civil complaints. The city may request such additional information as it deems necessary from the person submitting a proposed civil complaint.

2. The corporation counsel and the commissioner of investigation shall promulgate rules establishing a protocol detailing the procedures by which the city will address proposed civil complaints after they have been submitted, which protocol shall include the requirement that within one hundred eighty days of receipt of a proposed civil complaint, the city shall, in writing, notify the person who submitted the proposed civil complaint that the corporation counsel:

(i) intends to commence a civil enforcement action based on the facts alleged in the proposed civil complaint against one or more of the defendants named in the proposed civil complaint, in which case he or she shall commence such action within ninety days of such notification, provided that if the corporation counsel determines that a delay in

commencing such action is warranted, he or she may delay such commencement, upon notice to the person who submitted the proposed civil complaint, for an additional ninety days at which time he or she shall commence such action;

(ii) designates the person or, if the person is not an attorney, the attorney of such person, as a special assistant corporation counsel for purposes of filing a civil enforcement action against one or more of the defendants named in the proposed civil complaint; or

(iii) declines to commence a civil enforcement action or designate such person to commence a civil enforcement action in which case the corporation counsel shall state in the notification its reason for doing so.

3. The corporation counsel shall commence a civil enforcement action or designate the person who submitted the proposed civil complaint or, if the person is not an attorney, his or her attorney, to commence a civil enforcement action unless:

(i) the proposed civil complaint is barred for the reasons set forth in subdivision d of this section;

(ii) the corporation counsel has determined that the proposed civil complaint is based upon an interpretation of law or regulation which if adopted, would result in significant cost to the city;

(iii) the corporation counsel has determined that commencing a civil enforcement action would interfere with a contractual relationship between the city and an entity providing goods or services which would significantly interfere with the provision of important goods or services, or would jeopardize the health and safety of the public; or

(iv) the corporation counsel has determined that the complaint, if filed in a court of competent jurisdiction, would be dismissed for failure to state a claim upon which relief may be based.

(c) If the commissioner of investigation determines that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency, then the corporation counsel may decline to commence a civil enforcement action based on a proposed civil complaint or to designate the person who submitted such proposed civil complaint to commence such action, provided that the corporation counsel notifies the person who submitted the proposed civil complaint of such determination within ninety days of receipt by the city of such proposed civil complaint and every one hundred eighty days thereafter until such time as the commissioner of investigation determines that such civil enforcement action would no longer interfere with or jeopardize a governmental investigation, at which time the corporation counsel shall provide to the person who submitted the proposed complaint the notification required in paragraph two of subdivision b of this section. The determination by the commissioner of investigation shall be final.

(d) Certain actions barred. This section shall not apply to claims, records, or statements made pursuant to federal, state or local tax law nor to any proposed civil complaints:

1. based upon one or more false claims with a cumulative value of less than twenty five thousand dollars;

2. based upon allegations or transactions which are the subject of any pending criminal or civil action or proceeding, including a civil enforcement action, or an administrative action in which the city is already a party;

3. derived from public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or upon allegations or transactions disclosed by the news media and likely to be seen by the city officials responsible for addressing false claims, unless the person who submitted the proposed complaint is the primary source of the information;

4. based upon information discovered by an employee of the city, state or federal government in the course of his or her employment unless: **(i)** such employee first reported such information to the department of investigation; and **(ii)** the city failed to act on the information within six months of its receipt by the department of investigation; or

5. against the federal government, the state of New York, the city or any officer or employee acting within the scope of his or her employment.

(**e)** Nothing herein shall be construed as authorizing anyone other than the corporation counsel and a person or attorney authorized pursuant to this chapter to commence a civil enforcement action to represent the city of New York in legal proceedings.

(**f)** Pending and related actions. **1.** No person, other than the corporation counsel, may intervene or bring a related action based upon the facts underlying a civil enforcement action, unless such other person has first obtained the permission of the corporation counsel to intervene or to bring such related action.

2. Regardless of whether the corporation counsel has commenced a civil enforcement action or another party has been designated to do so, the city may elect to pursue any alternate action with respect to the presentation of false claims, provided that the person who submitted the proposed civil complaint upon which such alternate action is based, if any, shall be entitled to the same percentage share of any cash proceeds recovered by the city as such person would have been entitled to if such alternate action was a civil enforcement action.

(g) Rights of the parties. **1.** If the corporation counsel elects to commence a civil enforcement action, then the city shall have the sole authority for prosecuting, and, subject to the approval of the comptroller, settling the action and may move to dismiss the action, or may settle the action notwithstanding the objections of the person who submitted the proposed civil complaint upon which such civil enforcement action is based.

2. If a person who submitted a proposed complaint or his or her attorney has been designated to commence a civil enforcement action, then the corporation counsel and such authorized person or attorney shall share

authority for prosecuting the case. However, the corporation counsel may move to dismiss the action notwithstanding the objection of the person who submitted the proposed civil complaint provided such person has been served with an appropriate motion and the court has provided such person with an opportunity to be heard. The corporation counsel may also, subject to the approval of the comptroller, settle the action notwithstanding the objection of the person who submitted the proposed civil complaint if the court determines after providing such person with an opportunity to be heard, that the proposed settlement is fair, adequate, and reasonable.

3. The corporation counsel may apply to the court for and the court may issue an order restricting the participation of a person designated to commence a civil enforcement action in such litigation notwithstanding the objections of such person if the court determines, after providing such person an opportunity to be heard, that such person's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case, or would be repetitious or irrelevant, or upon a showing by the defendant that such person's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden. Such restrictions may include, but need not be limited to: **(i)** limiting the number of witnesses such person may call, **(ii)** limiting the length of the testimony of such witnesses, **(iii)** limiting such person's cross-examination of witnesses, or **(iv)** otherwise limiting such person's participation in the litigation.

4. The corporation counsel may apply to the court for a stay of any civil enforcement action if it will interfere with any investigation or prosecution of a criminal matter arising out of the same facts.

(**h)** Under no circumstances shall the city be bound by an act of a person designated to commence a civil enforcement action.

(i) Awards from proceeds. **1.** If the corporation counsel has elected to commence a civil enforcement action based on a proposed civil complaint, then the person or persons who submitted such proposed civil complaint collectively shall be entitled to receive between ten and twenty-five percent of the proceeds recovered in such civil enforcement action or in settlement of such action.

2. If a person, or such person's attorney has been designated to commence a civil enforcement action based on such person's proposed civil complaint, then such person shall be entitled to receive between fifteen and thirty percent of the proceeds recovered in such civil enforcement action or in settlement of such action.

3. The court shall determine the share of the proceeds to which a person submitting a proposed complaint is entitled, and may take into account the following factors:

(i) the extent to which the person who submitted the proposed civil complaint contributed to the prosecution of the action, either in time, effort or finances;

(ii) whether the civil enforcement action was based primarily on information provided by the person who submitted the proposed civil complaint, rather than information derived from public sources such as allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media;

(iii) any unreasonable delay by such person in submitting the proposed civil complaint;

(iv) the extent to which the allegations involve a significant safety issue;

(v) whether the person who submitted the proposed civil complaint that formed the basis of the civil enforcement action initiated the violation of section 7-803 of this chapter alleged in such action, in which case the percentage share of the proceeds of the action that such person would otherwise receive under this section may be reduced below the minimum percentages set forth in paragraphs one and two of this subdivision, taking into account the role of such person in advancing the case to litigation and any relevant circumstances including those pertaining to the violation;

(vi) whether the person who submitted the proposed civil complaint that formed the basis of the civil enforcement action has been charged with criminal conduct arising from his or her role in the alleged violation of section 7-803 of this chapter, in which case such person shall not receive any share of the proceeds of the action if convicted on such charges; and

(vii) fundamental fairness and any other factors the corporation counsel and the court deem appropriate.

(j) Costs, expenses and attorneys' fees. **1.** In any civil enforcement action commenced pursuant to this chapter, the corporation counsel, or a person designated to commence such civil enforcement action, if applicable, may apply for an amount of reasonable expenses, plus reasonable attorneys' fees, plus costs. Costs and expenses shall include costs incurred by the department of investigation in investigating the false claim and prosecuting conduct relating thereto. All such expenses, attorneys' fees and costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the city prevails in the action.

2. In a civil enforcement action commenced by a designated person or such person's attorney the defendant may apply for an amount of reasonable expenses, plus reasonable attorney's fees, plus costs and the court may award such expenses, attorney's fees and costs if it determines that such civil enforcement action was frivolous. All such expenses, attorneys' fees and costs shall be awarded directly against the person or person's attorney that commenced the action.

(**k)** The city shall not be liable for any expenses, attorneys' fees or costs that a person or a person's attorney incurs in submitting a proposed civil complaint or commencing or litigating a civil enforcement action pursuant to this section.

§7-805. Remedies of employees. (a) 1. Any officer or employee of the city of New York who believes that he or she has been the subject of an adverse personnel action, as such term is defined in paragraph one of subdivision a of section 12-113 of the administrative code of the city of New York; or

(2) any officer or employee of the city or state of New York, who believes that he or she has been the subject of a retaliatory action, as defined by section seventy-five-b of the civil service law; or

(3) any non-public employee who believes that he or she has been the subject of a retaliatory action by his or her employer, as defined by section seven hundred forty of the labor law because of lawful acts of such employee in furtherance of a civil enforcement action brought under this section, including the investigation, initiation, testimony, or assistance in connection with, a civil enforcement action commenced or to be commenced under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to: **(i)** an injunction to restrain continued discrimination, **(ii)** reinstatement to the position such employee would have had but for the discrimination or to an equivalent position, **(iii)** reinstatement of full fringe benefits and seniority rights, **(iv)** payment of two times back pay, plus interest, and **(v)** compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

(b) An employee described in subdivision of this section may bring an action in any court of competent jurisdiction for the relief provided in this section.

§7-806. Limitation of actions; burden of proof. **(a)** A civil enforcement action shall be commenced no later than the latest following date: **(i)** six years after the date on which the violation of section 7-803 is committed, or **(ii)** three years after the date when facts material to the right of action are known or reasonably should have been known by the corporation counsel or the department of investigation, not to exceed ten years after the date on which the violation is committed.

(b) In any civil enforcement action, all essential elements of the cause of action, including damages, shall be proven by a preponderance of the evidence.

§7-807. Other law enforcement authority and duties. This chapter shall not be construed as: **(i)** affecting the authority, or relieving the duty, of any federal, state or local law enforcement agency to investigate and

prosecute suspected violations of law, **(ii)** preventing or prohibiting a person from voluntarily disclosing any information concerning a violation of section 7-803 to any such law enforcement agency, **(iii)** limiting any of the powers granted to the city, elsewhere in this chapter or under other laws, to investigate possible violations of this chapter and take actions against wrongdoers, or **(iv)** diminishing in any way the responsibility of city employees to report any wrongdoing to the commissioner of investigation pursuant to any executive order or statute.

§ 7-808. Annual report. Not later than March first of each year following the year of enactment, the corporation counsel shall transmit to the mayor and the speaker of the council a report setting forth, with respect to the prior calendar year, the following information:

1. The number of proposed civil complaints submitted pursuant to section 7-804;

2. The number of proposed civil complaints resulting in the corporation counsel commencing a civil enforcement action based upon such submission;

3. The number of proposed civil complaints resulting in the corporation counsel designating the person, or such person's attorney, to act as a special assistant corporation counsel for purposes of commencing a civil enforcement action;

4. The disposition of each civil enforcement action filed, including

(i) whether the case was based on a proposed civil complaint; and

(ii) the monetary value of the award or settlement in each action commenced by the person who submitted a proposed civil complaint to the city; and

(iii) the monetary value of any award or settlement in each action commenced by the city.

5. The number of proposed civil complaints under review by the city and pending a determination by the corporation counsel as to the commencement of a civil enforcement action;

6. The number of proposed civil complaints for which the corporation counsel determined not to commence a civil enforcement action and a statistical summary of the reasons for such determinations; and

7. Any other information related to proposed civil complaints submitted pursuant to section 7-804 which the corporation counsel deems appropriate.

§7-809. Comptroller. Nothing in the local law that added this chapter is intended to modify, supersede or in any way diminish the powers granted to the comptroller pursuant to section ninety-three of the charter to settle and adjust all claims for the city.

§7-810. Regulations. The corporation counsel and the commissioner of

investigation shall promulgate such rules as are necessary to effectuate the purposes of this chapter.

Section 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

Section 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

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CITY OF NEW YORK LAW DEPARTMENT AND DEPARTMENT OF INVESTIGATION

RULE GOVERNING THE PROTOCOL FOR PROCESSING PROPOSED CIVIL COMPLAINTS PURSUANT TO THE NEW YORK CITY FALSE CLAIMS ACTTITLE 46CHAPTER 3FALSE CLAIMS

§ 3-01. Submission of proposed civil complaints to the City.

1. Any person may submit a proposed civil complaint alleging a violation of § 7-803 of Chapter 8 of Title 7 of the Administrative Code of the City of New York on behalf of the City of New York. Such submission shall include the person's name, address, telephone numbers and e-mail address (if available), and shall enclose all material evidence and information possessed
by such person in support of the allegations of the proposed civil complaint. Information and materials submitted in support of the proposed complaint shall include, but not be limited to **(a)** identification of the person or entity alleged to have submitted a false or fraudulent claim to the City; **(b)** a description of the nature of the allegedly fraudulent claim; **(c)** the dollar amount alleged to have been falsely or fraudulently submitted to the City; **(d)** the date(s) on which the allegedly false or fraudulent claims were made; **(e)** the City agency(ies) to which the allegedly false or fraudulent claims were made.

2. The proposed civil complaint shall be signed and verified as follows: "The proposed civil complaint is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters [he][she] believes them to be true." Such verification shall be notarized.

3. The proposed civil complaint shall be sent by certified U.S. mail, return receipt requested, in a sealed envelope addressed to the New York

City Department of Investigation, 80 Maiden Lane, New York, New York 10038, Attention: Complaint Bureau.

4. The Department of Investigation ("DOI") shall send an acknowledgement to each person who has submitted a proposed civil complaint indicating that their proposed civil complaint has been received.

§ 3-02. Review of proposed civil complaints.

1. Within thirty days of receipt of the proposed civil complaint, DOI shall forward a copy of each proposed civil complaint and all documentation submitted in support thereof to the Law Department, addressed to "Chief, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007," and marked "CONFIDENTIAL – TO BE OPENED ONLY BY ADDRESSEE." DOI shall at that time notify the Law Department in writing whether the proposed civil complaint alleges wrongdoing that is already the subject of an ongoing investigation, or may warrant the opening of a new investigation by DOI.

2. Following receipt of notification from DOI that the subject of a proposed civil complaint is the subject of an ongoing investigation or that a new investigation may be warranted, the Law Department and DOI will promptly and thereafter, as necessary, discuss the necessity of and the appropriate level of confidentiality to be given to such proposed complaints; the
preparation for and/or commencement of a civil action and the timing of such civil action; and the status of the investigation or prosecution.

3. (a) Within 60 days of receipt of a proposed civil complaint, DOI shall notify the Law Department in writing as to whether the Commissioner of Investigation has determined that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency. DOI shall promptly notify the Law Department in writing when the Commissioner of
Investigation has determined that such civil enforcement action would no longer interfere with or jeopardize a governmental investigation.

(b) Upon the determination by the Commissioner of Investigation that a civil enforcement action shall not interfere with or jeopardize a governmental investigation, DOI will share with the Law Department relevant documents in its possession. DOI will also share material developed during the course of the investigation, to the extent permitted by law and to the extent that the sharing of such information will not compromise a criminal investigation.

4. DOI shall make the determination as to if and when a referral of a potential criminal case shall be made to the appropriate prosecutorial agency, based on its investigation of allegations submitted pursuant to Administrative Code § 7-804.

5. Nothing in these rules shall be deemed to supersede or interfere with

the authority and practices of DOI with respect to its conduct of investigations and cooperation with and referral of matters to other law enforcement or other government agencies pursuant to the City Charter or other law, nor shall the Corporation Counsel commence or authorize the commencement of any civil enforcement action pursuant to Administrative Code § 7-804 if the Commissioner of Investigation has determined that such an action may interfere with or jeopardize an investigation by a governmental agency.

§ 3-03. Processing of proposed civil complaints.

1. In accordance with Administrative Code § 7-804(b)(2), within one hundred eighty days of the receipt of a proposed civil complaint by the Department of Investigation, the Law Department shall in writing notify the person who has submitted the proposed complaint of its intention to commence a civil enforcement action, or to designate the person or his or her attorney to commence a civil enforcement action, or to decline to commence such action, in which case it shall provide its reasons for so declining. If the Commissioner of Investigation has determined that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency, the Law Department shall notify the complainant of such fact within ninety days of the City's receipt of the proposed civil complaint.

2. Any person who has submitted a proposed civil complaint shall fully cooperate with DOI and the Law Department from the time such proposed civil complaint was submitted through the resolution of the matter.

3. Nothing in these rules shall be deemed to supersede or interfere with the authority of the Corporation Counsel, pursuant to the New York City Charter or any other law, with regard to the conduct of litigation or the recommendation for settlement of matters on behalf of the City of New York.

NORTH CAROLINA

No Act at this time
Effective February, 2008

NORTH DAKOTA

No Act at this time
Effective February, 2008

OHIO

No Act at this time
Effective February, 2008

OKLAHOMA

Title 63 § 5053

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053 of Title 63, unless there is created a duplication in numbering, reads as follows: This act shall be known and may be cited as the "Oklahoma Medicaid False Claims Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section:

1. "Knowing" and "knowingly" mean that a person, with respect to information:
a. has actual knowledge of the information,
b. acts in deliberate ignorance of the truth or falsity of the information, or
c. acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required; and

2. "Claim" 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 if this state provides any portion of the money or property which is requested or demanded, or if the state will reimburse the contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
B. Any person who:
1. Knowingly presents, or causes to be presented, to an officer or employee of the State of Oklahoma, 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 state;
3. Conspires to defraud the state by getting a false or fraudulent claim allowed or paid;
4. Has possession, custody, or control of property or money used, or to be used, by the state and, intending to defraud the state or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
5. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, 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 state, who lawfully may not sell or pledge the property; or

7. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, is liable to the State of Oklahoma for a civil penalty of not less than Five Thousand Dollars ($5,000.00) and not more than Ten Thousand Dollars ($10,000.00), unless a penalty is imposed for the act of that person in violation of this subsection under the federal False Claims Act for the same or a prior action, plus three times the amount of damages which the state sustains because of the act of that person.

C. If the court finds that:

1. The person committing the violation in subsection B of this section furnished officials of this state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

2. The person fully cooperated with any state investigation of the violation; and

3. At the time the person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under Title 63 of the Oklahoma Statutes with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation, the court may assess not less than two times the amount of damages which the state sustains because of the act of the person. A person violating subsection B of this section shall also be liable to this state for the costs of a civil action brought to recover any such penalty or damages.

D. Any information furnished pursuant to subsections A through C of this section shall be exempt from disclosure under the Oklahoma Open Records Act.

E. This section does not apply to claims, records or statements under the Oklahoma Tax Code.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General shall diligently investigate a violation under the Oklahoma Medicaid False Claims Act. If the Attorney General finds that a person has violated or is violating the Oklahoma Medicaid False Claims Act, the Attorney General may bring a civil action under this section against the person.

B. 1. A person may bring a civil action for a violation of the Oklahoma Medicaid False Claims Act for the person and for this state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting.

2. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state pursuant to Section 2004 of Title 12 of the Oklahoma Statutes. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.
3. The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph 2 of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant pursuant to Section 2004 of Title 12 of the Oklahoma Statutes.
4. Before the expiration of the sixty-day period or any extensions obtained under paragraph 3 of this subsection, the state shall:
a. proceed with the action, in which case the action shall be conducted by the state, or
b. notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.
5. When a person brings an action under this section, under the federal False Claims Act, or under any similar provision of the law of any other state, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the state proceeds with the action pursuant to Section 3 of the Oklahoma Medicaid False Claims Act, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall the right to continue as a party to the action, subject to the limitations set forth in paragraph 1 of subsection B of Section 3 of this act.
1. The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
2. The state may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.
3. Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its

discretion, impose limitations on the participation of the person, such as:
(a) limiting the number of witnesses the person may call,
(b) limiting the length of the testimony of the witnesses,
(c) limiting the person's cross-examination of witnesses, or
(d) otherwise limiting the participation by the person in the litigation.
4. Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

B. If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the expense of the state. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

C. Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

D. Notwithstanding subsection B of Section 3 of this act, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceeding as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Oklahoma, if all time for filing the appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. If the state proceeds with an action brought by a person under subsection B of Section 3 of this act, the person shall, subject to paragraph 2 of this subsection, receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.
2. Where the action is one which the court finds to be based primarily on disclosures of specific information other than information provided by the person bringing the action relating to allegations or transactions in a criminal, civil, or administrative hearing, in a Congressional, legislative, administrative, or State Auditor and Inspector report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.
3. Any payment to a person under paragraph 1 or 2 of this subsection shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

B. If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

C. Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or participated in the violation of the Oklahoma Medicaid False Claims Act upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under subsection A or B of this section to no more than ten percent (10%), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of the Oklahoma Medicaid False Claims Act, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of this state to continue the action, represented by the Office of the Attorney General or its assigns.

D. The court shall reduce the share of the proceeds of the action which

the person would otherwise receive to no more than ten percent (10%) of the proceeds of the action if:
1. An action brought under subsection B of Section 3 of this act is based upon allegations or transactions of which the person bringing the action became aware while employed by, or under contract to, or serving as an agent for a defendant; and
2. The person bringing the action failed to make an effective disclosure of those allegations or transactions under the corporate compliance plan of that defendant.
E. If the state does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In no event may a person bring an action under subsection B of Section 3 of this act which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

B. No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a Congressional, legislative, administrative, or State Auditor and Inspector report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the 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 state before filing an action under this section which is based on the information.

C. In no event may a person bring an action under subsection B of Section 3 of this act that is based on allegations or transactions that the person knew or had reason to know were known to the Attorney General or the other law enforcement officials of the state prior to that person filing the action or serving the disclosure of the material evidence.

D. The state is not liable for expenses which a person incurs in bringing an action under this section.
E. In civil actions brought under this section by this state, the provisions of Title 28 of the Oklahoma Statutes shall apply.

F. Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed, 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, two 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 attorney fees. An employee may bring an action in the appropriate district court of the State of Oklahoma for the relief provided in this subsection.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A subpoena requiring the attendance of a witness at a trial or hearing conducted under subsection B of Section 3 of the Oklahoma Medicaid False Claims Act may be served at any place in Oklahoma.
B. A civil action under subsection B of Section 3 of this act may not be brought:
1. More than six (6) years after the date on which the violation of the Oklahoma Medicaid False Claims Act is committed; or
2. More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of Oklahoma charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

C. In any action brought under subsection B of Section 3 of this act, this state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

D. Notwithstanding any other provision of law, a final judgment rendered in favor of this state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any action under subsection B of Section 3 of the Oklahoma

Medicaid False Claims Act may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by the Oklahoma Medicaid False Claims Act occurred. A summons as required by Section 2004 of Title 12 of the Oklahoma Statutes shall be issued by the appropriate district court and served at any place within or outside the State of Oklahoma.

B. The district courts shall have jurisdiction over any action brought under the laws of the state for the recovery of funds paid by a state or local government if the action arises from the same transaction or occurrence as an action brought under subsection B of Section 3 of this act.

SECTION 9. This act shall become effective November 1, 2007.

Passed the Senate the 8th day of May, 2007.
Presiding Officer of the Senate
Passed the House of Representatives the 25th day of April, 2007.
Presiding Officer of the House
of Representatives

OREGON

No Act at this time
Effective February, 2008

PENNSYLVANIA

No Act at this time
Effective February, 2008

RHODE ISLAND

§ 9-1.1-1 Name of act. [Effective February 15, 2008.]. – This chapter may be cited as the State False Claims Act.

§ 9-1.1-2 Definitions. [Effective February 15, 2008.]. – As used in this chapter:

(a) "State" means the state of Rhode Island; any agency of state government; and any political subdivision meaning any city, town, county or other governmental entity authorized or created by state law, including public corporations and authorities.

(b) "Guard" means the Rhode Island National Guard.

(c) "Investigation" means any inquiry conducted by any investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this chapter.

(d) "Investigator" means a person who is charged by the Rhode Island attorney general, or his or her designee with the duty of conducting any investigation under this act, or any officer or employee of the State acting under the direction and supervision of the department of attorney general.

(e) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(f) "Custodian" means the custodian, or any deputy custodian, designated by the attorney general under § 9-1.1-6 of the Rhode Island general laws.

(g) "Product of discovery" includes:

(1) The original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(2) Any digest, analysis, selection, compilation, or derivation of any item listed in paragraph (1); and

(3) Any index or other manner of access to any item listed in paragraph (1).

§ 9-1.1-3 Liability for certain acts. [Effective February 15, 2008.]. – (a) Any person who:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the state or a member of the guard 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 state;

(3) Conspires to defraud the state by getting a false or fraudulent claim allowed or paid;

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

(5) Authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, 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 state, or a member of the guard, who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state, is liable to the state for a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000), plus three (3) times the amount of damages which the state sustains because of the act of that person. A person violating this subsection (a) shall also be liable to the state for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and knowingly defined. As used in this section, the terms "knowing" and "knowingly" mean that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) *Claim defined.* As used in this section, "claim" 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 if the state provides any portion of the money or property which is requested or demanded, or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) *Exclusion.* This section does not apply to claims, records, or statements made under the Rhode Island personal income tax law contained in Rhode Island general laws chapter 44-30.

§ 9-1.1-4 Civil actions for false claims. [Effective February 15, 2008.]. – *(a) Responsibilities of the attorney general.* The attorney general diligently shall investigate a violation under § 9-1.1-3 of this section. If under this section the attorney general finds that a person has violated or is violating section 9-1.1-3 the attorney general may bring a civil action under this section against the person.

(1) A person may bring a civil action for a violation of § 9-1.1-3 for the person and for the state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state upon the attorney general. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the sixty (60) day period or any extensions obtained under paragraph (3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to Qui Tam actions.

(1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) Limiting the number of witnesses the person may call:

(ii) Limiting the length of the testimony of such witnesses;

(iii) Limiting the person's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation

during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the state's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty (60) day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam plaintiff.

(1) If the State proceeds with an action brought by a person under subsection 9-1.1-4(b), such person shall, subject to the second sentence of this paragraph, receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific

information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph (1) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. The state shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the attorney general, including reasonable attorneys' fees and costs, and the amount received shall be deposited in the false claims act fund created under this chapter. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 9-1.1-3 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection (d), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of § 9-1.1-3, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for

purposes of harassment.

(e) Certain actions barred.

(1) No court shall have jurisdiction over an action brought by a former or present member of the guard under subsection 9-1.1-4(b) (actions by private persons) against a member of the guard arising out of such person's service in the guard.

(2) No court shall have jurisdiction over an action brought pursuant to subsection 9-1.1-4(b) (actions by private persons) against the governor, lieutenant governor, the attorney general, members of the general assembly, a member of the judiciary, the treasurer, secretary of state, the auditor general, any director of a state agency, and any other individual appointed to office by the governor if the action is based on evidence or information known to the state when the action was brought.

(3) In no event may a person bring an action under subsection 9-1.1-4(b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(4) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or auditor general's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information.

(B) For purposes of this exclusion, "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 state before filing an action under this section which is based on the information.

(f) *State not liable for certain expenses.* The state is not liable for expenses which a person incurs in bringing an action under this section.

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the seniority status such employee would have had but for the discrimination, two (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 superior court for the relief provided in this subsection 9-1.1-4(g).

§ 9-1.1-5 False claims procedure. [Effective February 15, 2008.]. – (a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 9-1.1-4, may be served at any place in the state.

(b) A civil action under § 9-1.1-4 may not be brought:

(1) More than 6 years after the date on which the violation of § 9-1.1-3 is committed, or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under § 9-1.1-4, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsections 9-1.1-4(a) or 9-1.1-4(b).

§ 9-1.1-6 Subpoenas. [Effective February 15, 2008.]. – (a) In general:

(1) *Issuance and service.* Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation, the attorney general may, before commencing a civil proceeding under this act, issue in writing and cause to be served upon such person, a subpoena requiring such person:

(A) To produce such documentary material for inspection and copying,

(B) To answer, in writing, written interrogatories with respect to such documentary material or information,

(C) To give oral testimony concerning such documentary material or information, or

(D) To furnish any combination of such material, answers, or testimony.

The attorney general may delegate the authority to issue subpoenas under this subsection (a) to the sate police subject to conditions as the attorney general deems appropriate. Whenever a subpoena is an express demand for any product of discovery, the attorney general or his or her delegate shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(2) Where a subpoena requires the production of documentary material, the respondent shall produce the original of the documentary material, provided, however, that the attorney general may agree that copies may be substituted for the originals. All documentary material kept or stored in electronic form, including electronic mail, shall be produced in hard copy, unless the attorney general agrees that electronic versions may be substituted for the hard copy. The production of documentary material shall be made at the respondent's expense.

(3) *Contents and deadlines.* Each subpoena issued under paragraph (1):

(A) Shall state the nature of the conduct constituting an alleged violation that is under investigation and the applicable provision of law alleged to be violated.

(B) Shall identify the individual causing the subpoena to be served and to whom communications regarding the subpoena should be directed.

(C) Shall state the date, place, and time at which the person is required to appear, produce written answers to interrogatories, produce documentary material or give oral testimony. The date shall not be less than ten (10) days from the date of service of the subpoena. Compliance with the subpoena shall be at the office of the attorney general.

(D) If the subpoena is for documentary material or interrogatories, shall describe the documents or information requested with specificity.

(E) Shall notify the person of the right to be assisted by counsel.

(F) Shall advise that the person has twenty (20) days from the date of service or up until the return date specified in the demand, whichever

date is earlier, to move, modify, or set aside the subpoena pursuant to subparagraph (j)(2)(A) of this section.

(b) Protected material or information.

(1) *In general.* A subpoena issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(A) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or

(B) The standards applicable to discovery requests under the Rhode Island superior court rules of civil procedure, to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this section.

(2) *Effect on other orders, rules, and laws.* Any such subpoena which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such subpoena does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) *Service in general.* Any subpoena issued under subsection (a) may be served by any person so authorized by the attorney general or by any person authorized to serve process on individuals within Rhode Island, through any method prescribed in the Rhode Island superior court rules of civil procedure or as otherwise set forth in this chapter.

(d) Service upon legal entities and natural persons.

(1) *Legal entities.* Service of any subpoena issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by:

(A) Delivering an executed copy of such subpoena or petition to any partner, executive officer, managing agent, general agent, or registered agent of the partnership, corporation, association or entity;

(B) Delivering an executed copy of such subpoena or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) Depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity as its principal office or place of business.

(2) *Natural person.* Service of any such subpoena or petition may be made upon any natural person by:

(A) Delivering an executed copy of such subpoena or petition to the person; or

(B) Depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) *Proof of service.* A verified return by the individual serving any subpoena issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(f) Documentary material.

(1) *Sworn certificates.* The production of documentary material in response to a subpoena served under this Section shall be made under a sworn certificate, in such form as the subpoena designates, by:

(A) In the case of a natural person, the person to whom the subpoena is directed, or

(B) In the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the subpoena is directed has been produced and made available to the attorney general.

(2) *Production of materials.* Any person upon whom any subpoena for the production of documentary material has been served under this section shall make such material available for inspection and copying to the attorney general at the place designated in the subpoena, or at such other place as the attorney general and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such subpoena, or on such later date as the attorney general may prescribe in writing. Such person may, upon written agreement

between the person and the attorney general, substitute copies for originals of all or any part of such material.

(g) *Interrogatories.* Each interrogatory in a subpoena served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the subpoena designates by:

(1) In the case of a natural person, the person to whom the subpoena is directed, or

(2) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory. If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the subpoena and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) *Procedures.* The examination of any person pursuant to a subpoena for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this state or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a certified copy of the transcript of the testimony in accordance with the instructions of the attorney general. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Rhode Island superior court rules of civil procedure.

(2) *Persons present.* The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the state, any person who may be agreed upon by the attorney for the state and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) *Where testimony taken.* The oral testimony of any person taken

pursuant to a subpoena served under this section shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the attorney general and such person.

(4) *Transcript of testimony.* When the testimony is fully transcribed, the attorney general or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to review and correct the transcript, in accordance with the rules applicable to deposition witnesses in civil cases. Upon payment of reasonable charges, the attorney general shall furnish a copy of the transcript to the witness, except that the attorney general may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(A) Any person compelled to appear for oral testimony under a subpoena issued under subsection (a) may be accompanied, represented, and advised by counsel, who may raise objections based on matters of privilege in accordance with the rules applicable to depositions in civil cases. If such person refuses to answer any question, a petition may be filed in superior court under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with rules of criminal procedure.

(6) *Witness fees and allowances.* Any person appearing for oral testimony under a subpoena issued under subsection 9-1.1-6(a) shall be entitled to the same fees and allowances which are paid to witnesses in the superior court.

(7) Custodians of documents, answers, and transcripts.

(A) *Designation.* The attorney general or his or her delegate shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section.

(B) Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual, except as determined necessary by the attorney general and subject to the conditions imposed by him or her for effective enforcement of the laws of this state, or as otherwise provided by court order.

(C*)* Conditions for return of material. If any documentary material has been produced by any person in the course of any investigation pursuant to a subpoena under this section and:

(i) Any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed, or

(ii) No case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(j) Judicial proceedings.

(1) *Petition for enforcement.* Whenever any person fails to comply with any subpoena issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the attorney general may file, in the superior court of the county in which such person resides, is found, or transacts business, or the superior court in the he county in which an action filed pursuant to § 9-1.1-4 is pending if the action relates to the subject matter of the subpoena and serve upon such person a petition for an order of such court for the enforcement of the subpoena.

(A) Any person who has received a subpoena issued under subsection (a) may file, in the superior court of any county within which such person resides, is found, or transacts business, and serve upon the attorney general a petition for an order of the court to modify or set aside such subpoena. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the superior court of the county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph (a) must be filed:

(i) Within twenty (20) days after the date of service of the subpoena, or at any time before the return date specified in the subpoena, whichever date is earlier, or

(ii) Within such longer period as may be prescribed in writing by the attorney general.

(B) The petition shall specify each ground upon which the petitioner

relies in seeking relief under subparagraph (a), and may be based upon any failure of the subpoena to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the subpoena, in whole or in part, except that the person filing the petition shall comply with any portion of the subpoena not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery. In the case of any subpoena issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the superior court of the county in which the proceeding in which such discovery was obtained is or was last pending, a petition for an order of such court to modify or set aside those portions of the subpoena requiring production of any such product of discovery, subject to the same terms, conditions, and limitations set forth in subparagraph (j)(2) of this section.

(4) *Jurisdiction.* Whenever any petition is filed in any superior court under this subsection (j), such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(k) *Disclosure exemption.* Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under subsection (a) shall be exempt from disclosure under the Rhode Island access to public records law, § 38-2-2.

§ 9-1.1-7 Procedure. [Effective February 15, 2008.]. – The Rhode Island superior court rules of civil procedure shall apply to all proceedings under this chapter, except when those rules are inconsistent with this Chapter.

§ 9-1.1-8 Funds. [Effective February 15, 2008.]. – There is hereby created a separate fund entitled the false claims act fund. All proceeds of an action or settlement of a claim brought under this chapter shall be deposited in the Fund.

SOUTH CAROLINA

No Act at this time
Effective February, 2008

SOUTH DAKOTA

No Act at this time
Effective February, 2008

TENNESSEE

Tennessee Medicaid False Claims Act

§ 71-5-181

Tennessee Medicaid False Claims Act-Short title.-
(a) The title of this section and §§ 71-5-182-71-5-186 is and may be cited as the "Tennessee Medicaid False Claims Act."

(b) "Medicaid program" as used in §§ 71-5-182-71-5-186 includes the TennCare program and any successor program to the Medicaid program.

§ 71-5-182 Violations-Damages-Definitions. **(1)** Any person who:

(A) Presents, or causes to be presented, to the state of Tennessee a claim for payment under the Medicaid program knowing such claim is false or fraudulent;

(B) Makes, uses, or causes to be made or used, a record or statement to get a false or fraudulent claim under the Medicaid program paid for or approved by the state knowing such record or statement is false;

(C) Conspires to defraud the state by getting a claim allowed or paid under the Medicaid program knowing such claim is false or fraudulent; or

(D) Makes, uses, or causes to be made or used, a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, relative to the Medicaid program, knowing such record or statement is false; is liable to the state for a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000), plus three (3) times the amount of damages which the state sustains because of the act of that person.

(2) However, if the court finds that:

(A) The person committing the violation of this subsection furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

(B) Such person fully cooperated with any state investigation of such violation; and

(C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under §§ 71-5-181-71-5-186 with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation; the court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person. A person violating this subsection shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

(b) For purposes of this section, "knowing" and "knowingly" mean that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

§ 71-5-183 Civil actions-Employee remedies. **(1)** A person may bring a civil action for a violation of § 71-5-182 for the person and for the state of Tennessee. The action shall be brought in the name of the state of Tennessee. The action may be dismissed only if the court and the attorney general and reporter or district attorney general gives written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (a)(2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the sixty (60) day period or any extensions obtained under subdivision (a)(3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(b) (1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subdivision (b)(2).

(2) (A) The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation such as:

(i) Limiting the number of witnesses the person may call;

(ii) Limiting the length of the testimony of such witnesses; or

(iii) Limiting the person's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the state's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (a), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceedings as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a

finding or conclusion is final if it has been finally determined on appeal to the appropriate court of jurisdiction, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(c) (1) If the state proceeds with an action brought by a person under subsection (a), a person shall, subject to the second sentence of this paragraph, receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, report, audit, investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this subdivision shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 71-5-182 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under subdivision (c)(1) or (2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from such person's role in the violation of § 71-5-181, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing

the action conducts the action, the court shall award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(d) (1) In no event may a person bring an action under subsection (a) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(2) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, audit, investigation, or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision (2), "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 state before filing an action under this section which is based on the information.

(e) The state is not liable for expenses which a person incurs in bringing an action under this section.

(f) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by such 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 section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, 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, two (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 for the relief provided in this subsection.

§ 71-5-184 Service-Limitations.-**(a)** A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 71-5-183 may be served at any place in the United States.

(b) A civil action under § 71-5-183 may not be brought:

(1) More than six (6) years after the date on which the violation of § 71-5-1 82 is committed, or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the

circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under § 71-5-183, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, the Rules of Criminal Procedure, or the Rules of Evidence, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) or § 71-5-183.

§ 71-5-185 Venue.-Any action under § 71-5-183 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one (1) defendant can be found, resides, transacts business, or in which any act proscribed by § 71-5-182 occurred. A summons as required by the Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

§ 71-5-186 False claims.-**(a)** It is an offense if any person makes or presents to any person or department or agency of the state, any claim upon or against the state, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent.

(b) A violation of this section is punishable as theft and graded pursuant to § 39-14-105.

Tennessee False Claims Act

§ 4-18-101. Short title

This chapter shall be known and may be cited as the "False Claims Act."

§ 4-18-102. Definitions

For purposes of this chapter:

(1) "Claim" means any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state, referred to in this chapter as "state funds" or by any political

subdivision thereof, referred to in this chapter as "political subdivision funds";

(2) "Knowing" and "knowingly" mean that a person, with respect to information, does any of the following:

(A) Has actual knowledge of the information;

(B) Acts in deliberate ignorance of the truth or falsity of the information; or

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

Proof of specific intent to defraud is not required;

(3) "Person" means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust;

(4) "Political subdivision" means any city, town, municipality, county, including any county having a metropolitan form of government, or other legally authorized local governmental entity with jurisdictional boundaries; and

(5) "Prosecuting authority" means the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision.

§ 4-18-103. Liability; penalties; damages

(a) Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three (3) times the amount of damages that the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the state or political subdivision for a civil penalty of not less than two thousand five hundred dollars ($2,500) and not more than ten thousand dollars ($10,000) for each false claim:

(1) Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false 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 claim paid or approved by the state or by any political subdivision;

(3) Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision;

(4) Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

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

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

(7) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or to any political subdivision;

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

(9) Knowingly makes, uses, or causes to be made or used any false or fraudulent conduct, representation, or practice in order to procure anything of value directly or indirectly from the state or any political subdivision.

(b) Notwithstanding subsection (a), the court may assess not less than two **(2)** times nor more than three (3) times the amount of damages that the state or the political subdivision sustains because of the act of the person described in that subsection, and no civil penalty, if the court finds all of the following:

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

(2) The person fully cooperated with any investigation by the state or a political subdivision of the violation; and

(3) At the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the

violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability under this section shall be joint and several for any act committed by two (2) or more persons.

(d) This section does not apply to any controversy involving an amount of less than five hundred dollars ($500) in value. For purposes of this subsection (d), "controversy" means any one (1) or more false claims submitted by the same person in violation of this chapter.

(e) This section does not apply to claims, records, or statements made pursuant to workers' compensation claims.

(f) This section does not apply to claims, records, or statements made under any statute applicable to any tax administered by the department of revenue.

§ 4-18-104. Investigation; civil actions; intervention; complaint and response; extensions; jurisdiction; qui tam plaintiff; distribution of proceeds; discovery; False Claims Act Fund

(a)(1) The attorney general and reporter shall diligently investigate violations under § 4-18-103 involving state funds. If the attorney general and reporter finds that a person has violated or is violating § 4-18-103, the attorney general and reporter may bring a civil action under this section against that person.

(2) If the attorney general and reporter brings a civil action under this subsection (a) on a claim involving political subdivision funds as well as state funds, the attorney general and reporter shall, on the same date that the complaint is filed in this action, serve by mail with "return receipt requested" a copy of the complaint on the appropriate prosecuting authority.

(3) The prosecuting authority shall have the right to intervene in an action brought by the attorney general and reporter under this subsection (a) within sixty (60) days after receipt of the complaint pursuant to subdivision (a)(2). The court may permit intervention thereafter.

(b)(1) The prosecuting authority of a political subdivision shall diligently investigate violations under § 4-18-103 involving political subdivision funds. If the prosecuting authority finds that a person has violated or is violating § 4-18-103, the prosecuting authority may bring a civil action under this section against that person.

(2) If the prosecuting authority brings a civil action under this section on a claim involving state funds as well as political subdivision funds, the prosecuting authority shall, on the same date that the complaint is filed in

this action, serve a copy of the complaint on the attorney general and reporter.

(3) Within sixty (60) days after receiving the complaint pursuant to subdivision (b)(2), the attorney general and reporter shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the attorney general and reporter shall assume primary responsibility for conducting the action and the prosecuting authority shall have the right to continue as a party; or

(B) Notify the court that it declines to proceed with the action, in which case the prosecuting authority shall have the right to conduct the action.

(c)(1) A person may bring a civil action for a violation of this chapter for the person and either for the state of Tennessee in the name of the state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are involved, or for both the state and political subdivision if state and political subdivision funds are involved. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this chapter.

(2) A complaint filed by a private person under this subsection (c) shall be filed in circuit or chancery court in camera and may remain under seal for up to sixty (60) days. No service shall be made on the defendant until after the complaint is unsealed. This subsection (c) shall not be construed as prohibiting an action being brought in federal court that involves claims from several states or claims involving federal funds.

(3) On the same day as the complaint is filed pursuant to subdivision (c)(2), the qui tam plaintiff shall serve by mail with "return receipt requested" the attorney general and reporter with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve state funds but not political subdivision funds, the attorney general and reporter may elect to intervene and proceed with the action.

(5) The attorney general and reporter may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to subdivision (c)(2). The motion may be supported by affidavits or other submissions in camera.

(6) Before the expiration of the sixty-day period or any extensions obtained under subdivision (c)(5), the attorney general and reporter shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the attorney general and reporter and the seal shall be lifted; or

(B) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(7)(A) Within fifteen (15) days after receiving a complaint alleging violations that exclusively involve political subdivision funds, the attorney general and reporter shall forward copies of the complaint and written disclosure of material evidence and information to the appropriate prosecuting authority for disposition, and shall notify the qui tam plaintiff of the transfer.

(B) Within forty-five (45) days after the attorney general and reporter forwards the complaint and written disclosure pursuant to subdivision (c)(7)(A), the prosecuting authority may elect to intervene and proceed with the action.

(C) The prosecuting authority may, for good cause shown, move for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the forty-five-day period or any extensions obtained under subdivision (c)(7)(C), the prosecuting authority shall do either of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the prosecuting authority and the seal shall be lifted; or

(ii) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(8)(A) Within fifteen (15) days after receiving a complaint alleging violations that involve both state and political subdivision funds, the attorney general and reporter shall forward copies of the complaint and written disclosure to the appropriate prosecuting authority, and shall coordinate its review and investigation with those of the prosecuting authority.

(B) Within sixty (60) days after receiving a complaint and written

disclosure of material evidence and information alleging violations that involve both state and political subdivision funds, the attorney general and reporter or the prosecuting authority, or both, may elect to intervene and proceed with the action.

(C) The attorney general and reporter or the prosecuting authority, or both, may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (c)(2). The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the sixty-day period or any extensions obtained under subdivision (c)(8)(C), the attorney general and reporter shall do one of the following:

(i) Notify the court that, it intends to proceed with the action, in which case the action shall be conducted by the attorney general and reporter and the seal shall be lifted;

(ii) Notify the court that it declines to proceed with the action but that the prosecuting authority of the political subdivision involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the prosecuting authority; or

(iii) Notify the court that both it and the prosecuting authority decline to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(E) If the attorney general and reporter proceeds with the action pursuant to subdivision (c)(8)(D)(i) the prosecuting authority of the political subdivision shall be permitted to intervene in the action within sixty (60) days after the attorney general and reporter notifies the court of its intentions. The court may authorize intervention thereafter.

(9) The defendant shall not be required to respond to any complaint filed under this section until thirty (30) days after the complaint is unsealed and served upon the defendant.

(10) When a person brings an action under this subsection (c), no other person may bring a related action based on the facts underlying the pending action.

(d)(1) No court shall have jurisdiction over an action brought under subsection (c) against a member of the general assembly, a member of the state judiciary, an elected official in the executive branch of the state, or a member of the governing body or other elected official of any political subdivision if the action is based on evidence or information known to the state or political subdivision when the action was brought.

(2) A person may not bring an action under subsection (c) that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the state or political subdivision is already a party.

(3)(A) No court shall have jurisdiction over an action under this chapter based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing, or audit conducted by or at the request of the general assembly, comptroller of the treasury, or governing body of a political subdivision, or by the news media, unless the action is brought by the attorney general and reporter or the prosecuting authority of a political subdivision or the person bringing the action is an original source of the information.

(B) For purposes of subdivision (d)(3)(A), "original source" means an individual, who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the state or political subdivision before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure as described in subdivision (d)(3)(A).

(4) No court shall have jurisdiction over an action brought under subsection (c) based upon information discovered by a present or former employee of the state or a political subdivision during the course of such person's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the state or political subdivision failed to act on the information provided within a reasonable period of time.

(e)(1) If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

(2)(A) The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state or political subdivision may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(f)(1) If the state or political subdivision elects not to proceed, the qui

tam plaintiff shall have the same right to conduct the action as the attorney general and reporter or prosecuting authority would have had if it had chosen to proceed under subsection (c). If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2)(A) Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the state or political subdivision is allowed to intervene under subdivision (f)(2)(A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

(g)(1)(A) If the attorney general and reporter initiates an action pursuant to subsection (a) or assumes control of an action initiated by a prosecuting authority pursuant to subdivision (b)(3)(A), the office of the attorney general and reporter shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(B) If a prosecuting authority initiates and conducts an action pursuant to subsection (b), the office of the prosecuting authority shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(C) If a prosecuting authority intervenes in an action initiated by the attorney general and reporter pursuant to subdivision (a)(3) or remains a party to an action assumed by the attorney general and reporter pursuant to subdivision (b)(3)(A), the court may award the office of the prosecuting authority a portion of the attorney general and reporter's fixed thirty-three percent (33%) of the recovery under subdivision (g)(1)(A), taking into account the prosecuting authority's role in investigating and conducting the action.

(2) If the state or political subdivision proceeds with an action brought by a qui tam plaintiff under subsection (c), the qui tam plaintiff shall, subject to subdivisions (g)(4) and (5), receive at least twenty-five percent (25%) but not more than thirty-three percent (33%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action, the attorney general and reporter's

office or the office of the prosecuting authority of the political subdivision shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims made against the state or political subdivision. When both the attorney general and reporter and a prosecuting authority are involved in a qui tam action pursuant to subdivision (c)(6)(C), the court at its discretion may award the prosecuting authority a portion of the attorney general and reporter's fixed thirty-three percent (33%) of the recovery, taking into account the prosecuting authority's contribution to investigating and conducting the action.

(3) If the state or political subdivision does not proceed with an action under subsection (c), the qui tam plaintiff shall, subject to subdivisions (g)(4) and (5), receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government. The amount shall be not less than thirty-five percent (35%) and not more than fifty percent (50%) of the proceeds of the action or settlement and shall be paid out of these proceeds.

(4) If the action is one provided for under subdivision (d)(4), the present or former employee of the state or political subdivision is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff those sums from the proceeds as it considers appropriate, but in no case more than thirty-three percent (33%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

(5) If the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff any sums from the proceeds it considers appropriate, but in no case more than thirty-three percent (33%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

(6) The portion of the recovery not distributed pursuant to subdivisions (g)(1)-(5), inclusive, shall revert to the state if the underlying false claims

involved state funds exclusively and to the political subdivision if the underlying false claims involved political subdivision funds exclusively. If the violation involved both state and political subdivision funds, the court shall make an apportionment between the state and political subdivision based on their relative share of the funds falsely claimed.

(7) For purposes of this section, "proceeds" include civil penalties as well as double or treble damages as provided in § 4-18-103.

(8) If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subsection (c), the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

(9) If the state, a political subdivision, or the qui tam plaintiff proceeds with the action, the court may award to the defendant its reasonable attorney's fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought solely for purposes of harassment.

(h)(1) The court may stay an act of discovery of the person initiating the action for a period of not more than sixty (60) days if the attorney general and reporter or local prosecuting authority shows that the act of discovery would interfere with an investigation or a prosecution of criminal or civil matter arising out of the same facts, regardless of whether the attorney general and reporter or local prosecuting authority proceeds with the action. This showing shall be conducted in camera.

(2) The court may extend the sixty-day period upon a further showing in camera that the attorney general and reporter or local prosecuting authority has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(i) Upon a showing by the attorney general and reporter or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the attorney general and reporter's or local prosecuting authority's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

(1) Limiting the number of witnesses the person may call;

(2) Limiting the length of the testimony of the witnesses;

(3) Limiting the person's cross-examination of witnesses; or

(4) Otherwise limiting the participation by the person in the litigation.

(j) There is hereby created in the state treasury a fund to be known as the "False Claims Act Fund." Proceeds from the action or settlement of the claim by the attorney general and reporter pursuant to this chapter shall be deposited into this fund. Moneys in this fund, upon appropriation by the general assembly, shall be used by the attorney general and reporter to support the ongoing investigation and prosecution of false claims in furtherance of this chapter. Amounts in the fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in this chapter.

§ 4-18-105. Whistleblowing; liability; remedies

(a) No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under § 4-18-104.

(b) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under § 4-18-104.

(c) An employer who violates subsection (b) shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate chancery court of the state for the relief provided in this subsection (c).

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in terms and conditions of employment by such person's employer because of participation in conduct that directly or indirectly resulted in the

submission of a false claim to the state or a political subdivision shall be entitled to the remedies under subsection (c) if, and only if, both of the following occur:

(1) The employee voluntarily disclosed information to a government or law enforcement agency or acted in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed; and

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.

§ 4-18-106. Civil actions; essential elements

(a) A civil action under § 4-18-104 may not be filed more than three (3) years after the date of discovery by the official of the state or political subdivision charged with responsibility to act in the circumstances or, in any event, no more than ten (10) years after the date on which the violation of § 4-18-103 was committed.

(b) A civil action under § 4-18-104 may be brought for activity prior to July 1, 2001, if the limitations period set in subsection (a) has not lapsed.

(c) In any action brought under § 4-18-104, the state, the political subdivision, or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law to the contrary, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, except for a plea of nolo contendere made prior to July 1, 2001, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under § 4-18-104(a), (b), or (c).

§ 4-18-107. Remedies; severability; construction

(a) The provisions of this chapter are not exclusive, and the remedies provided for in this chapter shall be in addition to any other remedies provided for by law or available under common law.

(b) If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

(c) The provisions of this chapter are declared to be remedial in nature and the provisions of this chapter shall be liberally construed to effectuate its purposes.

§ 4-18-108. Applicability

This chapter shall not apply to any conduct, activity or claims covered by the Medicaid False Claims Act, §§ 71-5-181 -- 71-5-185, including without limitation, claims arising out of funds paid to or by TennCare managed care organizations.

TEXAS

Texas False Claims Act

§32.039. Damages and Penalties

(a) In this section:

(1) "Claim" means an application for payment of health care services under Title XIX of the federal Social Security Act that is submitted by a person who is under a contract or provider agreement with the department.

(2) "Managed care organization" means any entity or person that is authorized or otherwise permitted by law to arrange for or provide a managed care plan.

(3) "Managed care plan" means a plan under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care service. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(4) A person "should know" or "should have known" information to be false if the person acts in deliberate ignorance of the truth or falsity of the information or in reckless disregard of the truth or falsity of the information, and proof of the person's specific intent to defraud is not required.

(b) A person commits a violation if the person:

(1) presents or causes to be presented to the department a claim that contains a statement or representation the person knows or should know to be false; or

(2) is a managed care organization that contracts with the department to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with the department;

(B) fails to provide to the department information required to be provided by law, department rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that

the organization is required to provide under the contract with the department; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with the department, not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with the department.

(c) A person who commits a violation under Subsection (b) is liable to the department for:

(1) the amount paid, if any, as a result of the violation and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; and

(2) payment of an administrative penalty of an amount not to exceed twice the amount paid, if any, as a result of the violation, plus an amount:

(A) not less than $5,000 or more than $15,000 for each violation that results in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age; or

(B) not more than $10,000 for each violation that does not result in injury to a person described by Paragraph (A).

(d) Unless the provider submitted information to the department for use in preparing a voucher that the provider knew or should have known was false or failed to correct information that the provider knew or should have known was false when provided an opportunity to do so, this section does not apply to a claim based on the voucher if the department calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature. In addition, the provider's signature on the voucher does not constitute fraud. The department shall adopt rules that establish a grace period during which errors contained in a voucher prepared by the department may be corrected without penalty to the provider.

(e) In determining the amount of the penalty to be assessed under Subsection (c)(2), the department shall consider:

(1) the seriousness of the violation;

(2) whether the person had previously committed a violation; and

(3) the amount necessary to deter the person from committing future violations.

(f) If after an examination of the facts the department concludes that the person committed a violation, the department may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty under this section be imposed and recommending the amount of the proposed penalty.

(g) The department shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the

alleged violation, the amount of the penalty, or both the alleged violation and the amount of the penalty.

(h) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice, the person may either give the department written consent to the report, including the recommended penalty, or make a written request for an informal review by the department.

(i) If the person charged with committing the violation consents to the penalty recommended by the department or fails to timely request an informal review, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) If the person charged with committing the violation requests an informal review as provided by Subsection (h), the department shall conduct the review. The department shall give the person written notice of the results of the review.

(k) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (j), the person may make to the department a written request for a hearing. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(l) If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(m) Within 30 days after the date on which the board's order issued after a hearing under Subsection (k) becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(n) A person who acts under Subsection (m)(3) within the 30-day period may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedes bond that is approved by the court

for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(o) If the commissioner receives a copy of an affidavit under Subsection (n)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(p) If the person charged does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may forward the matter to the attorney general for enforcement of the penalty and interest as provided by law for legal judgments. An action to enforce a penalty order under this section must be initiated in a court of competent jurisdiction in Travis County or in the county in which the violation was committed.

(q) Judicial review of a department order or review under this section assessing a penalty is under the substantial evidence rule. A suit may be initiated by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(r) If a penalty is reduced or not assessed, the department shall remit to the person the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the department under this subsection shall be paid at a rate equal to the rate provided by law for legal judgments and shall be paid for the period beginning on the date the penalty is paid to the department under this section and ending on the date the penalty is remitted.

(s) A damage, cost, or penalty collected under this section is not an allowable expense in a claim or cost report that is or could be used to determine a rate or payment under the medical assistance program.

(t) All funds collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(u) A person found liable for a violation under Subsection (c) that resulted in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years. The department by

rule may provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

(v) A person found liable for a violation under Subsection (c) that did not result in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of three years. The department by rule may provide for a period of ineligibility longer than three years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

Added by Acts 1987, 70th Leg., ch. 1052, § 2.04, eff. Sept. 1, 1987.

Amended by Acts 1995, 74th Leg., ch. 76, § 5.95(49), (53), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1153, § 3.01(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 12, §§ 1, 2, eff. Sept. 1, 1999.

CHAPTER 36. MEDICAID FRAUD PREVENTION SUBCHAPTER A. GENERAL PROVISIONS

§ 36.001. Definitions

In this chapter:

(1) "Claim" means a written or electronically submitted request or demand that:

(A) is signed by a provider or a fiscal agent and that identifies a product or service provided or purported to have been provided to a Medicaid recipient as reimbursable under the Medicaid program, without regard to whether the money that is requested or demanded is paid; or

(B) states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under the Medicaid program.

(2) "Documentary material" means a record, document, or other tangible item of any form, including:

(A) a medical document or X ray prepared by a person in relation to the provision or purported provision of a product or service to a Medicaid recipient;

(B) a medical, professional, or business record relating to:

(i) the provision of a product or service to a Medicaid recipient; or

(ii) a rate or amount paid or claimed for a product or service, including a record relating to a product or service provided to a person other than a

Medicaid recipient as needed to verify the rate or amount;

(C) a record required to be kept by an agency that regulates health care providers; or

(D) a record necessary to disclose the extent of services a provider furnishes to Medicaid recipients.

(3) "Fiscal agent" means:

(A) a person who, through a contractual relationship with the Texas Department of Human Services, the Texas Department of Health, or another state agency, receives, processes, and pays a claim under the Medicaid program; or

(B) the designated agent of a person described by Paragraph (A).

(4) "Health care practitioner" means a dentist, podiatrist, psychologist, physical therapist, chiropractor, registered nurse, or other provider licensed to provide health care services in this state.

(5) "Managed care organization" has the meaning assigned by Section 32.039(a).

(6) "Medicaid program" means the state Medicaid program.

(7) "Medicaid recipient" means an individual on whose behalf a person claims or receives a payment from the Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program.

(8) "Physician" means a physician licensed to practice medicine in this state.

(9) "Provider" means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent;

(C) an employee of a provider; and

(D) a managed care organization.

(10) "Service" includes care or treatment of a Medicaid recipient.

(11) "Signed" means to have affixed a signature directly or indirectly by means of handwriting, typewriting, signature stamp, computer impulse, or other means recognized by law.

(12) "Unlawful act" means an act declared to be unlawful under Section 36.002.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1153, § 4.02, eff. Sept. 1, 1997.

§ 36.002. Unlawful Acts

A person commits an unlawful act if the person:

(1) knowingly or intentionally makes or causes to be made a false statement or misrepresentation of a material fact:

(A) on an application for a contract, benefit, or payment under the Medicaid program; or

(B) that is intended to be used to determine a person's eligibility for a benefit or payment under the Medicaid program;

(2) knowingly or intentionally conceals or fails to disclose an event:

(A) that the person knows affects the initial or continued right to a benefit or payment under the Medicaid program of:

(i) the person; or

(ii) another person on whose behalf the person has applied for a benefit or payment or is receiving a benefit or payment; and

(B) to permit a person to receive a benefit or payment that is not authorized or that is greater than the payment or benefit that is authorized;

(3) knowingly or intentionally applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly or intentionally makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an intermediate care facility for the mentally retarded;

(v) an assisted living facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly or intentionally charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or continued service to a Medicaid recipient if the cost of the service

provided to the Medicaid recipient is paid for, in whole or in part, under the Medicaid program;

(6) knowingly or intentionally presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly or intentionally makes a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly or intentionally fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly or intentionally enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent; or

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly or intentionally:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program; or

(D) obstructs an investigation by the attorney general of an alleged unlawful act under this section.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1153, § 4.03, eff. Sept. 1, 1997;

Acts 1999, 76th Leg., ch. 233, § 4, eff. Sept. 1, 1999.

§ 36.003. Documentary Material in Possession of State Agency

(a) A state agency, including the Health and Human Services Commission, the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, or the Department of Protective and Regulatory Services, shall provide the attorney general access to all documentary materials of persons and Medicaid recipients under the Medicaid program to which that agency has access. Documentary material provided under this subsection is provided to permit investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.

(b) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than:

(1) an authorized employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general; or

(5) a state or federal grand jury.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.007 by Acts 1997, 75th Leg., ch. 1153, § 4.01(a) eff. Sept. 1, 1997.

§ 36.004. Immunity

Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material under this chapter to:

(1) an authorized employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general; or

(5) a state or federal grand jury.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.008 by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997.

§ 36.005. Suspension or Revocation of Agreement; Professional Discipline

(a) The commissioner of human services, the commissioner of public health, the commissioner of mental health and mental retardation, the executive director of the Department of Protective and Regulatory Services, or the executive director of another state health care regulatory agency:

(1) shall suspend or revoke:

(A) a provider agreement between the department or agency and a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(B) a permit, license, or certification granted by the department or agency to a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(2) may suspend or revoke:

(A) a provider agreement between the department or agency and a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052; or

(B) a permit, license, or certification granted by the department or agency to a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052.

(b) A person found liable under Section 36.052 for an unlawful act may not provide or arrange to provide health care services under the Medicaid program for a period of 10 years. The board of a state agency that operates part of the Medicaid program may by rule provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

(c) A person licensed by a state regulatory agency who commits an unlawful act is subject to professional discipline under the applicable licensing law or rules adopted under that law.

(d) For purposes of this section, a person is considered to have been found liable under Section 36.052 if the person is found liable in an action brought under Subchapter C.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.009 by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, § 4.06, eff. Sept. 1, 1997.

§ 36.006. Application of Other Law

The application of a civil remedy under this chapter does not preclude the application of another common law, statutory, or regulatory remedy, except that a person may not be liable for a civil remedy under this chapter and civil damages or a penalty under Section 32.039 if the civil remedy and civil damages or penalty are assessed for the same act.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995.

Renumbered from V.T.C.A., Human Resources Code § 36.010 by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997.

§ 36.007. Recovery of Costs, Fees, and Expenses

The attorney general may recover fees, expenses, and costs reasonably incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, reasonable attorney's fees, witness fees, and deposition fees.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.011 by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997.

§ 36.008. Use of Money Recovered

The legislature, in appropriating money recovered under this chapter, shall consider the requirements of the attorney general and other affected state agencies in investigating Medicaid fraud and enforcing this chapter.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.012 by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997.

SUBCHAPTER B. ACTION BY ATTORNEY GENERAL

§ 36.051. Injunctive Relief

(a) If the attorney general has reason to believe that a person is committing, has committed, or is about to commit an unlawful act, the attorney general may institute an action for an appropriate order to restrain the person from committing or continuing to commit the act.

(b) An action under this section shall be brought in a district court of Travis County or of a county in which any part of the unlawful act occurred, is occurring, or is about to occur.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.003 by Acts 1997, 75th Leg., ch. 1153, § 4.01(b), eff. Sept. 1, 1997.

§ 36.052. Civil Remedies

(a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) restitution of the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act;

(2) interest on the value of the payment or benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the

benefit was received or paid to the date that restitution is paid to the state;

(3) a civil penalty of:

(A) not less than $5,000 or more than $15,000 for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age; or

(B) not less than $1,000 or more than $10,000 for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the value of the payment or benefit described by Subdivision (1).

(b) In determining the amount of the civil penalty described by Subsection (a)(3), the trier of fact shall consider:

(1) whether the person has previously violated the provisions of this chapter;

(2) the seriousness of the unlawful act committed by the person, including the nature, circumstances, extent, and gravity of the unlawful act;

(3) whether the health and safety of the public or an individual was threatened by the unlawful act;

(4) whether the person acted in bad faith when the person engaged in the conduct that formed the basis of the unlawful act; and

(5) the amount necessary to deter future unlawful acts.

(c) The trier of fact may assess a total of not more than two times the value of a payment or benefit described by Subsection (a)(1) if the trier of fact finds that:

(1) the person furnished the attorney general with all information known to the person about the unlawful act not later than the 30th day after the date on which the person first obtained the information; and

(2) at the time the person furnished all the information to the attorney general, the attorney general had not yet begun an investigation under this chapter.

(d) An action under this section shall be brought in Travis County or in a county in which any part of the unlawful act occurred.

(e) The attorney general may:

(1) bring an action for civil remedies under this section together with a suit for injunctive relief under Section 36.051; or

(2) institute an action for civil remedies independently of an action for injunctive relief.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.004 by Acts

1997, 75th Leg., ch. 1153, § 4.01(b), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, § 4.04, eff. Sept. 1, 1997.

§ 36.053. Investigation

(a) The attorney general may take action under Subsection (b) if the attorney general has reason to believe that:

(1) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged unlawful act;

(2) a person is committing, has committed, or is about to commit an unlawful act; or

(3) it is in the public interest to conduct an investigation to ascertain whether a person is committing, has committed, or is about to commit an unlawful act.

(b) In investigating an unlawful act, the attorney general may:

(1) require the person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general;

(2) examine under oath a person in connection with the alleged unlawful act; and

(3) execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material under Section 36.054.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.005 by Acts 1997, 75th Leg., ch. 1153, § 4.01(b), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, § 4.05, eff. Sept. 1, 1997.

§ 36.054. Civil Investigative Demand

(a) An investigative demand must:

(1) state the rule or statute under which the alleged unlawful act is being investigated and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(b) A civil investigative demand may require disclosure of any

documentary material that is discoverable under the Texas Rules of Civil Procedure.

(c) Service of an investigative demand may be made by:

(1) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served at the person's principal place of business in this state or, if the person has no place of business in this state, to a person's principal office or place of business.

(d) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.

(e) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than an authorized employee of the attorney general without the consent of the person who produced the documentary material. The attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person. The attorney general may use the documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(f) A person may file a petition, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A petition under this section shall be filed in a district court of Travis County and must be filed before the earlier of:

(1) the return date specified in the demand; or

(2) the 20th day after the date the demand is served.

(g) Except as provided by court order, a person on whom a demand has been served under this section shall comply with the terms of an investigative demand.

(h) A person who has committed an unlawful act in relation to the Medicaid program in this state has submitted to the jurisdiction of this state and personal service of an investigative demand under this section may be made on the person outside of this state.

(i) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Texas Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(j) If a person fails to comply with an investigative demand, or if copying and reproduction of the documentary material demanded cannot be satisfactorily accomplished and the person refuses to surrender the documentary material, the attorney general may file in a district court of Travis County a petition for an order to enforce the investigative demand.

(k) If a petition is filed under Subsection (j), the court may determine the matter presented and may enter an order to implement this section.

(l) Failure to comply with a final order entered under Subsection (k) is punishable by contempt.

(m) A final order issued by a district court under Subsection (k) is subject to appeal to the Supreme Court.

Added by Acts 1995, 74th Leg., ch. 824, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code § 36.006 by Acts 1997, 75th Leg., ch. 1153, § 4.01(b), eff. Sept. 1, 1997.

§ 36.055. Attorney General as Relator in Federal Action

To the extent permitted by 31 U.S.C. Sections 3729–3733, the attorney general may bring an action as relator under 31 U.S.C. Section 3730 with respect to an act in connection with the Medicaid program for which a person may be held liable under 31 U.S.C. Section 3729. The attorney general may contract with a private attorney to represent the state under this section.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.07(a), eff. Sept. 1, 1997.

SUBCHAPTER C. ACTION BY PRIVATE PERSONS

§ 36.101. Action by Private Person Authorized

(a) A person may bring a civil action for a violation of Section 36.002 for the person and for the state. The action shall be brought in the name of the person and of the state.

(b) In an action brought under this subchapter, a person who violates Section 36.002 is liable as provided by Section 36.052.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.102. Initiation of Action

(a) A person bringing an action under this subchapter shall serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure.

(b) The petition shall be filed in camera and shall remain under seal until at least the 60th day after the date the petition is filed. The petition may not be served on the defendant until the court orders service on the defendant.

(c) The state may elect to intervene and proceed with the action not later

than the 60th day after the date the attorney general receives the petition and the material evidence and information.

(d) The state may, for good cause shown, move the court to extend the time during which the petition remains under seal under Subsection (b). A motion under this subsection may be supported by affidavits or other submissions in camera.

(e) An action under this subchapter may be dismissed before the end of the period prescribed by Subsection (b), as extended as provided by Subsection (d), if applicable, only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.103. Answer by Defendant

A defendant is not required to file an answer to a petition filed under this subchapter until the 20th day after the date the petition is unsealed and served on the defendant in compliance with the Texas Rules of Civil Procedure.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.104. Continuation or Dismissal of Action Based on State Decision

(a) Not later than the last day of the period prescribed by Section 36.102(c), the state shall:

(1) proceed with the action; or

(2) notify the court that the state declines to take over the action.

(b) If the state declines to take over the action, the court shall dismiss the action.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.105. Representation of State by Private Attorney

The attorney general may contract with a private attorney to represent the state in an action under this subchapter with which the state elects to proceed.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.106. Intervention by Other Parties Prohibited

A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.107. Rights of Parties if State Continues Action

(a) If the state proceeds with the action, the state has the primary

responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations set forth by this section.

(b) The state may dismiss the action notwithstanding the objections of the person bringing the action if:

(1) the attorney general notifies the person that the state has filed a motion to dismiss; and

(2) the court provides the person with an opportunity for a hearing on the motion.

(c) The state may settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. On a showing of good cause, the hearing may be held in camera.

(d) On a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

(1) limiting the number of witnesses the person may call;

(2) limiting the length of the testimony of witnesses called by the person;

(3) limiting the person's cross-examination of witnesses; or

(4) otherwise limiting the participation by the person in the litigation.

(e) On a showing by the defendant that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.108. Stay of Certain Discovery

(a) On a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period not to exceed 60 days.

(b) The court shall hear a motion to stay discovery under this section in camera.

(c) The court may extend the period prescribed by Subsection (a) on a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing

criminal or civil investigation or proceedings.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.109. Pursuit of Alternate Remedy by State

(a) Notwithstanding Section 36.101, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter.

(b) A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this subchapter. For purposes of this subsection, a finding or conclusion is final if:

(1) the finding or conclusion has been finally determined on appeal to the appropriate court;

(2) no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired; or

(3) the finding or conclusion is not subject to judicial review.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.110. Award to Private Plaintiff

(a) If the state proceeds with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 10 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action.

(b) If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the amount the court considers appropriate but not more than seven percent of the proceeds of the action. The court shall consider the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c)A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. Expenses, fees, and costs shall be awarded against the defendant.

(d) In this section, "proceeds of the action" includes proceeds of a settlement of the action.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.111. Reduction of Award

(a) If the court finds that the action was brought by a person who planned and initiated the violation of Section 36.002 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive under Section 36.110, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(b) If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of Section 36.002, the court shall dismiss the person from the civil action and the person may not receive any share of the proceeds of the action. A dismissal under this subsection does not prejudice the right of the state to continue the action.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.112. Award to Defendant for Frivolous Action

Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which the state proceeds.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.113. Certain Actions Barred

(a) A person may not bring an action under this subchapter that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

(b) A person may not bring an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In 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 state before filing an action under this subchapter that is based on the information.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.114. State Not Liable for Certain Expenses

The state is not liable for expenses that a person incurs in bringing an action under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.115. Retaliation by Employer Against Person Bringing Suit Prohibited

(a) A person who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms of employment by the person's employer because of a lawful act taken by the person in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, is entitled to:

(1) reinstatement with the same seniority status the person would have had but for the discrimination; and

(2) not less than two 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 attorney's fees.

(b) A person may bring an action in the appropriate district court for the relief provided in this section.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.116. Sovereign Immunity Not Waived

Except as provided by Section 36.112, this subchapter does not waive sovereign immunity.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

§ 36.117. Attorney General Compensation

The office of the attorney general may retain a reasonable portion of recoveries under this subchapter, not to exceed amounts specified in the General Appropriations Act, for the administration of this subchapter.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.08, eff. Sept. 1, 1997.

SUBCHAPTER D. CRIMINAL PENALTIES AND REVOCATION OF CERTAIN OCCUPATIONAL LICENSES

§ 36.131. Criminal Offense

(a) A person commits an offense if the person commits an unlawful act under Section 36.002.

(b) An offense under this section is:

(1) a Class C misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is less than $50;

(2) a Class B misdemeanor if the value of any payment or monetary or

in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $50 or more but less than $500;

(3) a Class A misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $500 or more but less than $1,500;

(4) a state jail felony if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $1,500 or more but less than $20,000;

(5) a felony of the third degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $20,000 or more but less than $100,000;

(6) a felony of the second degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $100,000 or more but less than $200,000; or

(7) a felony of the first degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $200,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code, the actor may be prosecuted under either this section or the other provision.

(d) When multiple payments or monetary or in-kind benefits are provided under the Medicaid program as a result of one scheme or continuing course of conduct, the conduct may be considered as one offense and the amounts of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.09, eff. Sept. 1, 1997.

§ 36.132. Revocation of Licenses

(a) In this section:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and

(C) must be obtained before a person may practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means:

(A) the Texas State Board of Medical Examiners;

(B) the State Board of Dental Examiners;

(C) the Texas State Board of Examiners of Psychologists;

(D) the Texas State Board of Social Worker Examiners;

(E) the Board of Nurse Examiners;

(F) the Board of Vocational Nurse Examiners;

(G) the Texas Board of Physical Therapy Examiners;

(H) the Texas Board of Occupational Therapy Examiners; or

(I) another state agency authorized to regulate a provider who receives or is eligible to receive payment for a health care service under the Medicaid program.

(b) A licensing authority shall revoke a license issued by the authority to a person if the person is convicted of a felony under Section 36.131. In revoking the license, the licensing authority shall comply with all procedures generally applicable to the licensing authority in revoking licenses.

Added by Acts 1997, 75th Leg., ch. 1153, § 4.09, eff. Sept. 1, 1997.

TEXAS GOVERNMENT CODE

CHAPTER 531. HEALTH AND HUMAN SERVICES COMMISSION

SUBCHAPTER C. MEDICAID AND OTHER WELFARE FRAUD, ABUSE, OR OVERCHARGES

§ 531.101. Award for Reporting Medicaid Fraud, Abuse, or Overcharges

(a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program if the commission determines that the disclosure results in the recovery of an overcharge or in the termination of the fraudulent activity or abuse of funds.

(b) The commission shall determine the amount of an award. The award must be equal to not less than 10 percent of the savings to this state that result from the individual's disclosure. In determining the amount of the award, the commission shall consider how important the disclosure is in ensuring the fiscal integrity of the program.

(c) An award under this section is subject to appropriation. The award must be paid from money appropriated to or otherwise available to the commission, and additional money may not be appropriated to the commission for the purpose of paying the award.

(d) Payment of an award under this section from federal funds is subject to the permissible use under federal law of funds for this purpose.

(e) A person who brings an action under Subchapter C, Chapter 36, Human Resources Code, is not eligible for an award under this section.

Added by Acts 1997, 75th Leg., ch. 165, § 14.16, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1153, § 1.06(a), eff. Sept. 1, 1997.

§ 531.102. Investigations and Enforcement Office

(a) The commission, through the commission's office of investigations and enforcement, is responsible for the investigation of fraud in the provision of health and human services and the enforcement of state law relating to the provision of those services.

(b) The commission shall set clear objectives, priorities, and performance standards for the office that emphasize:

(1) coordinating investigative efforts to aggressively recover money;

(2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and

(3) maximizing opportunities for referral of cases to the office of the attorney general.

(c) The commission shall train office staff to enable the staff to pursue priority Medicaid and welfare fraud and abuse cases as necessary.

(d) The commission may require employees of health and human services agencies to provide assistance to the commission in connection with the commission's duties relating to the investigation of fraud in the provision of health and human services.

(e) The commission by rule shall set specific claims criteria that, when met, require the office to begin an investigation.

Added by Acts 1997, 75th Leg., ch. 1153, § 1.06(a), eff. June 20, 1997.

Amended by Acts 1999, 76th Leg., ch. 1289, § 3, eff. Sept. 1, 1999.

§ 531.103. Interagency Coordination

(a) The commission and the office of the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse under the state Medicaid program. The memorandum of understanding shall require:

(1) the commission and the office of the attorney general to set priorities and guidelines for referring cases to appropriate state agencies for investigation to enhance deterrence of fraud, waste, or abuse in the program and maximize the imposition of penalties, the recovery of money, and the successful prosecution of cases;

(2) the commission to keep detailed records for cases processed by the commission or the office of the attorney general, including information on the total number of cases processed and, for each case:

(A) the agency and division to which the case is referred for investigation;

(B) the date on which the case is referred; and

(C) the nature of the suspected fraud, waste, or abuse;

(3) the commission to notify each appropriate division of the office of the attorney general of each case referred by the commission;

(4) the office of the attorney general to ensure that information relating to each case investigated by that office is available to each division of the office with responsibility for investigating suspected fraud, waste, or abuse;

(5) the office of the attorney general to notify the commission of each case the attorney general declines to prosecute or prosecutes unsuccessfully;

(6) representatives of the commission and of the office of the attorney general to meet not less than quarterly to share case information and determine the appropriate agency and division to investigate each case; and

(7) the commission and the office of the attorney general to submit information requested by the comptroller about each resolved case for the comptroller's use in improving fraud detection.

(b) An exchange of information under this section between the office of the attorney general and the commission or a health and human services agency does not affect whether the information is subject to disclosure under Chapter 552.

(c) The commission and the office of the attorney general shall jointly prepare and submit a semiannual report to the governor, lieutenant governor, and speaker of the house of representatives concerning the activities of those agencies in detecting and preventing fraud, waste, and abuse under the state Medicaid program. The report may be consolidated with any other report
relating to the same subject matter the commission or office of the attorney general is required to submit under other law.

(d) The commission and the office of the attorney general may not assess or collect investigation and attorney's fees on behalf of any state agency unless the office of the attorney general or other state agency collects a penalty, restitution, or other reimbursement payment to the state.

(e) The commission shall refer a case of suspected fraud, waste, or abuse under the state Medicaid program to the appropriate district attorney, county attorney, city attorney, or private collection agency if the attorney general fails to act within 30 days of referral of the case to the office of the attorney general. A failure by the attorney general to act within 30 days constitutes approval by the attorney general under Section 2107.003.

(f) The district attorney, county attorney, city attorney, or private collection agency may collect and retain costs associated with the case and 20 percent of the amount of the penalty, restitution, or other

reimbursement payment collected.

Added by Acts 1997, 75th Leg., ch. 1153, § 1.06(a), eff. Sept. 1, 1997.

§ 531.104. Assisting Investigations by Attorney General

(a) The commission and the attorney general shall execute a memorandum of understanding under which the commission shall provide investigative support as required to the attorney general in connection with cases under Subchapter B, Chapter 36, Human Resources Code. Under the memorandum of understanding, the commission shall assist in performing preliminary investigations and ongoing investigations for actions prosecuted by the attorney general under Subchapter C, Chapter 36, Human Resources Code.

(b) The memorandum of understanding must provide that the commission is not required to provide investigative support in more than 100 open investigations in a fiscal year.

Added by Acts 1997, 75th Leg., ch. 1153, § 1.06(a), eff. Sept. 1, 1997.

§ 531.105. Fraud Detection Training

(a) The commission shall develop and implement a program to provide annual training to contractors who process Medicaid claims and appropriate staff of the Texas Department of Health and the Texas Department of Human Services in identifying potential cases of fraud, waste, or abuse under the state Medicaid program. The training provided to the contractors and staff must include clear criteria that specify:

(1) the circumstances under which a person should refer a potential case to the commission; and

(2) the time by which a referral should be made.

(b) The Texas Department of Health and the Texas Department of Human Services, in cooperation with the commission, shall periodically set a goal of the number of potential cases of fraud, waste, or abuse under the state Medicaid program that each agency will attempt to identify and refer to the commission. The commission shall include information on the agencies' goals and the success of each agency in meeting the agency's goal in the report required by Section 531.103(c).

Added by Acts 1997, 75th Leg., ch. 1153, § 1.06(a), eff. Sept. 1, 1997.

§ 531.106. Learning or Neural Network Technology

(a) The commission shall use learning or neural network technology to identify and deter fraud in the Medicaid program throughout this state.

(b) The commission shall contract with a private or public entity to develop and implement the technology. The commission may require the entity it contracts with to install and operate the technology at locations specified by the commission, including commission offices.

(c) The data used for neural network processing shall be maintained as an independent subset for security purposes.

(d) The commission shall require each health and human services agency that performs any aspect of the state Medicaid program to participate in the implementation and use of the technology.

(e) The commission shall maintain all information necessary to apply the technology to claims data covering a period of at least two years.

(f) The commission shall refer cases identified by the technology to the commission's office of investigations and enforcement or the office of the attorney general, as appropriate.

(g) Each month, the learning or neural network technology implemented under this section must match bureau of vital statistics death records with Medicaid claims filed by a provider. If the commission determines that a provider has filed a claim for services provided to a person after the person's date of death, as determined by the bureau of vital statistics death records, the commission shall refer the case for investigation to the commission's office of investigations and enforcement.

Added by Acts 1997, 75th Leg., ch. 1153, § 1.06(a), eff. June 20, 1997.

Amended by Acts 1999, 76th Leg., ch. 215, § 2, eff. Sept. 1, 1999.

§ 531.1061. Fraud Investigation Tracking System

(a) The commission shall use an automated fraud investigation tracking system through the commission's office of investigations and enforcement to monitor the progress of an investigation of suspected fraud, abuse, or insufficient quality of care under the state Medicaid program.

(b) For each case of suspected fraud, abuse, or insufficient quality of care identified by the learning or neural network technology required under Section 531.106, the automated fraud investigation tracking system must:

(1) receive electronically transferred records relating to the identified case from the learning or neural network technology;

(2) record the details and monitor the status of an investigation of the identified case, including maintaining a record of the beginning and completion dates for each phase of the case investigation;

(3) generate documents and reports related to the status of the case investigation; and

(4) generate standard letters to a provider regarding the status or outcome of an investigation.

(c) The commission shall require each health and human services agency that performs any aspect of the state Medicaid program to participate in the implementation and use of the automated fraud investigation tracking system.

Added by Acts 1999, 76th Leg., ch. 206, § 1, eff. Sept. 1, 1999.

§ 531.1062. Recovery Monitoring System

(a) The commission shall use an automated recovery monitoring system to monitor the collections process for a settled case of fraud, abuse, or insufficient quality of care under the state Medicaid program.

(b) The recovery monitoring system must:

(1) monitor the collection of funds resulting from settled cases, including:

(A) recording monetary payments received from a provider who has agreed to a monetary payment plan; and

(B) recording deductions taken through the recoupment program from subsequent Medicaid claims filed by the provider; and

(2) provide immediate notice of a provider who has agreed to a monetary payment plan or to deductions through the recoupment program from subsequent Medicaid claims who fails to comply with the settlement agreement, including providing notice of a provider who does not make a scheduled payment or who pays less than the scheduled amount.

Added by Acts 1999, 76th Leg., ch. 206, § 1, eff. Sept. 1, 1999.

§ 531.107. Medicaid and Public Assistance Fraud Oversight Task Force

(a) The Medicaid and Public Assistance Fraud Oversight Task Force advises and assists the commission and the commission's office of investigations and enforcement in improving the efficiency of fraud investigations and collections.

(b) The task force is composed of a representative of the:

(1) attorney general's office, appointed by the attorney general;

(2) comptroller's office, appointed by the comptroller;

(3) Department of Public Safety, appointed by the public safety director;

(4) state auditor's office, appointed by the state auditor;

(5) commission, appointed by the commissioner of health and human services;

(6) Texas Department of Human Services, appointed by the commissioner of human services; and

(7) Texas Department of Insurance, appointed by the commissioner of insurance.

(c) The comptroller or the comptroller's designee serves as the presiding

officer of the task force. The task force may elect any other necessary officers.

(d) The task force shall meet at least once each fiscal quarter at the call of the presiding officer.

(e) The appointing agency is responsible for the expenses of a member's service on the task force. Members of the task force receive no additional compensation for serving on the task force.

(f) At least once each fiscal quarter, the commission's office of investigations and enforcement shall provide to the task force:

(1) information detailing:

(A) the number of fraud referrals made to the office and the origin of each referral;

(B) the time spent investigating each case;

(C) the number of cases investigated each month, by program and region;

(D) the dollar value of each fraud case that results in a criminal conviction; and

(E) the number of cases the office rejects and the reason for rejection, by region; and

(2) any additional information the task force requires.

Added by Acts 1997, 75th Leg., ch. 1153, § 1.06(a), eff. Sept. 1, 1997.

§ 531.108. Fraud Prevention

(a) The commission's office of investigations and enforcement shall compile and disseminate accurate information and statistics relating to:

(1) fraud prevention; and

(2) post-fraud referrals received and accepted or rejected from the commission's case management system or the case management system of a health and human services agency.

(b) The commission shall:

(1) aggressively publicize successful fraud prosecutions and fraud-prevention programs through all available means, including the use of statewide press releases issued in coordination with the Texas Department of Human Services; and

(2) ensure that a toll-free hotline for reporting suspected fraud in programs administered by the commission or a health and human services agency is maintained and promoted, either by the commission or by a health and human services agency.

(c) The commission shall develop a cost-effective method of identifying applicants for public assistance in counties bordering other states and in metropolitan areas selected by the commission who are already receiving benefits in other states. If economically feasible, the commission may

develop a computerized matching system.

(d) The commission shall:

(1) verify automobile information that is used as criteria for eligibility; and

(2) establish a computerized matching system with the Texas Department of Criminal Justice to prevent an incarcerated individual from illegally receiving public assistance benefits administered by the commission.

(e) The commission shall submit to the governor and Legislative Budget Board a semiannual report on the results of computerized matching of commission information with information from neighboring states, if any, and information from the Texas Department of Criminal Justice. The report may be consolidated with any other report relating to the same subject matter the commission is required to submit under other law.

Added by Acts 1997, 75th Leg., ch. 1153, § 1.06(a), eff. Sept. 1, 1997

UTAH

Utah False Claims Act

§ U.C.A. 1953 26-20-1
(Title 26. Utah Health Code)

26-20-1. Short Title.

This chapter shall be known and may be cited as the "False Claims Act." 1981

26-20-2. Definitions.

As used in this chapter:

(1) "Benefit" means the receipt of money, goods, or any other thing of pecuniary value.

(2) "False statement" or "false representation" means a statement or representation which is knowingly and willfully made if the person making the statement or representation has knowledge of the falsity thereof.

(3) "Knowing" and "knowingly" mean that a person is aware of the nature of his conduct and that his conduct is substantially certain to cause the intended result.

(4) "Medical benefit" means a benefit paid or payable to a recipient or a provider under a program administered by the state under Titles V and XIX of the federal Social Security Act, Title X of the federal Public Health Services Act, the federal Child Nutrition Act of 1966 as amended by P.L. 94-105 and any programs for medical assistance of the state.

(5) "Person" means an individual, corporation, unincorporated association, professional corporation, partnership, or other form of business association. 1986

26-20-3. False statement or representation relating to medical benefits.

(1) A person shall not make or cause to be made a false statement or false representation of a material fact in an application for medical benefits.

(2) A person shall not make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medical benefit.

(3) A person, who having knowledge of the occurrence of an event affecting his initial or continued right to receive a medical benefit or the initial or continued right of any other person on whose behalf he has applied for or is receiving a medical benefit, shall not conceal or fail to disclose that event with intent to obtain a medical benefit to which the

person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled1986

26-20-4. Kickbacks or bribes prohibited.

A person may not solicit, offer, pay, or receive a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program, or pay or receive a rebate of a fee or charge for referring an individual to another person for the furnishing of goods or services. 1986

26-20-5. False statements or false representations relating to qualification of health institution or facility prohibited - Felony.

(1) A person shall not knowingly and willfully make, or induce or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency.

(2) A person who violates this section is guilty of a second degree felony. 1981

26-20-6. Conspiracy to defraud prohibited.

A person shall not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for a medical benefit. 1986

26-20-7. False claims for medical benefits prohibited.

(1) No person may make or present or cause to be made or presented to an employee or officer of the state a claim for a medical benefit, knowing the claim to be false, fictitious, or fraudulent.

(2) In addition, no person shall knowingly:

(a) file a claim for a medical benefit for services which were not rendered or for items or materials which were not delivered;

(b) file a claim for a medical benefit which misrepresents the type, quality, or quantity of items or services rendered;

(c) file a claim for a medical benefit representing charges at a higher rate than those charged by the provider to the general public;

(d) file a claim for a medical benefit for items or services which the person or the provider knew were not medically necessary in accordance with professionally recognized standards;

(e) file a claim for a medical benefit which has previously been paid;

(f) fail to credit the state for payments received from other sources;

(g) file a claim for a medical benefit for services also covered by one or more private sources when the person or provider knew of the private sources without disclosing those sources on the claim;

(h) recover or attempt to recover payment from a recipient under a medical benefit program, or the recipient's family in violation of the provider agreement;

(i) file a claim for a medical benefit where a provider divides an accepted multiple medical procedure into artificial components or single procedures requesting full medical benefits for performing those component procedures as if they had each been performed independently and at separate times;

(j) falsify or alter with intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement;

(k) retain any unauthorized payment as a result of acts described by this section; or

(l) aid or abet the commission of any act prohibited by this section. 1987

26-20-8. Knowledge of past acts not necessary to establish fact that false statement or representation knowingly made.

In prosecution under this chapter, it shall not be necessary to show that the person had knowledge of similar acts having been performed in the past on the part of persons acting on his behalf nor to show that the person had actual notice that the acts by the persons acting on his behalf occurred to establish the fact that a false statement or representation was knowingly made. 1981

26-20-9. Criminal penalties.

(1) The punishment for violation of any provision of this chapter, except as provided under Section 26-20-5, is determined by the cumulative value of the funds or other benefits received or claimed in the commission of all violations of a similar nature, and not by each separate violation.

(2) Punishment for violation of this chapter, except as provided under Section 26-20-5, is as follows:

(a) as a felony of the second degree if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds $1,000;

(b) as a felony of the third degree if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds $250 but does not exceed $1,000;

(c) as a class A misdemeanor if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds $100 but does not exceed $250; or

(d) as a class B misdemeanor if the cumulative value of the funds or other benefits received or claimed in violation of this chapter does not exceed $100. 1986

26-20-9.5. Civil penalties.

(1) Any person who violates this chapter shall, in addition to other penalties provided by law, be subject to the following civil penalties:

(a) in all cases, shall be required to make full and complete restitution to the state of all medical benefits improperly obtained;

(b) in all cases, shall be required to pay the state its costs of enforcement of this chapter in that case, including but not limited to the cost of investigators, attorneys, and other public employees, as determined by the Bureau of Medicaid Fraud;

(c) may be required, in the discretion of the court, to pay to the state a civil penalty not to exceed three times the amount of value improperly claimed or received as a medical benefit; or

(d) may be required, in the discretion of the court, to pay to the state a civil penalty of up to $2,000 for each claim filed or act done in violation of this chapter.

(2) Any civil penalties assessed under Subsection (1) shall be awarded by the court as part of its judgment in both criminal and civil actions.

(3) A criminal action need not be brought against a person in order for that person to be civilly liable under this section. 1987

26-20-10. Revocation of license of assisted living facility - Appointment of receiver.

(1) If the license of an assisted living facility is revoked for violation of this chapter, the county attorney may file a petition with the district court for the county in which the facility is located for the appointment of a receiver.

(2) The district court shall issue an order to show cause why a receiver should not be appointed returnable within five days after the filing of the petition.

(3) If the court finds that the facts warrant the granting of the petition, the court shall appoint a receiver to take charge of the facility. The court may determine fair compensation for the receiver.

(4) A receiver appointed pursuant to this section shall have the powers and duties prescribed by the court. 1998

26-20-11. Presumption based on paid state warrant - Value of medical benefits - Repayment of benefits.

(1) In any civil or criminal action brought under this chapter, a paid state warrant, made payable to the order of a party, creates a presumption that the party received funds from the state.

(2) In any civil or criminal action brought under this chapter, the value of the benefits received shall be the ordinary or usual charge for similar benefits in the private sector.

(3) In any criminal action under this chapter, the repayment of funds or other benefits obtained in violation of the provisions of this chapter does not constitute a defense to, or grounds for dismissal of that action. 1986

26-20-12. Violation of other laws.

This chapter shall not be construed to prohibit or limit an action against a person for violation of any other law. 1986

26-20-13. Medicaid fraud enforcement.

(1) This chapter shall be enforced in accordance with this section.

(2) The department shall be responsible for:

(a) investigating and prosecuting all civil violations of this chapter; and

(b) promptly referring suspected criminal violations of this chapter to the attorney general for criminal investigation and prosecution.

(3) The attorney general shall be responsible for:

(a) investigating criminal violations of this chapter that are reported to the attorney general by the department or others;

(b) promptly referring probable civil violations of this chapter that are not related to a criminal investigation or prosecution to the department for civil investigation and prosecution; and

(c) prosecuting criminal violations of this chapter.

(4) The department and the attorney general may enter into an interagency agreement regarding the investigation and prosecution of violations of this chapter in accordance with this section, the requirements of Title XIX of the federal Social Security Act, and applicable federal regulations.2000

26-20-14. Investigations--Civil investigative demands

(1) The attorney general may take investigative action under Subsection (2) if the attorney general has reason to believe that:

(a) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged violation of this chapter;

(b) a person is committing, has committed, or is about to commit a violation of this chapter; or

(c) it is in the public interest to conduct an investigation to ascertain whether or not a person is committing, has committed, or is about to commit a violation of this chapter.
(2) In taking investigative action, the attorney general may:
(a) require the person to file on a prescribed form a statement in writing, under oath or affirmation describing:
(i) the facts and circumstances concerning the alleged violation of this chapter; and
(ii) other information considered necessary by the attorney general;
(b) examine under oath a person in connection with the alleged violation of this chapter; and
(c) in accordance with Subsections (7) through (18), execute in writing, and serve on the person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material.
(3) The attorney general may not release or disclose information that is obtained under Subsection (2)(a) or (b), or any documentary material or other record derived from the information obtained under Subsection (2)(a) or (b), except:
(a) by court order for good cause shown;
(b) with the consent of the person who provided the information;
(c) to an employee of the attorney general or the department;
(d) to an agency of this state, the United States, or another state;
(e) to a special assistant attorney general representing the state in a civil action;
(f) to a political subdivision of this state; or
(g) to a person authorized by the attorney general to receive the information.
(4) The attorney general may use documentary material derived from information obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.
(5)(a) If a person fails to file a statement as required by Subsection (2)(a) or fails to submit to an examination as required by Subsection (2)(b), the attorney general may file in district court a complaint for an order to compel the person to within a period stated by court order:
(i) file the statement required by Subsection (2)(a); or
(ii) submit to the examination required by Subsection (2)(b).
(b) Failure to comply with an order entered under Subsection (5)(a) is punishable as contempt.
(6) A civil investigative demand must:
(a) state the rule or statute under which the alleged violation of this chapter is being investigated;
(b) describe the:
(i) general subject matter of the investigation; and
(ii) class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(c) designate a date within which the documentary material is to be produced; and
(d) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.
(7) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Utah Rules of Civil Procedure.
(8) Service of a civil investigative demand may be made by:
(a) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;
(b) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or
(c) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served:
(i) at the person's principal place of business in this state; or
(ii) if the person has no place of business in this state, to the person's principal office or place of business.
(9) Documentary material demanded in a civil investigative demand shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.
(10) The attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained pursuant to a civil investigative demand except:
(a) by court order for good cause shown;
(b) with the consent of the person who produced the information;
(c) to an employee of the attorney general or the department;
(d) to an agency of this state, the United States, or another state;
(e) to a special assistant attorney general representing the state in a civil action;
(f) to a political subdivision of this state; or
(g) to a person authorized by the attorney general to receive the information.
(11)(a) With respect to documentary material obtained pursuant to a civil investigative demand, the attorney general shall prescribe reasonable terms and conditions allowing such documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person.
(b) The attorney general may use such documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.
(12) A person may file a complaint, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be filed in district court and must be filed before the earlier of:
(a) the return date specified in the demand; or
(b) the 20th day after the date the demand is served.

(13) Except as provided by court order, a person who has been served with a civil investigative demand shall comply with the terms of the demand.
(14)(a) A person who has committed a violation of this chapter in relation to the Medicaid program in this state, or to any other medical benefit program administered by the state has submitted to the jurisdiction of this state.
(b) Personal service of a civil investigative demand under this section may be made on the person described in Subsection (14)(a) outside of this state.
(15) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.
(16) The attorney general may file a complaint in district court for an order to enforce the civil investigative demand if:
(a) a person fails to comply with a civil investigative demand; or
(b) copying and reproduction of the documentary material demanded:
(i) cannot be satisfactorily accomplished; and
(ii) the person refuses to surrender the documentary material.
(17) If a complaint is filed under Subsection (16), the court may determine the matter presented and may enter an order to enforce the civil investigative demand.
(18) Failure to comply with a final order entered under Subsection (17) is punishable by contempt.

26-20-15. Limitation of actions--Civil acts antedating this section--Civil burden of proof--Estoppel--Joint civil liability—Venue
(1) An action under this chapter may not be brought after the later of:
(a) six years after the date on which the violation was committed; or
(b) three years after the date an official of the state charged with responsibility to act in the circumstances discovers the violation, but in no event more than ten years after the date on which the violation was committed.
(2) A civil action brought under this chapter may be brought for acts occurring prior to the effective date of this section if the limitations period set forth in Subsection (1) has not lapsed.
(3) In any civil action brought under this chapter the state shall be required to prove by a preponderance of evidence, all essential elements of the cause of action including damages.
(4) Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding under this chapter, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any civil action under this chapter which involves the same transaction.
(5) Civil liability under this chapter shall be joint and several for a

violation committed by two or more persons.
(6) Any action brought by the state under this chapter shall be brought in district court in Salt Lake County or in any county where the defendant resides or does business.

VERMONT

No Act at this time
Effective February, 2008

VIRGINIA

Virginia Fraud Against Taxpayers Act
§ 8.01-216.1.

CHAPTER 842

An Act to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 19.1, consisting of sections numbered 8.01-216.1 through 8.01-216.19, relating to the Virginia Fraud Against Taxpayers Act.[S 445]

Approved April 17, 2002

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered 19.1, consisting of sections numbered 8.01-216.1 through 8.01-216.19, as follows:

Article 19.1.Virginia Fraud Against Taxpayers Act.

This article may be cited as the Virginia Fraud Against Taxpayers Act.

§ 8.01-216.2. Definitions.

As used in this article, unless the context requires otherwise:

"Attorney General" means the Attorney General of Virginia, the Chief Deputy, other deputies, counsels or assistant attorneys general employed by the Office of the Attorney General and designated by the Attorney General to act pursuant to this article.

"Claim" means any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the Commonwealth provides any portion of the money or property that is requested or demanded, or if the Commonwealth will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

"Commonwealth" means the Commonwealth of Virginia, any agency of state government, and any political subdivision of the Commonwealth.

"Documentary material" means the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

"Investigation" means any inquiry conducted by an investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this article.

"Person" includes any natural person, corporation, firm, association,

organization, partnership, limited liability company, business or trust.

"Product of discovery" means **(i)** the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature; **(ii)** any digest, analysis, selection, compilation, or derivation of any item listed in clause (i); and **(iii)** any index or other manner of access to any item listed in clause (i).

§ 8.01-216.3. False claims; civil penalty.

A. Any person who:

1. Knowingly presents, or causes to be presented, to an officer or employee of the Commonwealth 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 Commonwealth;

3. Conspires to defraud the Commonwealth by getting a false or fraudulent claim allowed or paid;

4. Has possession, custody, or control of property or money used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

5. Authorizes to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth, 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 Commonwealth who lawfully may not sell or pledge the property; or

7. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Commonwealth; shall be liable to the Commonwealth for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages sustained by the Commonwealth.

B. If the court finds that **(i)** the person committing the violation of this section furnished officials of the Commonwealth responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information; **(ii)** such person fully cooperated with any Commonwealth investigation of such violation; **(iii)** at the time such person furnished the Commonwealth with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and

(iv) the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two times the amount of damages that the Commonwealth sustains because of the act of the person. A person violating this section shall also be liable to the Commonwealth for the costs of a civil action brought to recover any such penalty or damages.

C. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information **(i)** has actual knowledge of the information; **(ii)** acts in deliberate ignorance of the truth or falsity of the information; or **(iii)** acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

D. This section shall not apply to claims, records or statements relating to income taxation as set forth in Title 58.1.

§ 8.01-216.4. Attorney General; investigation, civil action.

The Attorney General shall investigate any violation of § 8.01-216.3. If the Attorney General finds that a person has violated or is violating § 8.01-216.3, the Attorney General may bring a civil action under this section.

§ 8.01-216.5. Civil actions filed by private persons; Commonwealth may intervene.

A. A person may bring a civil action for a violation of § 8.01-216.3 for the person and for the Commonwealth. The action shall be brought in the name of the Commonwealth. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

B. A copy of the motion for judgment and written disclosure of substantially all material evidence and information the person possesses shall be served on the Commonwealth. The motion for judgment shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The Commonwealth may elect to intervene and proceed with the action within 120 days after it receives both the motion for judgment and the material evidence and information.

C. The Commonwealth may, for good cause shown, move the court for extensions of the time during which the motion for judgment remains under seal. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any motion for judgment filed under this section until twenty-one days after the motion for judgment is unsealed and served upon the defendant.

D. Before the expiration of the 120-day period or any extensions obtained under subsection C, the Commonwealth shall proceed with the action, in which case the action shall be conducted by the Commonwealth, or notify the court that it declines to take over the

action, in which case the person bringing the action shall have the right to prosecute the action.

E. When a person brings an action under this section, no person other than the Commonwealth may intervene or bring a related action based on the facts underlying the pending action.

§ 8.01-216.6. Rights of private plaintiff and Commonwealth.

A. If the Commonwealth proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations of this section.

B. The Commonwealth may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Commonwealth of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

C. The Commonwealth may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera. The Commonwealth may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

D. Upon a showing by the Commonwealth that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Commonwealth's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as **(i)**limiting the number of witnesses the person may call; **(ii)** limiting the length of the testimony of such witnesses; **(iii)** limiting the person's cross-examination of witnesses; and **(iv)** otherwise limiting the participation by the person in the litigation.

E. Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

F. If the Commonwealth elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Commonwealth so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition
transcripts at the Commonwealth's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Commonwealth to intervene at a later date upon a showing of good cause.

G. Whether or not the Commonwealth proceeds with the action, upon a showing by the Commonwealth that certain actions of discovery by the person initiating the action would interfere with the Commonwealth's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the Commonwealth has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

H. Notwithstanding the provisions of subsection B of § 8.01-216.5, the Commonwealth may elect to pursue its claim through any alternate remedy available to the Commonwealth, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this article. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to a court of competent jurisdiction of the Commonwealth, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

§ 8.01-216.7. Award to private plaintiff.

A. Except as hereinafter provided, if the Commonwealth proceeds with an action brought by a person under § 8.01-216.5, such person shall receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this section shall be made from the proceeds of the award. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

B. If the Commonwealth does not proceed with an action, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the award or settlement and shall be paid out of the proceeds. Such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

C. Whether or not the Commonwealth proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 8.01-216.3 upon which the action was brought, or if the person bringing the action is convicted of criminal conduct arising from his role in the violation of § 8.01-216.3, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the Commonwealth to continue the action.

D. If the Commonwealth does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

§ 8.01-216.8. Certain actions barred.

No court shall have jurisdiction over an action brought under § 8.01-216.5 based on information discovered by a present or former employee of the Commonwealth during the course of his employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the Commonwealth failed to act on the information provided within a reasonable period of time.

No court shall have jurisdiction over any action brought under this article by an inmate incarcerated within a state or local correctional facility as defined in § 53.1-1.

No court shall have jurisdiction over an action brought under this article against any department, authority, board, bureau, commission, or agency of the Commonwealth, any political subdivision of the Commonwealth, a member of the General Assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known to the Commonwealth when the action was brought. For purposes of this section, "exempt official" means the Governor, Lieutenant Governor, Attorney General and the directors or members of any department, authority, board, bureau, commission or agency of the Commonwealth or any political subdivision of the Commonwealth.

In no event may a person bring an action under this article that is based

upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the Commonwealth is already a party.

No court shall have jurisdiction over an action under this article based upon the public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information. For purposes of this section, "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 Commonwealth before filing an action under this article that is based on the information.

The Commonwealth shall not be liable for expenses a person incurs in bringing an action under this article.

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his employer because he has opposed any practice referenced in § 8.01-216.3 or because he has initiated, testified, assisted, or participated in any manner in any investigation, action or hearing under this article, 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, two 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 a court of competent jurisdiction for the relief provided in this section.

§ 8.01-216.9. Procedure; statute of limitations.

A subpoena requiring the attendance of a witness at a trial or hearing conducted under this article may be served at any place in the Commonwealth.

A civil action under § 8.01-216.5 may not be brought **(i)** more than six years after the date on which the violation is committed or **(ii)** more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the Commonwealth charged with responsibility to act in the circumstances, but in that event no more than ten years after the date on which the violation is committed, whichever occurs last.

In any action brought under § 8.01-216.5, the Commonwealth shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Notwithstanding any other provision of law, a final judgment rendered in favor of the Commonwealth in any criminal proceeding charging fraud

or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under § 8.01-216.5.

§ 8.01-216.10. Civil investigative demands; issuance.

A. Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under this article, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person **(i)** to produce such documentary material for inspection and copying, **(ii)** to answer in writing written interrogatories with respect to such documentary material or information, **(iii)** to give oral testimony concerning such documentary material or information, or **(iv)** to furnish any combination of such material, answers, or testimony.

B. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General shall cause to be served, in any manner authorized by this article, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

§ 8.01-216.11. Civil investigative demand; contents and deadlines.

Each civil investigative demand issued under this article shall state the nature of the conduct constituting the alleged violation of a false claims law that is under investigation, and the applicable provision of law alleged to be violated.

If such demand is for the production of documentary material, the demand shall **(i)** describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified; **(ii)** prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and **(iii)** identify the false claims law investigator to whom such material shall be made available.

If such demand is for answers to written interrogatories, the demand shall **(i)** set forth with specificity the written interrogatories to be answered; **(ii)** prescribe dates at which time answers to written interrogatories shall be submitted; and **(iii)** identify the false claims law investigator to whom such answers shall be submitted.

If such demand is for the giving of oral testimony, the demand shall **(i)** prescribe a date, time, and place at which oral testimony shall be commenced; **(ii)** identify a false claims law investigator who shall

conduct the examination and the custodian to whom the transcript of such examination shall be submitted; **(iii)** specify that such attendance and testimony are necessary to the conduct of the investigation; **(iv)** notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and **(v)** describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry that will be taken pursuant to the demand.

Any civil investigative demand that is an express demand for any product of discovery shall not be returned or returnable until twenty-one days after a copy of such demand has been served upon the person from whom the discovery was obtained.

The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this article shall be a date that is not less than seven days after the date on which the demand is received, unless the Attorney General determines that exceptional circumstances are present that warrant the commencement of such testimony within a lesser period of time.

The Attorney General shall not authorize the issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

§ 8.01-216.12. Civil investigative demands; protected material or information.

A civil investigative demand issued under this article shall not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under **(i)** the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this Commonwealth to aid in a grand jury investigation or **(ii)** the standards applicable to discovery requests under the Rules of the Supreme Court of Virginia, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this article.

Any such demand that is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege that the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

§ 8.01-216.13. Civil investigative demands; service and jurisdiction.

Any civil investigative demand issued under this article may be served

by an investigator, or by any person authorized to serve process on individuals in the Commonwealth.

Any such demand or any petition filed under this article may be served upon any person who is not found within Virginia in such manner as the Rules of the Supreme Court of Virginia or the Code of Virginia prescribe for service of process outside Virginia. To the extent that the courts of this Commonwealth can assert jurisdiction over any such person consistent with due process, the courts of this Commonwealth shall have the same jurisdiction to take any action respecting compliance with the provisions of this article by any such person that the court would have if such person were personally within the jurisdiction of the court.

Service of any civil investigative demand issued under this article or of any petition filed under this article may be made upon a partnership, corporation, association, or other legal entity by **(i)** delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity; **(ii)** delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or **(iii)** depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

Service of any such demand or petition may be made upon any natural person by **(i)** delivering an executed copy of such demand or petition to the person, or **(ii)** depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

A verified return by the individual serving any civil investigative demand issued under this article or any petition filed under this article setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

§ 8.01-216.14. Civil investigative demands; documentary material.

The production of documentary material in response to a civil investigative demand served under this article shall be made under a sworn certificate, in such form as the demand designates, by **(i)** in the case of a natural person, the person to whom the demand is directed, or **(ii)** in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the

possession, custody, or control of the person to whom the demand is directed has been produced and made available to the investigator identified in the demand.

Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the investigator identified in such demand at the principal place of business of such person, or at such other place as the investigator and the person thereafter may agree and prescribe in writing, or as the court may direct. Such material shall be made available on the return date specified in such demand, or on such later date as the investigator may prescribe in writing. Such person may, upon written agreement between the person and the investigator, substitute copies for originals of all or any part of such material.

§ 8.01-216.15. Civil investigative demands; interrogatories.

Each inquiry in a civil investigative demand served under this article shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by **(i)** in the case of a natural person, the person to whom the demand is directed, or **(ii)** in the case of a person other than a natural person, the person or persons responsible for answering each inquiry. If any inquiry is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

§ 8.01-216.16. Civil investigative demands; oral examinations.

A. The examination of any person pursuant to a civil investigative demand for oral testimony served under this article shall be taken before an officer authorized to administer oaths under the laws of this Commonwealth or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the Attorney General. This section shall not preclude the taking of testimony by any means authorized by and in a manner consistent with the Rules of the Supreme Court of Virginia.

B. The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving

the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Commonwealth, any person who may be agreed upon by the attorney for the Commonwealth and the person giving the testimony, the officer before whom the testimony is to be taken, and any court reporter taking such testimony.

C. The oral testimony of any person taken pursuant to a civil investigative demand served under this article shall be taken in the county or city within which such person resides, is found, or transacts business or in such other place as may be agreed upon by the investigator conducting the examination and such person.

D. When the testimony is fully transcribed, the investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the officer or the investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after being afforded a reasonable opportunity to examine it, the officer or the investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefore..

E. The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the Attorney General.

F. Upon payment of reasonable charges therefore, the investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

G. Any person compelled to appear for oral testimony under a civil investigative demand may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the circuit court for an order compelling such person to answer such

question. If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with applicable law.

H. Any person appearing for oral testimony under a civil investigative demand issued under this article shall be entitled to the same fees and allowances paid to witnesses in the circuit court.

§ 8.01-216.17. Civil investigative demands; custodian of documents; answers.

A. The Attorney General shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this article.

B. An investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the Attorney General. The Attorney General shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material.

C. The Attorney General may cause the preparation of such copies of documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any investigator, or other officer or employee of the Attorney General or employee of the Department of State Police, who is authorized for such use by the Attorney General. Such material, answers, and transcripts may be used by any authorized investigator or other officer or employee in connection with the taking of oral testimony under this article.

D. Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the Attorney General, shall be available for examination by any individual other than an investigator or other officer or employee of the Attorney General or employee of the Department of State
Police authorized by the Attorney General. The prohibition on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subsection is intended to prevent disclosure to the General Assembly, including any committee or subcommittee of the General Assembly, or to any other state agency for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a circuit court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

E. While in the possession of the Attorney General and under such reasonable terms and conditions as the Attorney General shall prescribe,

(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers, and **(ii)** transcripts of oral testimony shall be available for examination by the person who produced such testimony or by a representative of that person authorized by that person to examine such transcripts.

F. Any attorney employed by the Office of the Attorney General designated to appear before any court, grand jury, or state agency in any case or proceeding may use any documentary material, answers to interrogatories, or transcripts of oral testimony in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of the court, grand jury, or agency through introduction into the record of such case or proceeding.

G. If any documentary material has been produced by any person in the course of any investigation pursuant to a civil investigative demand under this article, and **(i)** any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed, or **(ii)** no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the Attorney General shall, upon written request of the person who produced such material, return to such person any material, other than copies furnished to the investigator, or made for the Attorney General that has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

§ 8.01-216.18. Civil investigative demands; judicial proceedings for noncompliance.

A. Whenever any person fails to comply with any civil investigative demand issued under this article, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender the material, the Attorney General may file in the appropriate circuit court for the county or city in which such person resides, is found, or transacts business, and serve upon such person a petition for a court order for the enforcement of the civil investigative demand.

B. Any person who has received a civil investigative demand issued under this article may file, in the circuit court of any county or city within which such person resides, is found, or transacts business, and serve upon the investigator identified in such demand a petition for an order of the court to modify or set aside the demand. In the case of a petition addressed to an express demand for any product of discovery, a

petition to modify or set aside such demand may be brought only in the circuit court of the county or city in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this section shall be filed **(i)** within twenty-one days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or **(ii)** within such longer period as may be prescribed in writing by any investigator identified in the demand.

C. The petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this article or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

D. In the case of any civil investigative demand issued under this article that is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the circuit court of the county or city in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any investigator identified in the demand and upon the recipient of the demand a petition for a court order to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subsection shall be filed **(i)** within twenty-one days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier, or **(ii)** within such longer period as may be prescribed in writing by any investigator identified in the demand.

E. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure of the demand from which relief is sought to comply with the provisions of this article, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

F. At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given by any person in compliance with any civil investigative demand issued under this article, such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the circuit court of the county or city within which the office of such custodian is situated, and serve upon such custodian a petition for a court order to require the performance by the custodian of any duty imposed upon the custodian by this section. Whenever any petition is filed in any circuit court under this section, the court shall have jurisdiction to hear and determine the matter

so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as contempt of the court.

G. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under this article shall be exempt from disclosure under the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

§ 8.01-216.19. Application of the Rules of the Supreme Court.

The Rules of the Supreme Court of Virginia shall apply to all proceedings under this article, except when those Rules are inconsistent with this article.

2. That the provisions of this act shall become effective January 1, 2003.

WASHINGTON

No Act at this time
Effective February, 2008

WEST VIRGINIA

No Act at this time
Effective February, 2008

WISCONSIN

APPROPRIATIONS AND BUDGET MANAGEMENT 20.931
121 Updated 05−06 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.

Electronic reproduction of 2005−06 Wis. Stats. database, updated and current through December 18, 2007 and 2007 Wis. Act 41.
Text from the 2005−06 Wis. Stats. database updated by the Revisor of Statutes. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 1−2−08 are printed as if currently in effect. Statutory changes effective on or after 1−2−08 are designated by NOTES. Report errors at (608) 266−2011, FAX 264−6978, http://www.legis.state.wi.us/rsb/
20.930 Attorney fees.

Except as provided in ss. 5.05 (2m) (c) 7., 46.27 (7g) (h), 49.496 (3) (f), and 49.682 (6), no state agency in the executive branch may employ any attorney until such employment has been approved by the governor.
NOTE: This section is shown as amended by 2007 Wis. Act 1 eff. the initiation date as set forth in section 209 (1) of that Act. Prior to that date it reads: 20.930 Attorney fees. Except as provided in ss. 46.27 (7g) (h), 49.496 (3) (f) and 49.682 (6), no state agency in the executive branch may employ any attorney until such employment has been approved by the governor. History: 1979 c. 221; 1989 a. 119 s. 1; Stats. 1989 s. 20.930; 1993 a. 490; 1999 a. 9; 2007 a. 1.

This section applies to principal administrative units and whatever agencies assist those units in administration and governance of the unit. Kaye v. Board of Regents, 158 Wis. 2d 664, 463 N.W.2d 398 (Ct. App. 1990). **20.931 False claims for medical assistance; actions by or on behalf of state.**
(1) In this section:
(b) "Claim" includes any request or demand for medical assistance made to any officer, employee, or agent of this state.
(c) "Employer" includes all agencies and authorities.
(d) "Knowingly" means, with respect to information, having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard of the truth or falsity of the information. "Knowingly" does not mean specifically intending to defraud. (dm) "Medical assistance" has the meaning given under s. 49.43 (8).
(e) "Proceeds" includes damages, civil penalties, surcharges, payments for costs of compliance, and any other economic benefit realized by this state as a result of an action or settlement of a claim.

(f) "State public official" has the meaning given in s. 19.42 (14).
(2) Except as provided in sub. (3), any person who does any of the following is liable to this state for 3 times the amount of the damages sustained by this state because of the actions of the person, and shall forfeit not less than $5,000 nor more than $10,000 for each violation:
(a) Knowingly presents or causes to be presented to any officer, employee, or agent of this state a false claim for medical assistance.
(b) Knowingly makes, uses, or causes to be made or used a false record or statement to obtain approval or payment of a false claim for medical assistance.
(c) Conspires to defraud this state by obtaining allowance or payment of a false claim for medical assistance, or by knowingly making or using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance program.
(g) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease any obligation to pay or transmit money or property to the Medical Assistance program.
(h) Is a beneficiary of the submission of a false claim for medical assistance to any officer, employee, or agent of this state, knows that the claim is false, and fails to disclose the false claim to this state within a reasonable time after the person becomes aware that the claim is false.
(3) The court may assess against a person who violates sub.
(2) not less than 2 nor more than 3 times the amount of the damages sustained by the state because of the acts of the person, and shall not assess any forfeiture, if the court finds all of the following:
(a) The person who commits the acts furnished the attorney general with all information known to the person about the acts within 30 days after the date on which the person obtained the information.
(b) The person fully cooperated with any investigation of the acts by this state.
(c) At the time that the person furnished the attorney general with information concerning the acts, no criminal prosecution or civil or administrative enforcement action had been commenced with respect to any such act, and the person did not have actual knowledge of the existence of any investigation into any such act.
(5) (a) Except as provided in subs. (10) and (12), any person
may bring a civil action as a qui tam plaintiff against a person who commits an act in violation of sub. (2) for the person and the state in the name of the state.
(b) The plaintiff shall serve upon the attorney general a copy of the complaint and documents disclosing substantially all material evidence and information that the person possesses. The plaintiff shall file a copy of the complaint with the court for inspection in camera. Except as provided in par. (c), the complaint shall remain under seal for a period of 60 days from the date of filing, and shall not be served upon the defendant until the court so orders. Within 60 days from the date of

service upon the attorney general of the complaint, evidence, and information under this paragraph, the attorney general may intervene in the action.

(c) The attorney general may, for good cause shown, move the court for one or more extensions of the period during which a complaint in an action under this subsection remains under seal.

(d) Before the expiration of the period during which the complaint remains under seal, the attorney general shall do one of the following:

1. Proceed with the action or an alternate remedy under sub. (10), in which case the action or proceeding under sub. (10) shall be prosecuted by the state.

2. Notify the court that he or she declines to proceed with the action, in which case the person bringing the action may proceed with the action.

(e) If a person brings a valid action under this subsection, no person other than the state may intervene or bring a related action while the original action is pending based upon the same facts underlying the pending action.

(f) In any action or other proceeding under sub. (10) brought under this subsection, the plaintiff is required to prove all essential elements of the cause of action or complaint, including damages, by a preponderance of the evidence.

(6) If the state proceeds with an action under sub. (5) or an alternate remedy under sub. (10), the state has primary responsibility for prosecuting the action or proceeding under sub. (10). The state is not bound by any act of the person bringing the action, but that person has the right to continue as a party to the action, subject to the limitations under sub. (7).

(7) (a) The state may move to dismiss an action under sub. (5) or an administrative proceeding under sub. (10) to which the state is a party for good cause shown, notwithstanding objection of the person bringing the action, if that person is served with a copy of the state's motion and is provided with an opportunity to oppose the motion before the court or the administrative agency before which the proceeding is conducted.

(b) With the approval of the governor, the attorney general may compromise and settle an action under sub. (5) or an administrative proceeding under sub. (10) to which the state is a party, notwithstanding objection of the person bringing the action, if the court determines, after affording to the person bringing the action the right to a hearing at which the person is afforded the opportunity to present evidence in opposition to the proposed settlement, that the proposed settlement is fair, adequate, and reasonable considering the relevant circumstances pertaining to the violation.

(c) Upon a showing by the state that unrestricted participation in the prosecution of an action under sub. (5) or an alternate proceeding to which the state is a party by the person bringing the action would interfere with or unduly delay the prosecution of the action or

proceeding, or would result in consideration of repetitious or irrelevant evidence or evidence presented for purposes of

harassment, the court may limit the person's participation in the prosecution, such as:
1. Limiting the number of witnesses that the person may call.
2. Limiting the length of the testimony of the witnesses.
3. Limiting the cross−examination of witnesses by the person.
4. Otherwise limiting the participation by the person in the prosecution of the action or proceeding.

(d) Upon showing by a defendant that unrestricted participation in the prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to which the state is a party by the person bringing the action would result in harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the person's participation in the prosecution.

(8) Except as provided in sub. (7), if the state elects not to participate in an action filed under sub. (5), the person bringing the action may prosecute the action. If the attorney general so requests, the attorney general shall, at the state's expense, be served with copies of all pleadings and deposition transcripts in the action. If the person bringing the action initiates prosecution of the action, the court, without limiting the status and rights of that person, may permit the state to intervene at a later date upon showing by the state of good cause for the proposed intervention.

(9) Whether or not the state participates in an action under sub. (5), upon showing in camera by the attorney general that discovery by the person bringing the action would interfere with the state's ongoing investigation or prosecution of a criminal or civil matter arising out of the same facts as the facts upon which the action is based, the court may stay such discovery in whole or in part for a period of not more than 60 days. The court may extend the period of any such stay upon further showing in camera by the attorney general that the state has pursued the criminal or civil investigation of the matter with reasonable diligence and the proposed discovery in the action brought under sub. (5) will interfere with the ongoing criminal or civil investigation or prosecution.

(10) The attorney general may pursue a claim relating to an alleged violation of sub. (2) through an alternate remedy available to the state or any state agency, including an administrative proceeding to assess a civil forfeiture. If the attorney general elects any such alternate remedy, the attorney general shall serve timely notice of his or her election upon the person bringing the action under sub. (5), and that person has the same rights in the alternate venue as the person would have had if the action had continued under sub. (5). Any finding of fact or conclusion of law made by a court or by a state agency in the alternate venue that has become final is conclusive upon all parties named in an action under sub. (5). For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal, if all time for filing an appeal or petition for review with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(11) (a) Except as provided in pars. (b) and (e), if the state proceeds with an action brought by a person under sub. (5) or the state pursues an alternate remedy relating to the same acts under sub. (10), the person who brings the action shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person contributed to the prosecution of the action or claim.

(b) Except as provided in par. (e), if an action or claim is one in which the court or other adjudicator finds to be based primarily upon disclosures of specific information not provided by the person who brings an action under sub. (5) relating to allegations or transactions specifically in a criminal, civil, or administrative hearing, or in a legislative or administrative report, hearing, audit, or investigation, or report made by the news media, the court or other adjudicator may award such amount as it considers appropriate, but not more than 10 percent of the proceeds of the action or settlement of the claim, depending upon the significance of the information and the role of the person bringing the action in advancing the prosecution of the action or claim.

(c) Except as provided in par. (e), in addition to any amount received under par. (a) or (b), a person bringing an action under sub. (5) shall be awarded his or her reasonable expenses necessarily incurred in bringing the action together with the person’s costs and reasonable actual attorney fees. The court or other adjudicator shall assess any award under this paragraph against the defendant.

(d) Except as provided in par. (e), if the state does not proceed with an action or an alternate proceeding under sub. (10), the person bringing the action shall receive an amount that the court decides is reasonable for collection of the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action and shall be paid from the proceeds. In addition, the person shall be paid his or her expenses, costs, and fees under par. (c).

(e) Whether or not the state proceeds with the action or an alternate proceeding under sub. (10), if the court or other adjudicator finds that an action under sub. (5) was brought by a person who planned or initiated

the violation upon which the action or proceeding is based, then the court may, to the extent that the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under par. (a), (b), or (d), taking into account the role of that person in advancing the prosecution of the action or claim and any other relevant circumstance pertaining to the violation, except that if the person bringing the action is convicted of criminal conduct arising from his or her role in a violation of sub. (2), the court or other adjudicator shall dismiss the person as a party and the person shall not receive any share of the proceeds of the action or claim or any expenses, costs, and fees under par. (c).

(12) (a) No court has jurisdiction over an action brought by a private person under sub. (5) against a state public official if the action is based upon information known to the attorney general at the time that the action is brought.

(b) No person may bring an action under sub. (5) that is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding to assess a civil forfeiture in which the state is a party if that action or proceeding was commenced prior to the date that the action is filed.

(13) The state is not liable for any expenses incurred by a private person in bringing an action under sub. (5).

(14) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of lawful actions taken by the employee, on behalf of the employee, or by others in furtherance of an action or claim filed under this section, including investigation for, initiation of, testimony for, or assistance in an action or claim filed or to be filed under sub. (5) is entitled to all necessary relief to make the employee whole. Such relief shall in each case include reinstatement with the same seniority status that the employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay at the legal rate, and compensation for any special damages sustained as a result of the discrimination, including costs and reasonable actual attorney fees. An employee may bring an action to obtain the relief to which the employee is entitled under this subsection.

(15) A civil action may be brought based upon acts occurring prior to October 27, 2007, if the action is brought within the period specified in s. 893.981.

(16) A judgment of guilty entered against a defendant in a criminal action in which the defendant is charged with fraud or making false statements estops the defendant from denying the essential elements of the offense in any action under sub. (5) that involves the same elements as in the criminal action.

APPROPRIATIONS AND BUDGET MANAGEMENT 20.931
123 Updated 05−06 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.
Electronic reproduction of 2005−06 Wis. Stats. database, updated and current through December 18, 2007 and 2007 Wis. Act 41.
Text from the 2005−06 Wis. Stats. database updated by the Revisor of Statutes. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 1−2−08 are printed as if currently in effect. Statutory changes effective on or after 1−2−08 are designated by NOTES. Report errors at (608) 266−2011, FAX 264−6978, http://www.legis.state.wi.us/rsb/

(17) The remedies provided for under this section are in addition to any other remedies provided for under any other law or available under the common law.
(18) This section shall be liberally construed and applied to promote the public interest and to effect the congressional intent in enacting 31 USC 3279 to 3733, as reflected in the act and the legislative history of the act.
History: 2007 a. 20.

WYOMING

No Act at this time
Effective February, 2008

SECTION 3
IRS WHISTLEBLOWERS
INFORMANT AWARDS

IRS PAYMENT FOR DETECTION OF FRAUD

26 U.S.C.A. § 7623

§ 7623. Expenses of detection of underpayments and fraud, etc.

(a) In general. The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for—
(1) detecting underpayments of tax, or
(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same, in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments.
(b) Awards to whistleblowers.
(1) In general. If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.
(2) Award in case of less substantial contribution.
(A) In general. In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.
(B) Nonapplication of paragraph where individual is original source of information. Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was

(b) Eligibility to file claim for reward—
(1) In general. Any person, other than certain present or former federal employees described in paragraph (b)(2) of this section, that submits, in the manner described in paragraph (d) of this section, information relating to the violation of an internal revenue law is eligible to file a claim for reward under section 7623 and this section.
(2) Federal employees. No person who was an officer or employee of the Department of the Treasury at the time the individual came into possession of information relating to violations of the internal revenue laws, or at the time the individual divulged such information, is eligible for a reward under section 7623 and this section. Any other current or former federal employee is eligible to file a claim for reward if the information provided came to the individual's knowledge other than in the course of the individual's official duties.
(3) Deceased informants. A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to the informant's death, the informant was eligible to file a claim for such reward under section 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be attached to the claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim.
(c) Amount and payment of reward. All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, will be taken into account by a district or service center director in determining whether a reward will be paid, and, if so, the amount of the reward. The amount of a reward will represent what the district or service center director deems to be adequate compensation in the particular case, generally not to exceed fifteen percent of the amounts (other than interest) collected by reason of the information. Payment of a reward will be made as promptly as the circumstances of the case permit, but not until the taxes, penalties, or fines involved have been collected. However, if the informant waives any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, the claim may be immediately processed. Partial reward payments, without waiver of the uncollected portion of the taxes, penalties, or fines involved, may be made when a criminal fine has been collected prior to completion of the civil aspects of a case, and also when there are multiple tax years involved and the deficiency for one or more of the years has been paid in full. No person is authorized under this section to make any offer, or promise, or otherwise to bind a district or service center director with respect to the payment of any reward or the amount of the reward.

(d) Submission of information. A person that desires to claim a reward under section 7623 and this section may submit information relating to violations of the internal revenue laws, in person, to the office of a district director, preferably to a representative of the Criminal Investigation Division. Such information may also be submitted in writing to the Commissioner of Internal Revenue, Attention: Assistant Commissioner (Criminal Investigation), 1111 Constitution Avenue, NW., Washington, DC 20224, to any district director, Attention: Chief, Criminal Investigation Division, or to any service center director. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) Identification of informant. No unauthorized person will be advised of the identity of an informant.

(f) Filing claim for reward. An informant that intends to claim a reward under section 7623 and this section should notify the person to whom the information is submitted of such intention, and must file a formal claim on Form 211, Application for Reward for Original Information, signed by the informant in the informant's true name, as soon as practicable after the submission of the information. If other than the informant's true name was used in furnishing the information, satisfactory proof of identity as that of the informant must be included with the claim for reward.

(g) Effective date. This section is applicable with respect to rewards paid after January 29, 1997.

Internal Revenue Service
U.S. Department of Treasury
Notice 2008-4
Claims Submitted to the IRS Whistleblower Office under Section 7623
Part III-Administrative, Procedural, and Miscellaneous
www.irs.gov/compliance/article/0,,id=180171,00.html

SECTION 1. PURPOSE

This Notice provides guidance to the public on how to file claims under Internal Revenue Code section 7623 as amended by the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432 (120 Stat. 2958) (the Act) enacted on December 20, 2006.

SECTION 2. BACKGROUND

Section 406 of the Act amended section 7623 of the Internal Revenue Code concerning the payment of awards to certain persons who detect underpayments of tax. Prior statutory authority to pay awards at the discretion of the Secretary was re- designated as section 7623(a), and a new section 7623(b) was added to the Code. Additional provisions in section 406 of the Act establish a Whistleblower Office within the IRS and address reward program administration issues. These provisions were not incorporated into the Code. The award program authorized by section 7623(a) has been previously implemented through regulations appearing at section 301.7623-1 of the Procedure and Administration Regulations, the substance of which is reprinted as IRS Publication 733, with additional administrative guidance appearing in the Internal Revenue Manual. Those regulations and Internal Revenue Manual provisions will continue to be followed for award claims within the scope of section 7623(a), except to the extent Sections 3.02 2 and 3.03 of this Notice provides interim guidance regarding submissions of information under section 7623(a). New section 7623(b) requires that awards be made for submissions meeting certain criteria. Individuals are eligible for section 7623(b) awards based on the amount collected as a result of any administrative or judicial action resulting from the information provided. Because new section 7623(b) includes several requirements that are inconsistent with existing regulations and administrative guidance applicable to award claims under section 7623(a), the regulations which appear at section 301.7623-1 will not apply to the new award program authorized by section 7623(b). This Notice provides interim guidance applicable to award claims submitted under the authority of section 7623(b). In addition, this Notice seeks public comment on the topics covered herein.

SECTION 3. INTERIM GUIDANCE

3.01 *Eligibility Requirements to Submit Claims Under Section 7623(b)*

To be eligible for an award under section 7623(b), the tax, penalties, interest, additions to tax, and additional amounts in dispute must exceed in the aggregate $2,000,000 and, if the allegedly noncompliant person is an individual, the individual's gross income must exceed $200,000 for any taxable year at issue in a claim. If the thresholds in section 7623(b) are not met, section 7623(a) authorizes, but does not require, the Service to pay for information relating to violations of the internal revenue laws that result in the government's recovery of tax. Submissions that do not qualify under section 7623(b) will be processed under section 7623(a). Unlike payments made on claims under section 7623(b), there is no requirement that payments made on claims 3 under section 7623(a) be subject to the statutory award percentages. The United States Tax Court appeal provisions added by the Act and codified in section 7623(b)(4) are applicable exclusively to award claims under section 7623(b). Accordingly, there is no right to appeal to the Tax Court for claims under section 7623(a).

3.02. *Submission of Information for Award under Sections 7623(a) or (b)*

(1) Individuals submitting information under section 7623(a) or (b) must complete IRS Form 211, Application for Award for Original Information (available on www.irs.gov) and send the completed Form 211 to:
Internal Revenue Service
Whistleblower Office
SE: WO
1111Constitution Ave., NW
Washington, D.C. 20224

(2) All claims for awards must be submitted under penalty of perjury in accordance with section 3.03(9) below. Until further guidance is issued, claims for awards may not be submitted electronically or by fax.
3.03 *Information to be Included with IRS Form 211* The Form 211 must be completed in its entirety and should include the following information**:**
(1) The date the claimant submits the claim;
(2) Claimant's name;
(3) Name of claimant's spouse (if applicable);
(4) Claimant's contact information, including address with zip code and telephone number;
(5) Claimant's date of birth;
(6) Claimant's Taxpayer Identification Number (*e.g.,* Social Security Number or Individual Taxpayer Identification Number) and Taxpayer Identification Number of claimant's spouse, if applicable.
(7) Specific and credible information concerning the person(s) that the claimant believes have failed to comply with tax laws and which will lead to the collection of unpaid taxes. This information should include the following:

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(6) Claimant's Taxpayer Identification Number (*e.g.,* Social Security Number or Individual Taxpayer Identification Number) and Taxpayer Identification Number of claimant's spouse, if applicable.
(7) Specific and credible information concerning the person(s) that the claimant believes have failed to comply with tax laws and which will lead to the collection of unpaid taxes. This information should include the following:

(i) The legal name of the person(s) (e.g., individual or entity), and any related person(s), that committed the violation of tax laws;
(ii) The person's aliases, if any;
(iii) The person's address;
(iv) The person's Taxpayer Identification Number(s);
(v) A description of the amount(s) and tax year(s) of Federal tax claimed to be owed, and facts supporting the basis for the amount(s) claimed to be owed;
(vi) Documentation to substantiate the claim (*e.g.*, financial data; the location of bank accounts, assets, books, and records; transaction documents or analyses relevant to the claim); and
(vii) Any and all other facts and information pertaining to the claim.
If available information is not provided by the claimant, the claimant bears the risk that such information may not be considered by the Whistleblower Office in making any award determination. If documents or supporting evidence are known to the claimant but are not in his or her possession or control, the claimant 5 should describe these documents and identify their location to the best of his or her ability.
(8) Explanation of how the information that forms the basis of the claim came to the attention of the claimant, including the date(s) on which this information was acquired, and a complete description of the claimant's present or former relationship (if any) to the person that is the subject of the claim (*e.g.*, family member, acquaintance, client, employee, accountant, lawyer, bookkeeper, customer). If the claimant identifies multiple person(s) as the subject of a claim, describe his or her relationship to each person.
(9) Information submitted under section 7623 must be accompanied by an original signed declaration under penalty of perjury, as follows:
I declare, under penalty of perjury, that I have examined this application and my accompanying statement and supporting documentation and aver that such application is true, correct and complete, to the best of my knowledge. The requirement to submit information under penalty of perjury precludes submissions by: (1) a person serving as a representative of the claimant, or (2) an entity other than a natural person. With respect to claims under section 7623(b), the requirement to submit information under penalty of perjury precludes submissions made anonymously or under an alias.
(10) Joint claims must be signed by each claimant and each claimant must sign the claim under penalty of perjury as described in 3.03(8).

3.04 *Examples of Grounds for not Processing Claims Under Section 7623(b)*
Examples of claims that will not be processed under section 7623(b) include:
(1) Claims submitted by an individual who is an employee of the Department of Treasury, or who is acting within the scope of his/her duties as an employee of any Federal, State, or local Government.
(2) Claims submitted by an individual who is required by Federal law or regulation to disclose the information, or by an individual who is precluded by Federal law or regulation from making the disclosure.

(3) Claims submitted by an individual who obtained or was furnished the information while acting in an official capacity as a member of a State body or commission having access to such materials as Federal returns, copies or abstracts.
(4) Claims submitted by an individual who had access to taxpayer information arising out of a contract with the Federal government that forms the basis of the claim.
(5) Claims that upon initial review have no merit or that lack sufficient specific and credible information.
(6) Claims submitted anonymously or under an alias.
(7) Claims filed by a person other than a natural person (such as a corporation or a partnership).
(8) The alleged noncompliant person is an individual whose gross income is below $200,000 for all taxable years at issue in a claim.

3.05 *Acknowledgment of Claim by Whistleblower Office*

The Whistleblower Office will acknowledge receipt of a claim in writing. If required information has not been submitted on a Form 211, the Whistleblower Office may return a Form 211 to the claimant for completion and submission. Following submission of the claim, the Whistleblower Office may, in its sole discretion, offer the opportunity to confer with the claimant to discuss the claim to ensure that the Service fully understands the information submitted with the claim. The Whistleblower Office, in its sole discretion, may ask for additional assistance from the claimant or any legal representative of such individual. Any assistance shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter. The submission of a claim does not create an agency relationship between the claimant and the Federal Government, nor does the claimant act in any way on behalf of the Federal Government.

3.06 *Confidentiality of Claimant's Identity*

The Service will protect the identity of the claimant to the fullest extent permitted by law. Under some circumstances, such as when the claimant is needed as a witness in a judicial proceeding, it may not be possible to pursue the investigation or examination without revealing the claimant's identity. The Service will make every effort to inform the claimant before proceeding in such a case.

3.07 *IRS Process for Evaluating Claim*

The process for evaluating a claim is initiated by Service consideration of the information provided by the claimant in light of the facts developed by the Service in investigating the claim. This process will also consider whether the information submitted by the claimant resulted in administrative action taken by the Service or judicial action. For example, in the case of large entities where the entities' tax returns are subject to annual examination by the Service, an administrative action can mean the creation of a new issue under the Audit Plan or a change in the way information about an issue is collected or analyzed, which would not otherwise have occurred without the information provided by the claimant. In other cases, an administrative action may include initiating an examination of the person which would not otherwise have

occurred without information provided by the claimant. Alternatively, a claimant's description of information when the alleged noncompliant person is already under investigation and when the information results in no change in the manner regarding how the issue is
approached or resolved would not generally be regarded as resulting in administrative or judicial action and therefore would not be eligible for an award.

3.08 *Duration of Process from Submitted Claim to Award Determination.*

The process, from submission of complete information to the Service until the proceeds that serve as the basis for any award determination are collected, may take several years. Accordingly, the Service is unable to make any commitment to the claimant concerning the expected duration of the process. Payment of awards will not be made until there is a final determination of the tax liability (including taxes, penalties, interest, additions to tax and additional amounts) owed to the Service and such amounts have been collected by the Service. Examples of when a final determination of tax liability can be made include, but are not limited to: (1) at the administrative level, when the Service and person that is the subject of the claimant's allegations enter into a closing agreement which conclusively waives the right to appeal or otherwise challenge a deficiency or additional tax liability determined by the Service; (2) if the person that is the subject of the claimant's allegations petitions the United States Tax Court for a redetermination of a deficiency, when the decision in that case becomes final within the meaning of section 7481; and (3) after the expiration of the statutory period for a taxpayer to file a claim for refund and to file a refund suit based on that claim against the United States or, if a refund suit is filed, when the judgment in that suit becomes final. In a case in which litigation is commenced, any award consideration will be delayed until that litigation has been concluded with finality.

3.09 *Percentages Applied to Awards Under 7623(b)*

The Whistleblower Office will make the final determination whether an award will be paid and the amount of the award for claims which it processes. Awards will be paid in proportion to the value of information furnished voluntarily with respect to proceeds collected, including penalties, interest, additions to tax and additional amounts. The amount of the award will be at least 15% but no more than 30% of the collected proceeds in cases in which the Service determines that the information submitted by the claimant substantially contributed to the Service's detection and recovery of tax. If the claimant planned and initiated the actions that led to the underpayment of tax, or to the violation of the internal revenue laws, the Whistleblower Office may reduce the award. If the claimant is convicted of criminal conduct arising from his or her role in planning and initiating the action, the Whistleblower Office will deny the claim. If an action is based principally on allegations resulting from judicial or administrative proceedings, government reports, hearing, audit, or investigation, or the media, an award of a lesser amount, subject to the discretion of the Whistleblower Office, may be provided; such an award, however, may not exceed 10% of the collected proceeds, including

penalties, interest, additions to tax, and additional amounts resulting from the action. This reduction in award percentage does not apply if the Service determines that the claimant was the initial source of the information that resulted in the judicial or administrative proceedings, government reports, hearing, audit, or investigation, or the media's report on the allegations.

3.10 *Tax Treatment of Awards*

All awards will be subject to current federal tax reporting and withholding requirements. Award recipients will receive a Form 1099 or such other form as may be proscribed by law, regulation or publication.

3.11 *Appeal Rights*

When the Whistleblower Office has made a final determination regarding a claim, the Whistleblower Office will send correspondence to the claimant regarding its final award determination. Final Whistleblower Office determinations regarding awards under section 7623(b) may, within 30 days of such determination, be appealed to the United States Tax Court. In accordance with section 7623(b)(4), decisions under section 7623(a) may not be appealed to the Tax Court.

3.12 *Claims Submitted Prior to Date of Enactment of the Act*

Information provided prior to December 20, 2006 (the date of enactment of the Act) is covered by the law and policies in place at the time the information was submitted. Supplemental information provided on or after December 20, 2006, will not be considered a new claim unless its receipt prompts the Service to take an administrative or judicial action that would not otherwise have been taken on the basis of the earlier-supplied information alone.

3.13 *Additional Questions* An electronic mailbox for email inquiries has been set up and may be accessed at WO@IRS.gov.

SECTION 4. REQUEST FOR COMMENTS

Interested parties are invited to submit comments on or before February 13, 2008**.** Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2008-4), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20224. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2008-4), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Comments may also be submitted electronically via the following email address: Notice.Comments@irscounsel.treas.gov. Please include "Notice 2008- 4" in the subject line of any electronic submissions.

SECTION 5. EFFECTIVE DATE

This Notice is effective as of January 14, 2008.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Holly Styles of the Office of Associate Chief Counsel, General Legal Services. For further information regarding this notice contact Holly Styles at (202) 927-0900 (not a toll-free call).

Internal Revenue Service
U.S. Department of Treasury
History of the Whistleblower/Informant Program
The first 140 years
www.irs.gov/compliance/article/0,,id=181294.00.html

*

What is now 26 USC 7623(a) has been on the books since March 1867, allowing the Secretary of the Treasury to pay such amounts as he deems necessary "for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same."

*

Prior to 2006 the only substantive change since 1867 was in 1996, when a clause was added allowing payments to be made "for detecting underpayments of tax" as another basis for an informant award, and making the payments from proceeds collected rather than appropriated funds.

*

The Treasury Department issued a regulation to implement the law, and the IRS has had a series of policies to define the scope and procedures for the program.

*

The Courts have considered attempts to challenge award decisions under this law, and uniformly found that the discretion to make, or not make, an award is essentially not reviewable.

The Tax Relief and Health Care Act of 2006

*

In December of 2006, the Tax Relief and Health Care Act of 2006 made fundamental changes to the IRS informant awards program.

*

The key change in the law was the addition of a new section 7623(b), under which awards are no longer discretionary. The new law says that the whistleblower shall receive 15 to 30 percent of the collected proceeds.

*

The amendment added whistleblower appeal rights.

*

The IRS was also required to create a Whistleblower Office reporting to the Commissioner to implement the law.

Pre-amendment program

*

The pre-amendment program was discretionary, and was governed by policies that defined award percentages and set a cap.

*

The maximum award percentage was 15% of collected taxes and penalties,

Maximum award was limited to $10 million

*

Awards were generally not paid when the disclosures were based on public information, or when the informant participated in the tax non-compliance

*

The whistleblower was not required to be an individual.

*

There was no requirement that the informant sign a Form 211

Internal Revenue Service

U.S. Department of Treasury

Whistleblower - Informant Award
www.irs.gov/compliance/article/0,,id=180171,00.html

The IRS Whistleblower Office pays money to people who blow the whistle on persons who do not pay their fair share of tax. If the IRS uses information provided by the whistleblower, it can award the whistleblower up to 30 percent of the additional tax, penalty and other amounts it collects.
Who can get an award?

The IRS may pay awards to people who provide specific and credible information to the IRS if the information results in the collection of taxes, penalties, interest or other amounts from the noncompliant taxpayer.

The IRS is looking for solid information, not an "educated guess" or unsupported speculation. We are also looking for a significant Federal tax issue - this is not a program for resolving personal problems or disputes about a business relationship.
What are the rules for getting an award?

The law provides for two types of awards. If the taxes, penalties, interest and other amounts in dispute exceed $2 million, and a few other qualifications are met, the IRS will pay 15 percent to 30 percent of the amount collected. If the case deals with an individual, his or her annual gross income must be more than $200,000. If the whistleblower disagrees with the outcome of the claim, he or she can appeal to the Tax Court. These rules are found at Internal Revenue Code IRC Section 7623(b) - Whistleblower Rules.

The IRS also has an award program for other whistleblowers - generally those who do not meet the dollar thresholds of $2 million in dispute or cases involving individual taxpayers with gross income of less that $200,000. The awards through this program are less, with a maximum award of 15 percent up to $10 million. In addition, the awards are discretionary and the informant cannot dispute the outcome of the claim in Tax Court. The rules for these cases are found at Internal Revenue Code IRC Section 7623(a) - Informant Claims Program, and some of the rules are different from those that apply to cases involving more than $2 million.

If you decide to submit information and seek an award for doing so, use IRS Form 211. The same form is used for both award programs.

What Happens to a Claim for an Informant Award (Whistleblower)
Procedures used and the criteria followed to identify and process informant cases

History of the Whistleblower/Informant Program
Historical information on the evolution of the concept of paying for leads from its inception up to the current law followed today
www.irs.gov/compliance/article/0,,id=181294,00.html

Whistleblower Law
A brief synopsis of what the new whistleblower law entails. This is the most significant change to the Services' approach to informant awards in 140 years

How Do You File a Whistleblower Award Claim
Step by step procedures to follow to file an informant claim for award

Confidentiality and Disclosure for Whistleblowers
The rules governing confidentiality of informant information

IRC Section 7623(b) - Whistleblower Rules
The requirements of the new rules enacted in IRC Section 7623(b), the Whistleblower Program

IRC Section 7623(a) - Informant Claims Program
The requirement of the rules governing claims that do not meet the requirements of the provisions in the whistleblower program under IRC Section 7623(b). These claims are part of the Informant Claims Program

IRS Form 211
Application for Award for Original Information

News Release IR-2007-201
Procedure Unveiled for Reporting Violations of the Tax Law, Making Reward Claims

Notice 2008-4 Guidance to the public on how to file claims
Claims Submitted to the IRS Whistleblower Office under Section 7623

Whistleblower Office At-a-Glance

Reporting other information to the IRS

If you have information about tax noncompliance but are not interested in an award, or you have other information you believe may be of interest to the IRS:

*

For information on how to Report Suspected Tax Fraud Activity, if you have information about an individual or company you suspect is not complying with the tax law, and you do not want to seek an award . You can remain anonymous.

Internal Revenue Service
What Happens to a Claim for an Informant Award (Whistleblower)
Process for Evaluating Whistleblower's Claim
www.irs.gov/compliance/article/0,,id=181290,00.html

*

A threshold requirement for any award under 7623 is that the information must lead to judicial or administrative action – an audit or investigation resulting in the collection of proceeds.

*

An analyst in the Whistleblower Office will consider the information provided by the whistleblower. The IRS has to decide that the case is worth pursuing.

*

In the case of a large corporate taxpayer whose returns are audited each year, an administrative action can mean the creation of a new issue under the Audit Plan or a change in the way information about an issue is collected or analyzed, which would not otherwise have occurred without the information provided by the whistleblower.

*

In other cases, an administrative action can mean placing a taxpayer under audit who was not already under audit.

Duration of Process

*

The process, from submission of complete information to the Service until the proceeds are collected, may take several years.

*

Payments of awards will not be made until after the taxes, penalties, interest, additions to tax and additional amounts that are finally determined to be owed to the Service have been collected.

*

Examples of when a final determination of tax liability can be made include, but are not limited to at the administrative level when the Service and the taxpayer enter into a closing agreement wherein the taxpayer conclusively waives the right to appeal or otherwise challenge a deficiency or additional tax liability determined by the Service; if a taxpayer petitions United States Tax Court; when a decision becomes final within the meaning of section 7481; and

*

After the expiration of the statutory period for a taxpayer to file a claim for refund and to file a refund suit based on the claim against the Untied States, or if a refund suit is filed, when the judgment in that suit becomes final.

*

A finding of fraud in a tax case carries some significant additional implications for penalties, fines and jail time. In the context of whistleblower claims, it also has statute of limitations implications that can make a big difference for the whistleblower.

Percentage Applied to Awards Under Section 7623(a)

*

The discretionary maximum percentage of award for an (a) case is 15 percent, up to $10 million.

*

If the whistleblower planned and initiated the actions that led to the underpayment of tax, or the violation of the internal revenue laws, the award may be reduced.

Percentage Applied to Awards Under Section 7623(b)

*

The Whistleblower Office will make the final determination whether an award will be paid and the amount of the award.

*

Award will be paid in proportion to the value of the information furnished voluntarily with respect to proceeds collected, including penalties, interest, additions to tax and additional amounts.

*

The amount of the award will be at least 15 percent but not more than 30 percent of collected proceeds in cases in which the Service determines that the information submitted substantially contributed to the Service's detection and recovery of tax.

*

If an action is based principally on allegations resulting from judicial or administrative proceeding, government reports, hearing, audit, or investigation, or the news media, an award of lesser amount, subject to the discretion of the Whistleblower Office, may be provided. The award will not be more than 10 percent of collected proceeds as described above. This reduction in award percentage does not apply if the whistleblower was the initial source of the information.

*

If the whistleblower planned and initiated the actions that led to the underpayment of tax, or the violation of the internal revenue laws, the Director, Whistleblower Office may reduce the award.

*

If the whistleblower is convicted based on his/her role in planning and initiating the action, then the Whistleblower Office is required to deny the award.

Tax Treatment of Awards

*

Prior to issuing an award check, the IRS will verify the informant's mailing address.

*

All awards will be subject to current federal tax reporting and withholding requirements.

*

Whistleblower will receive a Form 1099 or other form as may be prescribed by law, regulation, or publication.

Appeal Rights

*

The Whistleblower Office will communicate the final claim determination, in writing to the claimant. Final determinations regarding awards under 7623(b) may, within 30 days of such determination, be appealed to the United States Tax Court.

*

Decisions under section 7623(a) may not be appealed to the Tax Court.

Internal Revenue Service

How Do You File a Whistleblower Award Claim Under Section 7623 (a) or (b)

Submission of Information for Award under 7623 (a) or (b)

www.irs.gov/compliance/article/0,,id=181292,00.html

*

All whistleblower claims must be submitted under penalty of perjury.

*

Individuals must submit information on Form 211, application for Award for Original Information.

Mail Form 211 to:

Internal Revenue Service
Whistleblower Office
SE:WO
1111 Constitution Ave., NW
Washington, D.C. 20224

Examples of claims that will not be processed under 7623(b) include

*

The informant is an employee of the Department of Treasury, or is acting within the scope of his or her duties as an employee of any Federal, State, or local Government.

*

The individual is required by federal law or regulation to disclose the information, or the individual is precluded by federal law or regulation from making the disclosure.

*

The individual obtained or was furnished the information while acting in his or her official capacity as a member of a State body or commission having access to such materials as Federal returns, copies or abstracts.

*

The individual had access to taxpayer information arising out of contract with the federal government that forms the basis of the claim.

*

The claim is found to have no merit or the claim lacked sufficient specific and credible information.

*

The claim was submitted anonymously or under an alias.

*

The claim was filed by a person other than an individual (e.g., corporation or partnership)

*

The alleged noncompliant taxpayer is an individual whose gross income is below $200,000.

Examples of claims that will not be processed under 7623(a)

*

The individual is an employee of the Department of Treasury, or is acting within the scope of his or her duties as an employee of any Federal, State, or local Government.

*

The individual is required by federal law or regulation to disclose the information, or the individual is precluded by federal law or regulation from making the disclosure.

*

The individual obtained or was furnished the information while acting in his or her official capacity as a member of a State body or commission having access to such materials as Federal returns, copies or abstracts.

*

The individual had access to taxpayer information arising out of contract with the federal government that forms the basis of the claim.

*

The claim is found to have no merit or the claim lacked sufficient specific and credible information.

*

The claim was submitted anonymously or under an alias.

*

The claim was filed by a person other than an individual (e.g., corporation or partnership)

Full Disclosure

*

If the whistleblower withholds available information, the whistleblower bears the risk that withheld information may not be considered by the Whistleblower Office in making any award determination.

*

If the documents or supporting evidence are known to the whistleblower but not in his/her possession, the whistleblower should describe these documents and identify their location to the best of his or her ability.

*

Except in the most unusual cases involving boxes of data, the whistleblower should include the evidence with the initial submission. Contact the Whistleblower Office for guidance if there is a question on what to submit.

Under no circumstance do we expect or condone illegal actions taken to secure documents or supporting evidence.

*

No specific format is required; an index to exhibits, particularly when they are voluminous, is always helpful.

SECTION 4
THE FALSE CLAIMS REFORM ACT OF 1985

SENATE REPORT NO. 99-345
99TH CONGRESS 2D SESSION

July 28, 1986 – ordered to be printed

Mr. Thurmond, from the Committee on the Judiciary submitted the following

REPORT

[To accompany S. 1562]

The Committee on the Judiciary, to which was referred the bill (S. 1562) to amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

I. PURPOSE OF THE BILL

The purpose of S. 1562, the False Claims Reform Act, is to enhance the Government's ability to recover losses sustained as a result of fraud against the Government. While it may be difficult to estimate the exact magnitude of fraud in Federal programs and procurement, the recent proliferation of cases among some of the largest Government contractors indicates that the problem is severe. This growing pervasiveness of fraud necessitates modernization of the Government's primary litigative tool for combating fraud; the False Claims Act (31 U.S.C. 3729, 3730). The main portions of the act have not been amended in any substantial respect since signed into law in 1863. In order to make the statute a more useful tool against fraud in modern times, the Committee believes the statute should be amended in several significant respects.

The proposed legislation seeks not only to provide the Government's law enforcers with more effective tools, but to encourage any individual knowing of Government fraud to bring that information forward. In the face of sophisticated and widespread fraud, the Committee believes only a coordinated effort of both the Government and the citizenry will decrease this wave of defrauding public funds. S. 1562 increases incentives, financial and otherwise, for private individuals to bring suits on behalf of the Government.

The False Claims Reform Act also modernizes jurisdiction and venue provisions, increases recoverable damages, raises civil forfeiture and

criminal penalties, defines the mental element required for a successful prosecution and clarifies the burden of proof in civil false claims actions.

II. BACKGROUND STATEMENT

A. NEED FOR LEGISLATION

Evidence of fraud in Government programs and procurement is on a steady rise. In 1984, the Department of Defense conducted 2,311 fraud investigations, up 30 percent from 1982. Similarly, the Department of Health and Human Services has nearly tripled the number of entitlement program fraud cases referred for prosecution over the past 3 years. Detected fraud is, of course, an imprecise measure of how much actual fraud exists. The General Accounting Office in a 1981 study found that "most fraud goes undetected."[1] Of the fraud that is detected, the study states, the Government prosecutes and recovers its money in only a small percentage of cases.

Fraud permeates generally all Government programs ranging from welfare and food stamps benefits, to multibillion dollar defense procurements, to crop subsidies and disaster relief programs.[2] While fraud is obviously not limited to any one Government agency, defense procurement fraud has received heightened attention over the past few years. In 1985, the Department of Defense Inspector General, Joseph Sherick, testified that 45 of the 100 largest defense contractors, including 9 of the top 10, were under investigation for multiple fraud offenses.[3] Additionally, the Justice Department has reported that in the last year, four of the largest defense contractors, General Electric, GTE, Rockwell and Gould, have been convicted of criminal offenses while another, General Dynamics, has been indicted and awaits trial.[4]

No one knows, of course, exactly how much public money is lost to fraud. Estimates from those who have studied the issue, including the General Accounting Office, Department of Justice, and Inspectors General, range from hundreds of millions of dollars to more than $50 billion per year.

The 1981 GAO report on fraud estimated that loss to the Government from 77,000 reported cases over 2 1/2 years would total between $150 and $200 million. But the report went on to note:

These losses are only what is attributable to known fraud and other illegal activities investigated by the Federal agencies in this study. It does not include, of course, the cost of undetected fraud which is probably much higher because weak internal controls allow fraud to

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[1] GAO Report to Congress, "Fraud in Government Programs: How Extensive is it? How Can it be Controlled?," 1981.
[2] See *Id*. at 8-15.
[3] Hearing on Federal Securities Laws and Defense Contracting before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, 99th Congress, 1st session (1985).
[4] Hearings on White Collar Crime before the Senate Committee on the Judiciary, 99th Congress, 2d session (1985).

flourish.[5]

The Department of Justice has estimated fraud as draining 1 to 10 percent of the entire Federal budget. [6] Taking into account the spending level in 1985 of nearly $1 trillion, fraud against the Government could be costing taxpayers anywhere from $10 to $100 billion annually.

In the Defense Department procurement budget alone, we may be losing anywhere from $1 to $10 billion if the Justice Department estimate is accurate. Defense Department Inspector General Joseph Sherick estimated that DOD loses more than $1 billion just from fraudulent billing practices. [7]

The cost of fraud cannot always be measured in dollars and cents, however. GAO pointed out in its 1981 report that fraud erodes public confidence in the Government's ability to efficiently and effectively manage its programs.[8] Even in the cases where there is no dollar loss--for example where a defense contractor certifies an untested part for quality yet there are no apparent defects--the integrity of quality requirements in procurement programs is seriously undermined. A more dangerous scenario exists where in the above example the part is defective and causes not only a serious threat to human life, but also to national security.

Fraud is perhaps so pervasive and, therefore, costly to the Government due to a lack of deterrence. GAO concluded in its 1981 study that most fraud goes undetected due to the failure of Governmental agencies to effectively ensure accountability on the part of program recipients and Government contractors. The study states:

For those who are caught committing fraud, the chances of being prosecuted and eventually going to jail are slim . . . The sad truth is that crime against the Government often does pay. [9]

Many changes have been made since 1981 which have brought about some encouraging improvements in the Government's efforts against fraud. With the inception of Inspectors General, an increased number of fraud allegations are being addressed. However, available Department of Justice records show most fraud referrals remain unprosecuted and lost public funds, therefore, remain uncollected. [10]

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[5] GAO Report, at 1

[6] Hearings on the Department of State, Justice and Commerce

[7] Hearings on Federal Securities Laws and Defense Contracting before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, 99th Congress, 1st Session (1985).

[8] GAO Report, at 19.

[9] GAO Report, at cover.

[10] Department of Justice Civil Division records show 2,850 fraud referrals in fiscal year 1984 and just 21 complaints filed and 70 settlements or judgments,. In fiscal year 1985, the Division received 2,734 fraud referrals, filed 36 complaints and obtained 54 settlements or judgments.

In 1984, the Economic Crime Council of the Department of Justice targeted two major Federal programs--defense procurement and health care benefits--as economic crime areas in which stronger enforcement and deterrence were needed. In the Council's April, 1985 report to the Attorney General, it concluded that while some progress had been made, the level of enforcement in defense procurement fraud remains inadequate. [11]

Through hearings and research on Government fraud, the Committee has sought and is continuing to seek out the reasons why fraud in Government programs is so pervasive yet seldom detected and rarely prosecuted. It appears there are serious roadblocks to obtaining information as well as weaknesses in both investigative and litigative tools. In an effort to correct some of those weaknesses, the Committee has reviewed the Government's remedies against false claims and developed the legislative improvements embodied in S. 1562.

The False Claims Act currently permits the United States to recover double damages plus $2,000 for each false or fraudulent claim. Enacted in 1863 in response to cases of contractor fraud perpetrated on the Union Army during the Civil War, this statute has been used more than any other in defending the Federal treasury against unscrupulous contractors and grantees. Although the Government may also pursue common law contract remedies, the False Claims Act is a much more powerful tool in deterring fraud.

Since the act was last amended in 1943, several restrictive court interpretations of the act have emerged which tend to thwart the effectiveness of the statute. The Committee's amendments contained in S. 1562 are aimed at correcting restrictive interpretations of the act's liability standard, burden of proof, qui tam jurisdiction and other provisions in order to make the False Claims Act a more effective weapon against Government fraud.

Detecting fraud is usually very difficult without the cooperation of individuals who are either close observers or otherwise involved in the fraudulent activity. Yet in the area of Government fraud, there appears to be a great unwillingness to expose illegalities.

In 1983, the U.S. Merit Systems Protection Board conducted a survey of approximately 5,000 Federal Government employees to determine to what extent observed fraud, waste, and abuse was going unreported. The Merit Systems Board reported that 69 percent of those who believed they had direct knowledge of illegalities failed to report the information. Those employees who chose not to report fraud were then asked why they failed to come forward. The most frequently cited reason given (53 percent) was the belief that nothing would be done to correct the activity even if reported. Fear of reprisal was the second most cited reason (37 percent) for nonreporting.[12]

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[11] Report of the Economic Crime Council to the Attorney General, “Investigation and Prosecution of Fraud in Defense Procurement and Health Care Benefits Programs”, April 30, 1985.

[12] “Blowing the Whistle in the Federal Government”, Report of the United States Merit Systems Protection

In hearings before the Subcommittee on Administrative Practice and Procedure, individuals who had 'blown the whistle' on their Government contractor employers offered several reasons for what one termed the 'conspiracy of silence' among contractor employees.[13]

Robert Wityczak, a triple-amputee veteran who exposed mischarging practices at Rockwell International, said his 'ethical principles' were tested to the limit when faced with the difficult choice of either keeping quiet about mischarging he witnessed or risking the loss of his job.

I agonized over my decision to step forward. I have a wife, five children and a house mortgage * * * Yet once I made the decision to tell the truth about what was going on, I found no one inside or outside the company willing to act on the information.[14] Wityczak said his initial efforts to report the mischarging started what was to result in a long-term harassment campaign by his superiors which finally resulted in Wityczak being discharged. Wityczak said: I told my supervisors * * * I would no longer mischarge on my time cards. They reacted angrily, calling me antimanagement, anti-Rockwell, and a pain in the ass * * * Gradually, I was squeezed out of the work I was doing. I was stripped of my confidential security, my access to documents was limited, I was excluded from meetings and was put to work doing menial tasks outside my job description, such as sweeping, making coffee and cleaning a 50 gallon coffee pot. [15]

Wityczak said he has concluded not only from his own experience but from talking to his fellow workers that there is 'absolutely no encouragement or incentive' for individuals working in the defense industry to report fraud. Instead, he said, there is a great disincentive due to employer harassment and retaliation. 'Contractor employees are generally all for exposing fraud, but most individuals just simply cannot and will not put their head on the chopping block,' Wityczak said. [16]

Wityczak's comments were echoed by Mr. John Gravitt, another witness who testified in regard to time card mischarging at a General Electric plant in Ohio. Gravitt agreed that most individuals working in defense contractor plants are afraid to expose fraud. Gravitt also pointed out that without cooperating employees, Government auditors would rarely detect abuses. Gravitt explained that notice of an impending audit normally travels through the contractor plant 'like wildfire' and 'everybody straightens up their act.' Wityczak said his experience with Government audits was similar in that all departments were put on 'red alert' when auditors came through. [17]

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[13] Hearing on S. 1562, the False Claims Reform Act, before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 99th Congress, 1st Session, September 17, 1985.
[14] *Id.* At 80.
[15] *Id*. at 81.
[16] *Id*. at 85
[17] *Id*. at 82.

The Committee believes changes are necessary to half the so-called ‘conspiracy of silence' that has allowed fraud against the Government to flourish. John Phillips, co-director of the Center for Law in the Public Interest, a nonprofit law firm specializing in assisting 'whistleblowers', testified that more effective fraud detection will only occur if changes are made at the basic employee level. Phillips said people who are unwilling participants in fraudulent activity must be given an opportunity to speak up and take action without fear and with some assurance their disclosures will lead to results.[18]

Hearing testimony also suggested that the collection of information which leads to successful fraud recoveries is hampered by the Government's inadequate investigative tools. Justice Department witnesses stated that as in all complex white-collar fraud matters, investigative tools are critical to successful prosecutions. Mr. Jay Stephens, Associate Deputy Attorney General, testified that in civil false claims cases the Department's civil attorneys rely in large part on FBI reports and information gathered by the various Inspectors General, [19] but that civil investigative capacity is often hampered, however, in two ways. First, the civil attorneys themselves have no authority to compel production of documents or depositions prior to filing suit. Currently, some cases are weeded out and not filed because information is missing--information that might have turned up through pre-suit investigation if the tools were available. [20]

Second, information is often incomplete due to the existence of a prior grand jury investigation resulting in evidence protected by Rule 6(e) of the Federal Rules of Criminal Procedure. On June 30, 1983, the Supreme Court ruled in United States v. Sells Engineering, Inc., 103 S. Ct. 3133 (1983), that Department of Justice attorneys handling civil cases are not 'attorneys for the government' for the purposes of Rule 6(e) of the Federal Rules of Criminal Procedure. Therefore, they may not obtain grand jury materials that pertain to their cases without a court order; and such an order may be granted only upon a showing of 'particularized need.' The court further held that the 'particularized need' standard was not satisfied by a showing that nondisclosure would cause lengthy delays in litigation or would require substantial duplication of an investigation already conducted by the Government using scarce investigative and audit resources.

Compounding the investigative problems are also various litigative hurdles. As a civil remedy designed to make the Government whole for fraud losses, the civil False Claims Act currently provides that the Government need only prove that the defendant knowingly submitted a false claim. However, this standard has been construed by some courts

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[18] *Id.* at 87.
[19] *Id*. at 39.
[20] *Id*. at 39

to require that the Government prove the defendant had actual knowledge of fraud, and even to establish that the defendant had specific intent to submit the false claim, [21] for example, United States v. Aerodex, Inc., 469 F.2d 1003 (5th Cir. 1972). The Committee believes this standard is inappropriate in a civil remedy and presently prohibits the filing of many civil actions to recover taxpayer funds lost to fraud.

The Committee's interest is not only to adopt a more uniform standard, but a more appropriate standard for remedial actions. Currently, in judicial districts observing an 'actual knowledge' standard, the Government is unable to hold responsible those corporate officers who insulate themselves from knowledge of false claims submitted by lower-level subordinates. This 'ostrich-like' conduct which can occur in large corporations poses insurmountable difficulties for civil false claims recoveries.

The Committee is firm in its intention that the act not punish honest mistakes or incorrect claims submitted through mere negligence. But the Committee does believe the civil False Claims Act should recognize that those doing business with the Government have an obligation to make a limited inquiry to ensure the claims they submit are accurate.

The burden of proof in civil false claims cases has also evolved through case law into an ambiguous standard. Some courts have required that the United States prove a violation by clear and convincing, or even clear, unequivocal and convincing evidence, United States v. Ueber, 299 F.2d 310 (6th Cir. 1962), which the Justice Department has testified is the 'functional equivalent of a criminal standard.' [22]

In addition to detection, investigative and litigative problems which permit fraud to go unaddressed, perhaps the most serious problem plaguing effective enforcement is a lack of resources on the part of Federal enforcement agencies. Unlike most other types of crimes or abuses, fraud against the Federal Government can be policed by only one body--the Federal Government. State and local law enforcement are normally without jurisdiction where Federal funds are involved.

Taking into consideration the vast amounts of Federal dollars devoted to various complex and highly regulated assistance and procurement programs, Federal auditors, investigators, and attorneys are forced to make 'screening' decisions based on resource factors.[23] Allegations that perhaps could develop into very significant cases are often left unaddressed at the outset due to a judgment that devoting scarce resources to a questionable case may not be efficient. And with current budgetary constraints, it is unlikely that the Government's corps of individuals assigned to anti-fraud enforcement will substantially increase.

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[21] *Id.* at 39

[22] *Id.* at 35

[23] Hearings on Defense Procurement Fraud Law Enforcement before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 99th Congress, 1st session (1985).

An additional problem noted by hearing witnesses, exists when large, profitable corporations are the subject of a fraud investigation and able to devote many times the manpower and resources available to the Government. This resource mismatch was recognized by DOD Inspector General Joseph Sherick who said that in far too many instances the Government's enforcement team is overmatched by the legal team's major contractors retains. [24]

The Committee believes that the amendments in S. 1562 which allow and encourage assistance from the private citizenry can make a significant impact on bolstering the Government's fraud enforcement effort. The idea of private citizen aid in false claims actions is, of course, not a new one, but dates back to the original enactment of the False Claims Act in 1863. Additionally, in other areas of enforcement such as antitrust and securities violations, the number of private enforcement actions far exceeds those brought by the Government. [25]

B. HISTORY OF THE FALSE CLAIMS ACT AND COURT INTERPRETATIONS

The False Claims Act was adopted in 1863 and signed into law by President Abraham Lincoln in order to combat rampant fraud in Civil War defense contracts. Originally the act provided for both civil and criminal penalties assessed against one who was found to knowingly have submitted a false claim to the Government. The civil penalty provided for payment of double the amount of damages suffered by the United States as a result of the false claim, plus a $2,000 forfeiture for each claim submitted.

In its present form, the False Claims Act empowers the United States to recover double damages from those who make, or cause to be made, false claims for money or property upon the United States, or who submit false information in support of claims. In addition the United States may recover one $2,000 forfeiture for each false claim submitted in support of a claim. The imposition of this forfeiture is automatic and mandatory for each claim which is found to be false. The United States is entitled to recover such forfeitures solely upon proof that false claims were made, without proof of any damages. Fleming v. United States, 336 F.2d 475, 480 (10th Cir. 1964), cert. denied, 380 U.S. 907 (1965). A forfeiture may be recovered from one who submits a false claim though no payments were made on the claim. United States v. American Precision Products Corp., 115 F. Supp. 823 (D. N.J. 1953). The False Claims Act reaches all parties who may submit false claims. The term 'person' issued in its broad sense to include partnerships, associations, and corporations--United States v. Hanger One, Inc., 563 F.2d 1155,

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[24] *Id*. at 18

[25] See United States Department of Justice Source Book of Criminal Justice Statistics, 1981 at 431.

1158 (5th Cir. 1977); United States v. National Wholesalers, Inc., 236 F.2d 944 (9th Cir. 1956)--as well as States and political subdivisions thereof. Cf. Ohio v. Helvering, 292 U.S. 360, 370 (1934); Georgia v. Evans, 316 U.S. 153, 161 (1942); Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978).

The False Claims Act is intended to reach all fraudulent attempts to cause the Government to pay our sums of money or to deliver property or services. Accordingly, a false claim may take many forms, the most common being a claim for goods or services not provided, or provided in violation of contract terms, specification, statute, or regulation. For example, United States v. Bornstein, 423 U.S. 303 [FN26] (1976); United States v. National Wholesalers, 236 F.2d 944 (9th Cir. 1956), cert. denied, 353 U.S. 930 (1957); Henry v. United States, 424 F.2d 677 (5th Cir. 1970). A false claim for reimbursement under the Medicare, Medicaid or similar program is actionable under the act, Peterson v. Weinberger, supra, as is a false application for a loan from a Government agency, United States v. Neifert-White Co., 390 U.S. 228 (1968), or a false claim in connection with a sale financed by the Agency for International Development or Export-Import Bank, United States v. Chew, 546 F.2d 309 (9th Cir. 1978), and such claims may be false even though the services are provided as claimed if, for example, the claimant is ineligible to participate in the program, or though payments on the Government loan are current, if by means of false statements the Government was induced to lend an inflated amount. A false claim may take other forms, such as fraudulently cashing a Government check, which was wrongfully or mistakenly obtained. United States v. Veneziale, 268 F.2d 504 (3rd Cir. 1956). A fraudulent attempt to pay the Government less than is owed in connection with any goods, services, concession, or other benefits provided by the Government is also a false claim under the act. See Smith v. United States, 287 F.2d 299 (5th Cir. 1961); United States v. Garder, 73 F. Supp. 644 (N.D. Ala. 1947). For example, the Committee considers a false application for reduced postal rates to be a false claim for postal services, and agrees with the well-reasoned decision in United States ex rel. Rodriguez v. Weekly Publications, Inc., 68 F. Supp. 767, 770 (S.D. N.Y. 1946), that whether such benefits are received by means of a reduction in the amount paid by the Government or by means of subsequent claims for reimbursement is a matter of bookkeeping rather than of substance, and therefore, rejects the contrary result reached in United States v. Marple Community Record, Inc., 335 F. Supp. 95 (E.D. Pa. 1971); see also, United States v. Howell, 318 F.2d 162 (9th Cir. 1963).

Each separate bill, voucher or other 'false payment demand' constitutes a separate claim for which a forfeiture shall be imposed, see, for example, United States v. Bornstein, 423 U.S. 303 (1976), United States v. Collyer Insulated Wire Co., 94 F. Supp. 493 (D.R.I. 1950), and this is true although many such claims may be submitted to the Government at one time. For example, a doctor who completes separate Medicare claims for each patient treated will be liable for a forfeiture for

each such may be submitted to the entries even though several such forms may be submitted to the fiscal intermediary to one time. Likewise, each and every claim submitted under a contract, loan guarantee, or other agreement which was originally obtained by means of false statements or other corrupt or fraudulent conduct, or in violation of any statute or applicable regulation, constitutes a false claim. For example, all claims submitted under a contract obtained through collusive bidding are false and actionable under the act--Murray & Sorenson, Inc. v. United States, 207 F.2d 119 (1st Cir. 1953); United States ex rel. Marcus v. Hess, 317 U.S. 537 (1943)--as are all Medicare claims submitted by or on behalf of a physician who is ineligible to participate in the program. Peterson v. Weinberger, supra.

A claim upon any Government agency or instrumentability, quasi-governmental corporation, or nonappropriated fund activity is a claim upon the United States under the act. In addition, a false claim is actionable although the claims or false statements were made to a party other than the Government, if the payment thereon would ultimately result in a loss to the United States. United States v. Lagerbusch, 361 F.2d 449 (3rd Cir. 19666); Murray & Sorenson, Inc. v. United States, 207 F.2d 119 (1st Cir. 1953). For example, a false claim to the recipient of a grant from the United States or to a State under a program financed in part by the United States, is a false claim to the United States. See, for example, United States ex rel. Marcus v. Hess, 317 U.S. 537 (1943); United States ex rel. Davis v. Long's Drugs, 411 F. Supp. 1114 (S.D. Cal. 1976).

The original False Claims Act also contained a provision allowing private persons, or 'relators', to bring suit under the act. After providing for general subject matter jurisdiction and venue for all actions brought under the act, the statute provided that a suit 'may be brought and carried on by any person, as well for himself as for the United States.' The 1863 law, R.S. 3492, provided that: the (action) shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent.

The original statute also provided that the private relator who prosecuted the case to final judgment would be entitled to one half of the damages and forfeitures recovered and collected. If successful, the relator would also be entitled to an award of his costs.

Therefore, under the provisions of the original act, suits to redress fraud against the Government could be instituted as easily by a private individual, as by the Government's representative. Moreover, once the action was commenced by the relator, no one could interfere with its prosecution. The act contained no provision for the Government to take over the action and, in fact, the relator's interest in the action was viewed, at least in one instance, as a property right which could not be divested by the United States if it attempted to settle the dispute with the

defendant. United States v. Griswold, 30 Fed. Reg. 762 (Cir. Ct., D. Ore. 1887).

In the early 1940s, several qui tam actions were brought regarding World War II defense procurement fraud. Some suits brought by private citizens appeared to be based on criminal indictments brought by the Government. In one such suit, United States ex rel Marcus v. Hess, 317 U.S. 537 (1943), the Government contended that an action brought by an informer who based his civil action on a criminal indictment should be barred under the provisions of the False Claims Act because he brought no information of his own to the suit, thereby thwarting the spirit of the act. The Government also contended that such suits created a race to the courthouse between the Government's civil lawyers and private parties, and infringed upon the Attorney General's control over criminal and civil fraud actions. The Court rejected the Government's contentions and ruled that the statute, as then written, did not require the relator to bring original information to the suit or that the Attorney General should have exclusive control over the Government's civil fraud litigation. Writing for the Court, Justice Black stated that qui tam suits have been 'frequently permitted by legislative action and have not been without defense by the courts.' Id. at 541. Justice Black also referred to an earlier decision, United States v. Griswold, 24 F. 361, 366 (D. Ore. 1885) in which the Court said:

The statute is a remedial one. It is intended to protect the Treasury against the hungry and unscrupulous host that encompasses it on every side, and should be construed accordingly. It was passed upon the theory, based on experience as old as modern civilization, that one of the least expensive and most effective means of preventing frauds on the Treasury is to make the perpetrators of them liable to actions by private persons acting, if you please, under the strong stimulus of personal ill will or the hope of gain. Prosecutions conducted by such means compare with the ordinary methods as the enterprising privateer does to the slow-going public vessel.

The factual issue of whether the private relator in Marcus v. Hess had actually performed an independent investigation or merely copied a criminal indictment in order to bring his suit, was never reached by the Court. The Court did fund that:

Even if * * * the petitioner has contributed nothing to the discovery of this crime, he has contributed much to accomplishing one of the purposes for which the Act was passed. The suit results in a net recovery to the government of $150,000, three times as much as fines imposed in the criminal proceedings. Id. at 545.

The Marvus v. Hess decision prompted then Attorney General Francis Biddle to request that Congress repeal the qui tam provisions of the act. The House of Representatives passed repeal legislation, but the Senate passed an amendment to the House bill providing for the retention of qui tam suits, with restrictions. The Senate debated at length regarding the advisability of leaving all Government fraud cases solely in

the hands of the Attorney General. Senator Langer of North Dakota vehemently objected to any amendments to the qui tam law, citing Government delay in fraud cases and resource constraints for adequate enforcement. Langer argued:

I submit that the present statute now on the books is a most desirable one. What harm can there be if 10,000 lawyers in America the assisting the Attorney General of the United States in digging up war frauds? In any case, the Attorney General can protect himself by filing a (civil) lawsuit at the time when he files the indictment. 89 Cong. Rec. 7607 (Sept. 17, 1943).

The Senate specifically provided that jurisdiction would be barred on qui tam suits based on information in the possession of the Government unless the relator was the original source of that information. Without explanation, the resulting conference report dropped the clause regarding original sources of allegations and courts have since adopted a strict interpretation of the jurisdictional bar as precluding any qui tam suit based on information in the Government's possession, despite the source. That jurisdictional bar, however, has been applied only to private qui tam suits, and not those suits taken over by the Government. United States v. Pittman, 151 F.2d 851 (5th Cir. 1946).

Despite considerable judicial adherence to the plain language of the jurisdictional bar in the statute, it is unclear whether Congress fully understood the clause that had been fashioned through the conference committee compromise. Senator Van Nuys who was chairman of the Senate Judiciary Committee which proposed the Senate amendments and who also served on the conference committee, stated in floor debate that the proposal 'protects the honest informer as nearly we can do it by statute (and) * * * would not prevent an honest informer from coming in.' 89 Cong. Rec. 7609 (1943). Similarly, Representative William Kefauver in summarizing the final proposal on the House floor stated, '(If) the average, good American citizen * * * has the information and he gives it to the Government, and the Government does not proceed in due course, provision is made here where he can get some compensation.' 89 Cong. Rec. 10846 (1943).

The conference committee bill went on to provide that in the event the Government took over an action brought by a relator, the Court could award, out of the proceeds collected, fair and reasonable compensation, not to exceed 10 percent of the proceeds, to the relator for his disclosure of information and evidence not in the possession of the United States when the suit was brought. In suits not carried on by the United States, the court could award the person who brought the action and prosecuted it up to 25 percent of the proceeds.

The conference report was accepted by both House of Congress without amendment, and signed by President Roosevelt on Dec. 21, 1943. The provisions of the statute were codified at 31 U.S.C. 232 which has recently been recodified along with the entirely of the False Claims Act at 31 U.S.C. 3729-3731.

The jurisdictional bar prohibiting suits based on information in the possession of the Government has been invoked several times over the past four decades. Once a qui tam litigant has been found an improper relator due to this jurisdictional bar, he is no longer a part of the litigation and is precluded not only from receiving a portion of the proceeds, but also forfeits any rights to challenge the Government's 'reasonable diligence' or object to settlements and dismissals. Courts have also found the jurisdictional bar to apply even if the Government makes no effort to investigate or take action after the original allegations were received, United States ex rel Lapin v. International Business Machines Corp., 490 F. Supp. 244 (D. Hi. 1980).

Additionally, in United States ex rel State of Wisconsin v. Dean, 729 F.2d 1100 (7th Cir. 1984), the Court refused to allow the State of Wisconsin to act as a qui tam relator in a Medicaid fraud action even though the investigation had been conducted solely by the State of Wisconsin. The Court found that the Federal Government was in possession of the information due to the State disclosures of the fraud to the Department of Health and Human Services. The State was required to make such disclosures under Federal law government Medicare programs. Interestingly, the Federal Government in this case not only declined to intervene and take over the suit, but filed a brief with the Court indicating its belief that Wisconsin was a proper relator. In rejecting the views of both the Federal Government and the State of Wisconsin, the Court noted that:

If the State of Wisconsin desires a special exemption to the False Claims Act because of its requirement to report Medicaid fraud to the federal government, then it should ask Congress to provide the exemption. Id. at 1106.

The National Association of Attorneys General adopted a resolution in June of 1984 stating that 'to prohibit sovereign states from becoming qui tam plaintiffs because the U.S. Government was in possession of information provided to it by the State and declines to intercede in the State's lawsuit, unnecessarily inhibits the detection and prosecution of fraud on the Government.' The resolution goes on to strongly urge that Congress amended the False Claims Act to rectify the unfortunate result of the Wisconsin v. Dean decision.

III. HISTORY OF S. 1562

The False Claims Reform Act, S. 1562, which was introduced on August 1, 1985 by Senators Charles E. Grassley (R, Ia.), Dennis DeConcini (D, Az.), and Carl Levin (D, Mich.), contains in large part amendments to the False Claims Actf first proposed by the U.S. Department of Justice in 1979 and once again in the Department's Anti-Fraud Enforcement Package announced by Attorney General Edwin Meese III in September of 1985. As reported by the Committee, S. 1562 amends the civil False Claims Act, 31 U.S.C. 3729 and 3730, to increase

forfeiture and damages for those found liable by a 'preponderance of the evidence'. The standard for liability is clarified as one who 'knows or has reason to know' that the claim submitted to the Government is false. The bill also allows a qui tam, or private citizen relator, increased involvement in suits brought by the relator but litigated by the Government. Additionally, the relator could receive up to 30 percent of any judgment arising from his suit and is afforded protection from retaliation for his actions.

Senator DeConcini had sponsored a related measure, S. 1981, in the 96th Congress. While that legislation was reported favorably by the Senate Judiciary Committee in 1980, it failed to receive consideration by the full Senate before the adjournment of the 96th Congress. Evidence of rampant fraud in Government programs since that time has renewed the effort to legislate a more effective statute.

On September 17, 1985, the Senate Judiciary Committee's Subcommittee on Administrative Practice and Procedure held a hearing on S. 1562 and S. 1673, a similar bill proposed by the administration. Testifying at that hearing were Jay Stephens, Associate Deputy Attorney General, Department of Justice accompanied by Stuart E. Schiffer, Deputy Assistant Attorney General for the Civil Division, Department of Justice; John R. Phillips, Co-Director, Center for Law in the Public Interest; D. Wayne Silby, Business Executives for National Security; and three individuals, Mr. John Michael Gravitt; Mr. James B. Helmer, Jr.; and, Mr. Robert Wityczak.

All of these witnesses expressed strong support for amendments to the False Claims Act. Mr. John Phillips, testifying on behalf of the Center for Law in the Public Interest, focused his remarks on the necessity for enhancing the qui tam provisions under the False Claims Act, saying that an effective vehicle for private individuals to disclose fraud is necessary both for meaningful fraud deterrence and for breaking the current 'conspiracy of silence' among Government contractor employees.

Two individuals who had exposed mischarging at defense contractor plants also expressed support for the amendments contained in S. 1562. Mr. John Gravitt, who filed a qui tam false claims suit against General Electric, testified that the changes in S. 1562 were necessary to encourage workers directed to participate in fraudulent schemes to expose that wrongdoing. Mr. Robert Wityczak, a former Rockwell International employee who also exposed falsification of time cards, stated that the false claims reforms in S. 1562 are imperative 'to encourage employees like myself who know first-hand of fraudulent misconduct to step forward.'

Mr. D. Wayne Silby, testifying on behalf of Business Executives for National Security, said the business association supports S. 1562 because the bill 'is supportive of improved integrity in military contracting. The bill adds no new layers of bureaucracy, new regulations, or new Federal police powers. Instead, the bill takes the

sensible approach of increasing penalties for wrongdoing, and rewarding those private individuals who take significant personal risks to bring such wrongdoing to light.'

Mr. Jay Stephens, testifying for the Justice Department, stated that the Department was very supportive of False Claims Act reforms and would recommend the consideration of supplemental provisions included in the administration-proposed S. 1673. Additionally, Stephens expressed some concern regarding the broadness of the qui tam amendments contained in S. 1562, but added that the Justice Department was willing to work with the Committee on developing a 'practical solution' for legislation giving 'long overdue weapons to deal with the problem of fraud.'

In response to Justice Department concerns, S. 1562, and specifically the qui tam provision, was significantly revised at the subcommittee level and a substitute bill was reported favorably to the full Judiciary Committee on November 7, 1985. The S. 1562 substitute contained several provisions adopted from S. 1673:

First, the original constructive knowledge standard defined as 'acting in reckless disregard of the truth' was changed to the S. 1673 definition of 'reason to know that the claim or statement was false or fictitious.' While the two definitions are very similar, the Justice Department suggested that the definition from S. 1673 provided greater clarity and was better crafted to address the problem of the 'ostrich-like' refusal to learn of information which an individual, in the exercise of prudent judgment, had reason to know.

Second, the subcommittee adopted a provision allowing the full litigation of False Claims Act counterclaims asserted against an offender who initiates a case in U.S. Claims Court.

Third, the subcommittee added a provision permitting the United States to bring an action against a member of the armed forces, as well as civilian employees. The military has been excluded from False Claims Act liability since 1863 when the Government had available more severe military remedies. The subcommittee agreed, however, that military code remedies are inadequate to ensure full recoveries for fraudulent acts by servicepersons and such persons should therefore not be exempt from False Claims Act coverage.

Fourth, the subcommittee added a clarification that an individual who makes a material misrepresentation to avoid paying money owed the Government should be equally liable under the Act as if he had submitted a false claim. The Justice Department testified that recent court rulings had produced an ambiguity as to whether such 'reverse false claims' were covered by the False Claims Act, and the subcommittee agreed that such matters should be addressable under the Act.

Fifth, the subcommittee added a new uniform remedy to permit the Government to seek preliminary injunctive relief to bar a defendant from transferring or dissipating assets pending the completion of a false claims action. Currently, the Government's prejudgment attachment

remedies are governed by State law and the subcommittee agreed that a uniform Federal standard would significantly enhance the Government's remedies as well as avoid inconsistent results.

Sixth, the subcommittee adopted a provision allowing the Federal Government to sue under the False Claims Act to prosecute frauds perpetrated on certain grantees, States and other recipients of Federal financial assistance. A recent decision, United States v. Azzarelli Construction Co., 647 F.2d 757 (7th Cir. 1981), created some confusion with respect to whether the Federal Government may recover in grant cases where the Federal contribution is a fixed sum. The subcommittee agreed with the Justice Department's recommendation that it be made clear the United States may bring an action whether the grant obligation is open-ended or fixed.

Seventh, the subcommittee added a modification of the statute of limitations to permit the Government to bring an action within 6 years of when the false claim is submitted (current standard) or within 3 years of when the Government learned of a violation, whichever is later. The subcommittee agreed that because fraud is, by nature, deceptive, such tolling of the statute of limitations is necessary to ensure the Government's rights are not lost through a wrongdoer's successful deception.

Eighth, the subcommittee adopted a provision granting Civil Investigative Demand, or CID, authority to the Justice Department Civil Division to aid in the investigation of False Claims Act cases. The subcommittee noted that the CID authority from S. 1673 is nearly identical to that available to the Antitrust Division under the Hart-Scott-Rodino Act of 1976, 15 U.S.C. 1311-1314. The subcommittee agreed with the Justice Department suggestion to add this carefully crafted investigative tool in an effort to produce more efficient and complete Government investigations.

Finally, the subcommittee agreed to several changes in the qui tam provisions of S. 1562:

First, in response to Justice Department concerns that qui tam complaints filed in open court might tip off targets of ongoing criminal investigations, the subcommittee adopted a 60-day seal provision for all qui tam complaints.

Second, the Justice Department expressed concerns that the broadening of qui tam provisions under S. 1562 might provoke a greater number of frivolous suits and specifically a greater number of actions filed merely for political purposes. The subcommittee agreed to an amendment which limits the application of qui tam suits against political officials to only those cases involving information not already in the government's possession. As a further prevention of frivolous actions, the subcommittee adopted attorneys' fees sanctions to be charged against any qui tam plaintiff who brings a clearly frivolous or vexatious suit. Additionally, the subcommittee amendment specifically provides that where an action appears to be brought in bad faith the court may half the

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litigation pending assurances that the qui tam plaintiff can make payment of any legal fees and expenses the court may award.

Also in response to Department of Justice concerns that three levels of qui tam award portions would provoke additional litigation, the subcommittee adopted a simplified two-tier approach allowing 10-20 percent awards if the Government takes over the action and 20-30 percent if the qui tam plaintiff proceeds alone. In addition, so as to prevent any 'windfalls' for persons who may not have had direct involvement with investigating or exposing alleged false claims that are the basis of a qui tam suit, in the very limited area where the qui tam action is brought at least 6 months after a public disclosure, the Government has failed to act, and the suit succeeds, the individual who brought the action would only receive 'up to 10 percent' depending on his role in advancing the case to litigation.

The subcommittee substitute also added a provision authorizing the Attorney General to grant awards to informants who contribute to successful false claims suits. And finally, in response to comments from the National Association of Attorneys General, the subcommittee adopted a provision allowing State and local governments to join State law actions with False Claims Act actions brought in Federal district court if such actions grow out of the same transaction or occurrence.

On November 7, the Subcommittee on Administrative Practice and Procedure met and voted to report favorably to the full Senate Judiciary Committee S. 1562 as amended by a subcommittee substitute offered by Chairman Grassley. The subcommittee voted 4 to 0 to report S. 1562 with Chairman Grassley and Senators Heflin, Specter and East voting in favor of the bill.

While the original S. 1562, as well as the subcommittee substitute, contained amendments to Rule 6(e) of the Federal Rules of Criminal Procedure regarding access to grand jury information, Chairman Grassley announced at the November 7 mark-up that the full Senate Judiciary Committee would be addressing that issue separately and that Rule 6(e) amendments would be removed from S. 1562. On December 14, 1985, the full Senate Judiciary Committee voted by unanimous consent to favorably report S. 1562 to the Senate floor with the following amendments which came in response to suggestions offered by other Committee members and then offered by Senator Grassley:

First, as already noted, grand jury access amendments were removed.

Second, language was added to further define the constructive knowledge definition so that it paralleled that found in S. 1134, the Program Fraud and Civil Penalties Act as reported favorably from the Governmental Affairs Committee. While the standards were already ready very similar, S. 1134 contained further clarifying language and the Committee thought it unwise to allow the possibility of confusion and

the lack of a uniformly applied standard in administrative and judiciary civil false claims actions.

Third, the Committee adopted new language under the whistleblower protection provision to ensure that remedies afforded under the act will not be abused by employees acting in bad faith or who are discharged, demoted, etc. for legitimate reasons unrelated to any whistle blowing activity.

And finally, the CID authority was amended to require that other agencies seeking access to information obtained through CIDs must demonstrate to the appropriate Federal district court that they have a 'substantial need' for the information rather than allowing the Justice Department alone to determine outside agency access.

IV. SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 of the bill amends section 3729 of title 31, United States Code, in several respects.

31 U.S.C. 3729, SUBSECTION (a)

Section 1, paragraphs (1) and (2) of the bill create a new subsection (a) of section 3729 and amend section 3729 to raise the fixed statutory penalty for submitting a false claim from $2,000 to $10,000. The $2,000 figure has remained unchanged since the initial enactment of the False Claims Act in 1863. The Committee reaffirms the apparent belief of the act's initial drafters that defrauding the Government is serious enough to warrant an automatic forfeiture rather than leaving fine determinations with district courts, possibly resulting in discretionary nominal payments.

Section 1, paragraph (3) of the bill amends section 3729 to increase the Government's recoverable damages from double to treble. The Committee adopts the treble damage level to comport with legislation passed earlier in the 99th Congress (P.L. 99-145, Department of Defense Authorization Act, 1986) which established treble damage liability for false claims related to contracts with the Department of Defense.

Section 1, paragraph (4) of the bill amends section 3729 to permit the United States to bring an action against a member of the armed forces as well as against civilian employees. When the Act was first enacted, in 1863, the military was excluded because the Government had available more severe military remedies. Under the 1863 statute, Act of March 2, 1863, chapter 62, section 1, any person in the Army, Navy, or militia who was charged with submitting a false claim could be held for trial by a court-martial and, if found guilty, punished by any level of fine or imprisonment felt proper. Only the death penalty was precluded. However, currently, while the Government might institute court-martial proceedings against a member of the armed services found guilty of fraud, it cannot seek monetary recovery under the False Claims Act and must instead rely on less effective common law remedies.

Section 1, paragraphs (5) and (6) of the bill make technical changes in section 3729 of title 31.

Section 1, paragraph (7) of the bill amends section 3729 to provide that an individual who makes a material misrepresentation to avoid paying money owed the Government would be equally liable under the Act as if he had submitted a false claim to receive money.

The question of whether the False Claims Act covers situations where, by means of false financial statements or accounting reports, a person attempts to defeat or reduce the amount of a claim or potential

claim by the United States against him, has been the subject of differing judicial interpretations. Although it is now apparent that the False Claims Act does not apply to income taxes cases, and the Committee does not intend that it should be so used, the act's earlier history serves to illustrate the problem which has come to be known as the 'reverse false claim;' i.e., claims to avoid a payment to the Government. Thus, courts have held that there is no violation of the False Claims Act by the filing of a fraudulent Federal tax return (seeking to avoid payment of income tax) as distinguished from a fraudulent claim for a tax refund (seeking to obtain an inflated refund payment). Olson v. Mellon, 4 F. Supp. 947, 948 (W.D. Pa. 1933), aff'd sub nom., United States ex rel. Knight v. Mellon, 71 F.2d 1021 (3d Cir.), cert. denied, 293 U.S. 615 (1934). Cf. United States ex rel. Roberts v. Western Pac. R. Co., 190 F.2d 243, 247 (9th Cir. 1951), cert. denied, 342 U.S. 906 (1952). In the few contract or lease arrangement cases in which the issue arose, several courts have applied the same rationale, with the result that a person's fraudulent attempt to reduce the amount payable by him to the United States was considered not to constitute a violation of the False Claims Act. United States ex rel. Kessler v. Mercut Corp., 83 F.2d 178 (2d Cir.), cert denied, 299 U.S. 576 (1936); United States v. Howell 318 F.2d 162 (9th Cir. 1963), aff'g on this point, United States v. Elliott, 205 F. Supp. 581 (N.D. Cal. 1962); United States v. Brethauer, 222 F. Supp. 500 (W.D. Mo. 1963).

A better reasoned result was reached in Smith v. United States, 287 F.2d 299 (5th Cir. 1961). In that case, a nonprofit housing project was operated by a municipal housing authority under a lease from the U.S. Public Housing Administration as lessor. The lessee (housing authority) was obligated to remit quarterly to PHA as rent the excess of the lessee's revenues from the project over its operation expenses and PHA was obligated to advance to the lessee such funds as might be necessary to cover anticipated deficits if the project's revenues were insufficient to defray expenses. Quarterly reports of the project's revenues and expenses were required to be submitted by the lessee to PHA. The manager of the local housing authority fraudulently inflated the project's operating expenses in each of two quarterly reports filed with PHA. The report for the first quarter showed a deficit in the project operations and the PHA paid the amount of such deficit to the local housing authority. The report for the second quarter showed a surplus in the project operations and the amount of such surplus was remitted by the local housing authority to PHA. The United States sued the project manager under the False Claims Act, demanding a forfeiture for each false report and asserting as its damage (subject to doubling) the amount of the fraudulent inflation of the project's operating expenses in each of the two quarterly reports. The Fifth Circuit affirmed judgment for the United States for double damages and forfeitures with respect to both reports, declaring that the False Claims Act was violated (a) by the fraud in the first report, but for which the Government 'would have made a

lesser payment,' and (b) by the fraud in the second report, but for which the Government 'would have received more rent.' 287 F.2d, at 304. This same rationale was adopted in the more recent case of United States v. Peter Vincent Douglas, 626 F. Supp. 621 (E.D.Va. 1985).

The Supreme Court's opinion in United States v. Neifert-White Co, 390 U.S. 228 (1968), indicated that the False Claims Act 'was intended to reach all types of fraud, without qualification, that might result in financial loss to the Government.' The Committee strongly endorses this interpretation of the act and, to remove any ambiguity, has included this amendment to resolve the current split in the case law relating to such material misrepresentations.

Section 1, paragraph (7) of the bill also amends section 3729 to permit the Government to recover any consequential damages it suffers from the submission of a false claim. For instance, where a contractor has sold the Government defective bearings for use in military aircraft, the Government could recover not only the cost of new ball bearings, but the much greater cost of replacing the defective ball bearings. See, United States v. Aerodex, Inc., 469 F.2d 1003 (5th Cir. 1972). The court's conclusion in that case was based on a narrow and form-bound interpretation of the act:

Upon careful analysis, we hold that the language of the False Claims Act does not include consequential damages resulting from delivery of defective goods. The statute assesses double damages attributable to the 'act,' which in this case is the submission of the false vouchers. The submission of these vouchers was not the cause of the government's consequential damages. The delivery and installation of the bearings in the airplanes, not the filing of the false claims, caused the consequential damages. Id. at 1011.

31 U.S.C. 3729, SUBSECTION (b)

New paragraph (1) of subsection (b) of the statute includes damages that the Government would not have sustained but for its entry into a grant or contract as a result of a material false statement. When the Government changes its position, and commits its financial resources based upon a material false statement, it should be able to recover the resulting losses, but, under some court interpretations, it may not. For instance, in United States v. Hibbs, 568 F.2d 347 (3rd Cir. 1977), the FHA agreed to insure a mortgage based upon a representation, which was false, that the residence was habitable and in compliance with the housing code. The Government will not issue insurance to a non-code-conforming house. However, the court ruled that the default on the mortgage occurred because the borrower lost his job, and therefore could not meet his monthly payments--that the default was not related to the false statement. While the court may have been technically correct, the Committee believes that this position is unsound public policy. The act should cover representations which cause the Government to change its position and pledge its full faith and credit, including the risk of

insurable loss, based upon another, but material false statement. This provision is not intended, however, to provide additional penalties where only a false statement has occurred.

31 U.S.C. 3729, SUBSECTION (c)

New subsection (c) of section 3729 clarifies the standard of intent for a finding of liability under the act. This language establishes liability for those 'who know, or have reason to know' that a claim is false. In order to avoid varying interpretations, the Committee further defined the standard as making liable those who have 'actual knowledge that the claim is false, fictitious, or fraudulent, or acts in gross negligence of the duty to make such inquiry as would be reasonable and prudent to conduct under the circumstances to ascertain the true and accurate basis of the claim.'

While it is clear that actual knowledge of a claim's falsity will confer liability, courts have split on defining what type of 'constructive knowledge', if any, is rightfully culpable. In fashioning the appropriate standard of knowledge for liability under the civil False Claims Act, S. 1562 adopts the concept that individuals and contractors receiving public funds have some duty to make a limited inquiry so as to be reasonably certain they are entitled to the money they seek. A rigid definition of that 'duty', however, would ignore the wide variance of circumstances under which the Government funds its programs and the correlating variance in sophistication of program recipients. Consequently, S. 1562 defines this obligation as 'to make such inquiry as would be reasonable and prudent to conduct under the circumstances to ascertain the true and accurate basis of the claim.' Only those who act in 'gross negligence' of this duty will be found liable under the False Claims Act.

The standard in S. 1562 is identical to that in S. 1134, the Program Fraud and Civil Remedies Act which was reported favorably by the Senate Governmental Affairs Committee in November of 1985 and is probably indistinguishable from the knowledge standard found in H.R. 4560, reported favorably from the House Judiciary Subcommittee on Administrative Law and Governmental Relations in May of 1986. The Committee believes that the definition of knowledge under the False Claims Act should not differ from the definition of knowledge for any administrative adjudications regarding false claims. In both bills, the constructive knowledge definition attempts to reach what has become known as the 'ostrich' type situation where an individual has 'buried his head in the sand' and failed to make simple inquiries which would alert him that false claims are being submitted. While the Committee intends that at least some inquiry be made, the inquiry need only be 'reasonable and prudent under the circumstances', which clearly recognizes a limited duty to inquire as opposed to a burdensome obligation. The phrase strikes a balance which was accurately described by the Department of

Justice as 'designed to assure the skeptical both that mere negligence could not be punished by an overzealous agency and that artful defense counsel could not urge that the statute actually require some form of intent as an essential ingredient of proof.'

31 U.S.C. 3729, SUBSECTION (d)

New subsection (d) clarifies that the statute permits the Government to sue under the False Claims Act for frauds perpetrated on Federal grantees, including States and other recipients of Federal funds.

Some courts have concluded that once the United States has made the grant to the State, local government unit, or other institution, it substantially relinquishes all control over the disposition of the money or commodities and requires only that the grantee shall make periodic reports of its disbursements and activities. Where this is the case, the judicial determination may follow that a fraud against the grantee does not constitute a fraud against the Government of the United States with the result that the False Claims Act is inapplicable. Cf. United States ex rel. Salzman v. Salant & Salant, Inc., 41 F. Supp. 196 (S.D.N.Y. 1938) (fraud against the Red Cross).

More recently, the question has arisen whether claims under the Medicare and Medicaid programs are claims 'upon or against the Government of the United States or any department or officer thereof.' Under the Medicare program, claims are not submitted directly to the Federal agency, but rather to private intermediaries--usually insurance companies--which are subsequently reimbursed by the United States. However, false Medicare claims have been uniformly held to be within the ambit of the False Claims Act, though the claims were actually filed with, and paid by insurance companies. See Peterson v. Weinberger, 508 F.2d 45 (5th Cir. 1975), cert. denied, 423 U.S. 830 (1975). Numerous cases involving criminal False Claims Act (18 U.S.C. 287) prosecutions hold to the same effect. For example, in United States v. Beasley, 550 F.2d 261, 271 (5th Cir. 1977), the court, relying on United States ex. rel. Marcus v. Hess, 317 U.S. 537 (1942), stated:

Case law supports federal jurisdiction and a violation of Federal criminal law when false claims are presented to the United States by an intermediary. See also the extensive discussion at pages 272-273 relating to analogous situations under HUD and other programs; and United States v. Catena, 5000 F.2d 1319 (3d Cir. 1974).

Although the Federal involvement in the Medicaid program is less direct, claims submitted to State agencies under this program have also been held to be claims to the United States under the False Claims Act. In United States ex rel. Davis v. Long's Drugs, Inc., 411 F. Supp. 1144, 1146-1147 (S.D. Cal. 1976), the Court held that, although MediCal (California's Medicaid program) is administered by the State, and only 50 percent of the funds are obtained from the United States, the Federal funding and extensive Federal regulations and control are sufficient to bring claims submitted to MediCal within the False Claims Act, stating:

Although the California Medical program is administered by a state agency, this program and all state programs which qualify for Federal funds have substantial contacts with the Federal Government. As indicated above, MediCal was apparently enacted so that California could qualify for Federal Medicaid funds * * *. Disbursements to state medical assistance programs through Medicaid are subject to a myriad of Federal regulations. * * *

Further evidence that the Federal Government has significant contacts with claims submitted under state Medicaid programs is given by the fact that Congress has made it a crime to submit false Medicaid claims (42 U.S.C. § 1396h) * * * It is difficult to perceive why false Medicaid claims, where 50 percent of the funds originate with the Federal Government, should not constitute claims against the United States when Congress has seen fit to designate the same conduct as a Federal crime.

Similar reasoning should apply in other circumstances where claims are submitted to State, local, or private programs funded in part by the United States where there is significant Federal regulation and involvement.

Finally, in United States v. Azzarelli Construction Co., 647 F.2d 757 (7th Cir. 1981), the court held that because the Federal contribution to highway construction was a fixed sum rather than open-ended (as is the case with Medicare and Medicaid), the Federal Government could not sue the contractors who had engaged in a bid-rigging conspiracy. This narrow reading of the act throws the entire burden of prosecuting fraud on State officials who may not have the powerful remedies available to the United States under the False Claims Act or the sophisticated investigative resources necessary to even establish the fraud. Thus, the Committee intends the new subsection (d) to overrule Azzarelli and similar cases which have limited the ability of the United States to use the act to reach fraud perpetrated on federal grantees, contractors or other recipients of Federal funds.

31 U.S.C. 3729, SUBSECTION (e)

Section 2729 is amended to add new subsection (e), providing for uniform provisional remedies in False Claims Act suits. Under Rule 64, Federal Rules of Civil Procedure, the Government's prejudgment attachment remedies are governed by State law in the district in which the district court is held. A uniform Federal standard for the employment of these remedies in cases brought under the False Claims Act would significantly enhance the Government's litigating ability in this area, by avoiding the whims and vagaries of the widely varying State procedures for attachment. The bill contains effective remedies to prevent a potential defendant's dissipation of assets pending litigation. These remedies flow from the district court's inherent power to grant injunctions.

The bill is not intended to exclude the Government's utilization, where appropriate, of other existing prejudgment remedies. While the bill provides for provisional remedies comparable to those provided for under Rule 65, Federal Rules of Civil Procedure, it is intended that the Government shall be required only to show likelihood of success on the merits as a precondition to obtaining relief. Other traditional prerequisites to granting equitable relief, such as adequacy of remedy at law, irreparable harm and the like, shall not be required.

SECTION 2

Section 2 of the bill rewrites section 3730 of title 31, United States Code.

31 U.S.C. 3730, SUBSECTION (a)

Subsection (a) of 3730, which authorizes the Government to bring a civil action for violations of section 3729, remains unchanged.

31 U.S.C. 3730, SUBSECTION (b)

Subsection (b) (1) of 3730, under current law, authorizes a 'person' to bring a civil action for a violation of section 3729 on behalf of the Government. Additionally, current law provides that when a private person brings an action under this subsection, the action will be dismissed only if the court and the Attorney General consent to the dismissal. Subsection (b) (1) remains unchanged except for those portions of the paragraph dealing with jurisdiction and venue which are amended and incorporated into a new section 3732 of this title.

Subsection (b) (2) of section 3730 provides, as under current law, that the Government be served with a copy of the complaint filed by a person under this subsection as well as 'substantially all material evidence.' Paragraph (2) is amended to impose a new requirement that all qui tam actions will be filed in camera and remain under seal for at least 60 days, and to clarify that the 60 day period does not begin to run until both the complaint and material evidence are received--a point of some, albeit minor, confusion previously.

The Committee's overall intent in amending the qui tam section of the False Claims Act is to encourage more private enforcement suits. The Justice Department raised a concern, however, that a greater number of private suits could increase the chances that false claims allegations in civil suits might overlap with allegations already under criminal investigation. The Justice Department asserted that the public filing of overlapping false claims allegations could potentially 'tip off' investigation targets when the criminal inquiry is at a sensitive stage. While the Committee does not expect that disclosures from private false claims suits would often interfere with sensitive investigations, we recognize the necessity for some coordination of disclosures in civil proceedings in order to protect the Government's interest in criminal matters.

Keeping the qui tam complaint under seal for the initial 60-day time period is intended to allow the Government an adequate opportunity to fully evaluate the private enforcement suit and determine both if that suit involves matters the Government is already investigating and whether it is in the Government's interest to intervene and take over the civil action. Nothing in the statute, however, precludes the Government from intervening before the 60- day period expires, at which time the court would unseal the complaint and have it served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

By providing for sealed complaints, the Committee does not intend to affect defendants' rights in any way. Once the court has unsealed the complaint, the defendant will be served as required under Rule 4 of Federal Rules of Civil Procedure and will not be required to respond until 20 days after being served. This also corrects a current anomaly, under which the defendant may be forced to answer the complaint 2 days after being served, without knowing whether his opponent will be a private litigant or the Federal Government. The initial 60-day sealing of the allegations has the same effect as if the qui tam relator had brought his information to the Government and notified the Government of his intent to sue. The Government would need an opportunity to study and evaluate the information in either situation. Under this provision, the purposes of qui tam actions are balanced with law enforcement needs as the bill allows the qui tam relator to both start the judicial wheels in motion and protect his own litigative rights. If the individual who planned to bring a qui tam action did not file an action before bringing his information to the Government, nothing would preclude the Government from bringing suit first and the individual would no longer be considered a proper qui tam relator. Additionally, much of the purpose of qui tam actions would be defeated unless the private individual is able to advance the case to litigation. The Committee feels that sealing the initial private civil false claims complaint protects both the Government and the defendant's interests without harming those of the private relator.

Subsection (b) (3) of section 3730 establishes that the Government may petition the Court for extensions of both the 60-day evaluatory period and the time during which the complaint remains under seal. Extensions will be granted, however, only upon a showing of 'good cause'. The Committee intends that courts weigh carefully any extensions on the period of time in which the Government has to decide whether to intervene and take over the litigation. The Committee feels that with the vast majority of cases, 60 days is an adequate amount of time to allow Government coordination, review and decision. Consequently, 'good cause' would not be established merely upon a showing that the Government was overburdened and had not had a chance to address the complaint. While a pending criminal investigation of the allegations contained in the qui tam complaint will often establish 'good cause' for staying the civil action, the Committee does not intend

that criminal investigations be considered an automatic bar to proceeding with a civil fraud suit.

The Committee believes that if an initial stay is granted based on the existence of a criminal investigation, the court should carefully scrutinize any additional Government requests for extensions by evaluating the Government's progress with its criminal inquiry. The Government should not, in any way, be allowed to unnecessarily delay lifting of the seal from the civil complaint or processing of the qui tam litigation.

Subsection (b)(4) of section 3730 restates current law which provides that within the initial 60-day period, or before expiration of any stays granted by the court, the Government must indicate whether it will intervene and proceed with the action or decline to enter. If the Government takes over the civil false claims suit, the litigation will be conducted solely by the Government. If the Government declines, the suit will be litigated by the individual who brought the action.

Subsection (b) (5) of section 3730 further clarifies that only the Government may intervene in a qui tam action. While there are few known instances of multiple parties intervening in past qui tam cases, United States v. Baker-Lockwood Manufacturing Co., 138 F.2d 48 (8th Cir. 1943), the Committee wishes to clarify in the statute that private enforcement under the civil False Claims Act is not meant to produce class actions or multiple separate suits based on identical facts and circumstances.

31 U.S.C. 3730, SUBSECTION (c)

Subsection (c)(1) of section 3730 allows the private individual who brought the false claims suit to take a more active role in the litigation if he chooses. Current law presents an often times self-defeating 'all or nothing' proposition both for the person bringing the action and for the Government. If the Government intervenes and takes over the suit within the 60-day period, the action is controlled solely by the Government. The person who brought the action has virtually no guaranteed involvement or access to information about the false claims suit.

The Committee recognizes that in many cases, individuals knowing of fraud are unwilling to make disclosures in light of potential personal and financial risk as well as a lack of confidence in the Government's ability to remedy the problem. Witnesses in hearings on S. 1562 testified that incentives for exposing false claims against the Government would be enhanced if individuals who make disclosures are able to more directly participate in seeing that the fraud is remedied. Subsection (c)(1) provides qui tam plaintiffs with a more direct role not only in keeping abreast of the Government's efforts and protecting his financial stake, but also in acting as a check that the Government does not neglect evidence, cause unduly delay, or drop the false claims case without legitimate reason. Specifically, paragraph (1) provides that

when the Government takes over a privately initiated action, the individual who brought the suit will be served, upon request, with copies of all pleadings filed as well as deposition transcripts. Additionally, the person who brought the action may formally object to any motions to dismiss or proposed settlements between the Government and the defendant.

Any objections filed by the qui tam plaintiff may be accompanied by a petition for an evidentiary hearing on those objections. The Committee does not intend, however, that evidentiary hearings be granted as a matter of right. We recognize that an automatic right could provoke unnecessary litigation delays. Rather, evidentiary hearings should be granted when the qui tam relator shows a 'substantial and particularized need' for a hearing. Such a showing could be made if the relator presents a colorable claim that the settlement or dismissal is unreasonable in light of existing evidence, that the Government has not fully investigated the allegations, or that the Government's decision was based on arbitrary and improper considerations.

Subsection (c)(1) also provides that the qui tam plaintiff may request that the court allow him to take over the suit if the Government has not proceeded with 'reasonable diligence' within 6 months of intervening in the action. While this provision reflects current law, the Committee reaffirms the right of the qui tam plaintiff to intervene if the Government fails to adequately pursue the individual's allegations of false claims. To date, there is no known case law guidance on how courts should evaluate 'reasonable diligence' in civil false claims suits. The Committee believes 'reasonable diligence' should be evaluated in light of the amount of Government investigative and prosecutive activity in relation to the length of time the Government has been aware of the allegations as well as the magnitude of the alleged fraud. Additionally, courts should weight the resources willing to be devoted by both the Government and the individual who brought the action as well as the relative experience and expertise possessed by each party. While in most cases the Government's resources will likely appear to exceed the qui tam plaintiff's resources, the Committee recognizes that the often heavy, sporadic workload of Government attorneys may create a situation where a qui tam plaintiff is better able to conduct the litigation in a timely manner.

Subsection (c) (2) of section 3730, provides that the person who brought the false claims action may proceed with the litigation if the Government elects not to intervene and take over the suit within the 60-day time period. Under current law, the Government is barred from reentering the litigation once it has declined to intervene during this initial period. The Committee recognizes that this limited opportunity for Government involvement could in some cases work to the detriment of the Government's interests. Conceivably, new evidence discovered after the first 60 days of the litigation could escalate the magnitude or complexity of the fraud, causing the Government to reevaluate its initial assessment or making it difficult for the qui tam relator to litigate alone.

In those situations where new and significant evidence is found and the Government can show 'good cause' for intervening, paragraph (2) provides that the court may allow the Government to take over the suit. Upon request, the Government may also be served with copies of all pleadings and depositions associated with any qui tam action it declines to take over.

Subsection (c)(3) of section 3730 clarifies that the Government, once it intervenes and takes over a false claim suit brought by a private individual, may elect to pursue any alternate remedy for recovery of the false claim which might be available under the administrative process. The Department of Health and Human Services is currently authorized to use administrative proceedings for the recovery of some false claims. Earlier in this Congress, the Senate Government Affairs Committee favorably reported S. 1134, the Program Fraud Civil Penalties Act, which would extend this type of administrative mechanism for addressing false claims to all Executive agencies. The Committee intends that if civil monetary penalty proceedings are available, the Government may elect to pursue the claim either judicially or through an administrative civil penalty proceeding. In the event that the Government chooses to proceed administratively, the qui tam relator retains all the same rights to copies of filings and depositions, to objections of settlements or dismissals, to taking over the action if the Government fails to proceed with 'reasonable diligence', as well as to receiving a portion of any recovery. If the Government proceeds administratively, the district court shall stay the civil action pending the administrative proceeding and any petitions by the relator, in order to exercise his rights, will be to the district court. While the Government will have the opportunity to elect its remedy, it will not have an opportunity for dual recovery on the same claim or claims. In other words, the Government must elect to pursue the false claims action either judicially or administratively and if the Government declines to intervene in a qui tam action, it is estopped from pursing the same action administratively or in a separate judicial action.

31 U.S.C. 3730, SUBSECTION (d)

Subsection (d) of section 3730 delineates the qui tam relator's right to a portion of any recovery resulting from a successful false claims suit initiated by the relator.

Subsection (d)(1) provides that when the Government has intervened, taken over the suit, and produced a recovery either through a settlement agreement or a judgment, the relator will receive between 10 and 20 percent of the recovery.

Subsection (d) (2) provides that if the relator has litigated the false claims action successfully and the Government did not take over the suit, the relator will be awarded between 20 and 30 percent of the judgment or settlement proceeds.

Current law allows relator awards of up to 10 percent in suits the Government takes over, and up to 25 percent where the relator litigates without the Government. The new percentages found in subsection (d) (1) and (2) do not substantially increase the possible recovery available to a qui tam relator, but do create a guarantee that relators will receive at least some portion of the award if the litigation proves successful. Hearing witnesses who themselves had exposed fraud in Government contracting, expressed concern that current law fails to offer any security, financial or otherwise, to persons considering publicly exposing fraud. If a potential plaintiff reads the present statute and understands that in a successful case the court may arbitrarily decide to award only a tiny fraction of the proceeds to the person who brought the action, the potential plaintiff may decide it is too risky to proceed in the face of a totally unpredictable recovery.

The Committee acknowledges the risks and sacrifices of the private relator and sets a minimum 10 percent or 20 percent level of recovery depending on whether the Government or the relator litigates the action. The setting of such a definite amount is sensible and can be looked upon as a 'finder's fee' which the person bringing the case should receive as of right. The Government will still receive up to 90 percent of the proceeds--substantially more than the zero percent it would have received had the person not brought the evidence of fraud to its attention or advanced the case to litigation.

The Committee does not, however, believe that the court should be left without discretion on the percentage of award granted a qui tam relator. Obviously, the contribution of one person might be significantly more or less than the contribution of another. Consequently, we have stagged the allowable percentages of recovery so that courts may take various factors into consideration and use discretion in determining awards within those ranges.

Subsection (d) (3) specifies factors courts should take into account when determining recoveries as follows:

(A) the significance of the information provided to the Government;

(B) the contribution of the person bringing the action to the result obtained; and

(C) whether the information which formed the basis for the suit was known to the Government.

Subsection (d)(4) provides that a court may award up to 10 percent of an action's proceeds to persons bringing suits based on public information. The award ranges specified in (d)(1) and (2) do not apply to qui tam relators whose false claims disclosures were derived solely from public hearings, reports, or the news media. New subsection (e)(4) of section 3730 prohibits a suit based solely on previous public disclosures unless the Government has failed to act within 6 months of the public disclosure. The Committee recognizes that guaranteeing monetary compensation for individuals in this category could result in inappropriate windfalls where the relator's involvement with the evidence

is indirect at best. However, in the event an action of this type results in a Government recovery, subsection (d)(4) provides that the court may award up to 10 percent of the proceeds, taking into account the significance of the information and the role of the person in advancing the case to litigation. The Committee believes a financial reward is justified in these circumstances if but for the relator's suit, the Government may not have recovered.

Subsection (d)(5) of section 3730 provides that prevailing qui tam relators may be awarded reasonable attorneys fees in addition to any other percentage of award recovered. The existing False Claims Act does not contain a specific authorization for fees. Such fees will be payable by the defendant in addition to the forfeiture and damages amount. Unavailability of attorney's fees inhibits and precludes many private individuals, as well as their attorneys, from bringing civil fraud suits. Paragraph (5) also clarifies that the Government will in no way be liable for fees or expenses incurred by a private individual who brings a civil false claims action.

Subsection (d)(6) provides that the prevailing defendants in a civil False Claims Act case brought by a party other than the Government, may also be eligible for reasonable attorneys fees if the court finds that the private plaintiff's action was 'clearly frivolous, vexatious, or brought for purposes of harassment.' This standard reflects that which is found in section 1988 of the Civil Rights Attorneys Fees Awards Act of 1976. The Committee added this language in order to create a strong disincentive and send a clear message to those who might consider using the private enforcement provision of this Act for illegitimate purposes. The Committee encourages courts to strictly apply this provision in frivolous or harassment suits as well as any applicable sanctions available under the Federal Rules of Civil Procedure. Additionally, where the court determines that the private plaintiff is motivated by bad faith or bringing a clearly frivolous action, the court shall require the plaintiff to make assurances that payment of legal fees and expenses can be made before allowing the litigation to proceed.

Subsection (d)(7) requires the relator to apply for any award under this act within 60 days of the final judgment or settlement. The same 60-day time period applies where the Government has chosen to pursue its claim through an administrative civil money penalty proceeding. All petitions shall be filed with the appropriate Federal district court.

31 U.S.C. 3730, SUBSECTION (e)

Subsection (e)(1) of section 3730 prohibits qui tam actions among members of the armed services where such actions arise out of any such persons' service in the armed forces. This provision only prohibits servicemen and women from suing each other under the False Claims Act and in no way exempts them from liability under the act if the government brings an action against them.

Subsection (e)(2) disallows qui tam actions against members of Congress, the Judiciary, or Senior Executive branch officials when the Government is already aware of the allegation on which the action is based. This provision actually reflects current law in that any qui tam suit based on information already known to the Government is currently without jurisdiction. While S. 1562 repeals that jurisdictional bar for most suits, the Committee, at the request of the Justice Department, retained the bar for those suits which might be politically motivated. The Committee acknowledges that a statutory remedy for wrongdoing by public officials does exist under the Ethics in Government Act (28 U.S.C. 591). Paragraph (2) does not excuse the class identified from suits brought by the Government for violation of the False Claims Act or for suits based on information not in the possession of the Government.

Subsection (e)(3) defines 'senior executive branch officials' as those listed in section 201(f) of Appendix IV of title 5.

Subsection (e)(4) prohibits qui tam suits based on allegations which are already the subject of a civil suit brought by the Government. Additionally, paragraph (4) disallows jurisdiction for qui tam actions based on allegations disclosed in a criminal, civil or administrative hearing, a congressional or General Accounting Office report or hearing, or from the news media, unless the action is brought 6 months after the public disclosure and the Government has failed to take any action.

31 U.S.C. 3730, SUBSECTION (f)

Subsection (f) of section 3730 grants jurisdiction in Federal district court for any action arising under State law for the recovery of money paid by State or local governments if that action grows out of the same transaction or occurrence as an action brought by either the Government or a qui tam plaintiff under the False Claims Act.

31 U.S.C. 3730, SUBSECTION (g)

Subsection (g) of section 3730 authorizes the Attorney General to grant awards to persons who assist in successful civil recoveries under this section or successful criminal convictions under 18 U.S.C. 286, 18 U.S.C. 287, or 18 U.S.C. 1001. The Committee strongly encourages private individuals to come forward with any information regarding fraud against the Government, regardless of the forum in which they make their disclosures. For those individuals who do not wish to entangle themselves in litigation by bringing a civil false claims suit, but instead disclose their allegations directly to the Government, the Committee believes they too should be granted some reward for their efforts. Further, incentives for exposing fraud should be available in as

many forms as is possible. The awards under this section will be made at the discretion of the Attorney General and reported to Congress on an annual basis.

SECTION 3

31 U.S.C. 3731, subsection (a) remains unchanged by the bill.

31 U.S.C. 3731, SUBSECTION (b)

Subsection (b) of section 3731 of title 31, as amended by section 3 of the bill, would include an explicit tolling provision on the statute of limitations under the False Claims Act. The statute of limitations does not begin to run until the material facts are known by an official within the Department of Justice with the authority to act in the circumstances.

31 U.S.C. 3731, SUBSECTION (c)

Section 3 of the bill amends section 3731 by adding a new subsection (c) to make clear that in civil fraud actions, the Government is required to prove all essential elements of the cause of action by a preponderance of the evidence. Traditionally, the burden of proof in a civil action is by a preponderance of the evidence. However, this point is not expressly addressed in the current act, and the case law is fragmented and inconsistent. Inasmuch as False Claims Act proceedings are civil and remedial in nature and are brought to recover compensatory damages, the Committee believes that the appropriate burden of proof devolving upon the United States in a civil False Claims Act suit is by a preponderance of the evidence. United States v. Gardner, 73 F. Supp. 644 (N.D. Ala. 1947).

Some courts have required that the United States prove its case by clear and convincing, or even by clear, unequivocal and convincing evidence. United States v. Ueber, 299 F.2d 310 (6th Cir. 1962), which is the functional equivalent of a criminal standard. This line of authority, beginning in the early case of United States v. Shapleigh, 54 Fed 126 (8th Cir. 1893), is predicated on its premise that the civil False Claims Act is penal in nature. The Supreme Court's rejection of the underlying premise in United States ex rel Marcus v. Hess, 317 U.S. 537 (1943), necessarily carried with it the repudiation of that conclusion as the burden of proof, and the subsequent decisions under the False Claims Act have generally rejected the criminal standard of 'beyond a reasonable doubt.'

The 'preponderance of the evidence' standard of proof in S. 1562 is, according to the Justice Department, the standard applied in most civil and administrative litigation. The Eighth Circuit recently held in Federal Crop Insurance Corp. v. Hester, 765 F.2d 723 (8th Cir. 1985) that 'preponderance of the evidence' is the appropriate standard for the False Claims Act, stating: 'Because the Act neither requires a showing of fraudulent intent nor is punitive in nature, we find no justification for applying a burden of proof higher than a preponderance of evidence.' In

testimony before the Senate Judiciary Committee on September 17, 1985, Jay Stephens, Associate Deputy Attorney General, stated that 'because the False Claims Act is basically a civil, remedial statute, the traditional 'preponderance of evidence' standard of proof is appropriate.'

Thus, notwithstanding the fact that the act permits a treble recovery, it would be governed by the traditional civil burden of proof. The Committee notes in support of this proposition that the U.S. Supreme Court has upheld such a burden in the areas of securities fraud and antitrust violations, which involve related forms of misconduct and civil remedies. Herman & McLean v. Huddleston, 459 U.S. 375, 388-89 (1983).

31 U.S.C. 3731, SUBSECTION (d)

Section 3 of the bill amends section 3731 of title 31 by adding a new subsection (d) providing that a nolo contendere plea in a criminal fraud case shall have collateral estoppel effect in a subsequent civil fraud action. Without this amendment, the well-settled rule that a nolo plea would have no collateral estoppel effect in related civil proceedings would apply. This common law principle is now embodied in Rule 410, Federal Rules of Evidence, and in Rule 11 (e)(6), Federal Rules of Criminal Procedure, which states:

* * * evidence of * * * a plea of nolo contendere * * * is not admissible in any civil or criminal proceedings against the person who made the plea or offer.

The Committee feels that given the high priority which should be afforded to the effective prosecution of procurement fraud cases, an exception to this general rule should be made for False Claims Act cases. Moreover, even when the criminal prosecutor wants to pursue his case fully and gain a guilty verdict, the court could still accept a nolo plea over the Government's objection, thus requiring the Civil Division to relitigate the issue. The Committee believes that this would be an unacceptable result; individuals who cheat the Government should not be able to hide behind a nolo plea.

SECTION 4

31 U.S.C. 3732, SUBSECTION (a)

Section (4) of the bill adds a new section 3732 of title 31 to modernize the jurisdiction and venue provisions of the False Claims Act, by recognizing the existence of multi-defendant and multi-district frauds against the Government. The bill provides that jurisdiction and venue in suits under the False Claims Act shall be proper in any district in which either: (a) any defendant resides, transacts business, is doing business, or can be found; or (b) in any district in which any of the following acts occurred: (i) the false claim was made or presented, or (ii) any other act constituting a violation of the False Claims Act occurred.

Under existing law, a False Claims Act suit must be commenced in the district where the defendant can be 'found'. This considerably hinders the Government's litigative effort in cases involving multiple defendants. Many suits brought under the Act involve several defendants and only infrequently can all defendants be 'found' in any one district. Many False Claims Act suits are brought after criminal litigation involving the same or similar conduct. Typically, for a variety of reasons, the individuals involved have moved from the area where the wrongdoing occurred and where they once were 'found'. This, in turn, may force the Department of Justice to file multiple suits involving the same scheme or pattern or fraudulent conduct against each defendant in the district in which he or she may be found at the time suit is commenced. Multiple suits, of course, increase the cost to the Government to pursue these cases and have a comparable impact upon the judicial resources required for a complete adjudication.

This expansion of jurisdiction and venue is made with a view to more effective litigation by the Government as well as convenience and fairness. It is basically a form of long-arm statute with many familiar counterparts in State law. However, the Committee is aware of the potential for abuse of this section. Choice of venue could turn more upon which court had provided a previous favorable decision to the Government than upon other factors of convenience or fairness. The Committee will remain sensitive to these potential abuses. Of course, a defendant could always move to transfer a case where appropriate 'in the interest of justice and for the convenience of the parties' (28 U.S.C. 1404).

31 U.S.C. 3732, SUBSECTION (b)

Subsection (b) of new section 3732 provides that the Claims Court shall have jurisdiction over any False Claims Act suit brought by the United States by way of a counterclaim. This provision will promote the economy of judicial resources by facilitating the resolution of all aspects of a given contract dispute--including any Government fraud claims--in a single judicial proceeding.

SECTION 5

31 U.S.C. 3733, SUBSECTION (a)

Section 5 of the bill adds a new section 3733 to title 31 which would authorize the Justice Department to issue Civil Investigative Demands (CID) for documents or testimony relevant to a False Claim Act investigation. This authority is nearly identical to that currently available to the Justice Department's Antitrust Division under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 1311-14).

Currently, the Civil Division of the Department relies primarily on two sources for investigation of civil fraud cases: the work of agency

Inspectors General (IGs) and material developed in criminal investigations, usually through the use of grand jury subpoenas. However, since the Supreme Court's decision in United States v. Sells Engineering Co., 31 S. Ct. 3133 (1983), interpreting Rule 6(e) of the Rules of Criminal Procedure, the Civil Division has been largely unable to gain access to the information developed before the grand jury. Therefore, in addition to supplementing the investigative powers of the IGs, CID authority would permit the Civil Division to gain access to evidence of fraud which might currently be unavailable to it due to the Supreme Court's interpretation of Rule 6(e).

With the single exception of sharing information with other agencies (discussed below), the CID authority granted by the bill is identical to that available to the Antitrust Division, and the Committee intends that the legislative history and caselaw interpreting that statute (15 U.S.C. 1311-14), fully apply to this bill. Briefly, the CID statute would work as follows. Where the responsible Assistant Attorney General believes that an individual or corporation has access to information relating to a False Claims Act investigation, he may, prior to the institution of litigation, issue a CID. The demand may require the production of documents, written answers to interrogatories and/or oral testimony. The standards governing subpoenas and ordinary civil discovery shall apply to protect against disclosure of information subject to a privilege, such as those privileges recognized by the Federal Rules of Civil Procedure and the Federal Rules of Evidence, and those recognized by Hickman v. Taylor, 329 U.S. 495 (1946), and its progeny. The Department may enforce compliance with the CID in district court and its order shall be final and hence, subject to appeal under 28 U.S.C. 1291.

The Committee notes that the use of CID authority has long been upheld against constitutional challenges. Hyster Company v. United States, 338 F.2d 183 (9th Cir. 1964); Petition of Gold Bond Stamp Company, 221 F. Supp. 391 (D. Minn. 1963), aff'd 325 F.2d 1018 (8th Cir. 1964).

The single noteworthy difference from the Hart-Scott-Rodino Act is subsection 3733(j)(3)(c), which authorizes the Department to share information obtained through a CID with any other agency of the United States for use by that agency in furtherance of its statutory responsibilities. However, such information could only be provided if the requesting agency, acting through the Department of Justice, obtained a court order upon a showing of substantial need. This proceeding would be conducted ex parte. The Committee feels that this protection will be adequate to ensure that only agencies with legitimate interests in fulfilling their most significant statutory responsibilities would have access to the information.

SECTION 6

31 U.S.C. 3734

Section 6 of the bill establishes a new section 3734 under the False Claims Act to provide for 'whistleblower' protection.

The Committee recognizes that few individuals will expose fraud if they fear their disclosures will lead to harassment, demotion, loss of employment, or any other form of retaliation. With the provisions in section 3434, the Committee seeks to halt companies and individuals from using the threat of economic retaliation to silence 'whistleblowers', as well as assure those who may be considering exposing fraud that they are legally protected from retaliatory acts.

In forming these protections, the Committee was guided by the whistleblower protection provisions found in Federal safety and environmental statutes including the Federal Surface Mining Act, 30 U.S.C. 1293, Energy Reorganization Act, 42 U.S.C. 5851, Clean Air Act, 42 U.S.C. 7622, Safe Drinking Water Act, 42 U.S.C. 300j-9, Solid Waste Disposal Act, 42 U.S.C. 6971, Water Pollution Control Act, 33 U.S.C. 1367, Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610, and Toxic Substances Control Act, 15 U.S.C. 2622.

New section 3734 provides 'make whole' relief for anyone who is 'discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against' by his employer due to his involvement with a false claims disclosure. The 'protected activity' under this section includes any 'good faith' exercise of an individual 'on behalf of himself or others of any option afforded by this Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this act.' Consequently, the Committee believes protection should extend not only to actual qui tam litigants, but those who assist or testify for the litigant, as well as those who assist the Government in bringing a false claims action. Protected activity should therefore be interpreted broadly.

As is the rule under other Federal whistleblower statutes as well as discrimination laws, the definitions of 'employee' and 'employer' should be all-inclusive. Temporary, blacklisted or discharged workers should be considered 'employees' for purposes of this act. Additionally, 'employers' should include public as well as private sector entities.

Section 3734 provides relief only if the whistleblower can show by a preponderance of the evidence that the employer's retaliatory actions resulted 'because' of the whistleblower's participation in a protected activity. Under other Federal whistleblower statutes, the 'because' standard has developed into a two-pronged approach. One, the whistleblower must show the employer had knowledge the employee engaged in 'protected activity' and, two, the retaliation was motivated, at least in part, by the employee's engaging in protected activity. Once these elements have been satisfied, the burden of proof shifts to the

employer to prove affirmatively that the same decision would have been made even if the employee had not engaged in protected activity. Deford v. Secretary of Labor, 700 F.2d 281, 286 (6th Cir. 1983); Mackwiak v. University Nuclear Systems, Inc., 735 F.2d 1159, 1162-1164 (9th Cir. 1984); Consolidated Edison of N.Y. Inc. v. Donovan, 673 F.2d 61, 62 (2nd Cir. 1982).

Additionally, as in the Safe Drinking Water Act, Clean Air Act, and Federal Water Pollution Act, the employer would not have to be proven in violation of the False Claims Act in order for this section to protect the employee's actions. However, the actions of the employee must result from a 'good faith' belief that violations exist.

Section 3734 provides 'make whole' relief including 'reinstatement with full seniority rights, backpay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.' In addition, the court could award double back pay, special damages or punitive damages if appropriate under the circumstances.

Jurisdiction for any actions under section 3734 of the False Claims Act shall be in Federal district court.

SECTION 7

Section 7 of the bill raises criminal penalties as well as possible imprisonment for criminal violations involving false claims. Subsection (a) of the bill amends section 286 of title 18, conspiracy to defraud the Government with respect to claims, and increases the penalty from $10,000 to $1 million. Subsection (b) of the bill amends section 287 of title 18, false, fictitious or fraudulent claims, and increases the $10,000 penalty to $1 million as well as increases the allowable prison sentence from 5 years to 10 years. Earlier in the 99th Congress, a $1 million level was set for submitting false claims related to contracts with the Department of Defense (P.L. 99- 145, Department of Defense Authorization act, 1986). The amendments in section 7 of this bill would apply that criminal penalty level across-the-board to any criminal false claims violations.

SECTION 8

Section 8 of the bill establishes that the amendments made by this act will be effective upon the date of enactment.

V. AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,

OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,

Washington, DC, December 11, 1985.

Hon. STROM THURMOND, Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to express the Justice Department's strong support for the False Claims Act amendments contained in S. 1562 as reported out of the Subcommittee on Administrative Practice and Procedure on November 7. We believe that these amendments will provide a significant enhancement to our ability to detect and prosecute economic crime.

As stated in our previous testimony, the Department does not believe that any changes are necessary in the 'qui tam,' or citizen suit, portions of the False Claims Act. However, the current language of S. 1562, a result of negotiations between representatives of the Department and subcommittee staff, is not objectionable in the context of the bill's other beneficial amendments to the False Claims Act.

However, the Department continues to oppose any amendment to Rule 6(e) of the Federal Rules of Criminal Procedure that would permit congressional access to grand jury information. We also recommend that administrative agencies be permitted to obtain access to grand jury information only at the request of an attorney for the Department of Justice on a showing of substantial need. Therefore, in an effort to expedite action on this vital anti-fraud initiative, we would urge the Committee to act to report out the False Claims Act amendments contained in S. 1562 separate from the grand jury reforms, which would seem to require more deliberation and discussion. Prompt action by your Committee may be crucial to ensuring ultimate passage of some anti-fraud legislation in the 99th Congress.

Additionally, we urge you to take action on the other Administration anti-fraud bills pending in the Committee. In particular, S. 1675, the Bribes and Gratuities Act, is directly related to the False Claims Act amendments, and would provide a valuable supplement to the enhanced anti-fraud remedies contained in S. 1562.

The Administration remains prepared to work with the Committee on this initiative and compliments you and Senator Grassley on your leadership in this area.

The Office of Management and Budget advises us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,
PHILLIP D. BRADY,

Acting Assistant Attorney General.

VI. COST ESTIMATE

The Congressional Budget Office has reviewed S. 1562 and does not expect the bill to result in any additional costs to the Government.

U.S. CONGRESS,CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 12, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1562, a bill amending the False Claims Act, and Title 18 of the United States Code regarding penalties for false claims, as ordered reported by the Senate Committee on the Judiciary, December 12, 1985.

S. 1562 would increase penalties and damages to which defendants under the False Claims Act are liable, broaden the scope of liability under that act, give the Department of Justice the authority to issue investigative demands prior to filing a complaint, and make a number of procedural changes for the conduct of false claims suits. These amendments are expected to involve no significant costs to the federal government or to state or local governments. The federal government may receive increased revenues as a result of increased penalties and damages authorized by this bill, but the amount cannot be estimated with precision.

Section 1 of S. 1562 increases the liability for false claims from $2,000 plus two times the damages sustained by the government to $10,000 plus three times the damages sustained by the government. According to the Department of Justice, collections of penalties and damages under the False Claims Act currently average about $40 million each year, although this amount fluctuates widely. The imposition of treble damages could potentially increase this amount by 50 percent. The increase might be lower, however, due to the possible reluctance of courts to impose more severe penalties. Conversely, collections could be even greater due to provisions in this bill making it easier for the government to win convictions for false claims, encouraging individuals to initiate false claims suits and establishing a uniform federal prejudgment standard. Because the provisions of the bill would apply only to claims made subsequent to enactment, no revenues would be realized until 1989 or 1990.

We expect that other sections of S. 1562 could affect costs of the Department of Justice. Section 5 of the bill gives Justice Department civil attorneys the authority for discovery of evidence prior to a complaint. The new authority may reduce duplication of investigative time and effort, and result in cost savings. Increased costs for litigation would offset some of the increased revenues produced by this bill, if it results in an increased number of false claims actions, particularly those brought by individuals.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, Director.

VII. REGULATORY IMPACT STATEMENT

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact or paperwork impact will result from the enactment of S. 1562.

VIII. VOTE OF COMMITTEE

The Committee favorably reported S. 1562, as amended, by unanimous consent on December 12, 1985.

SECTION 5
RESOURCES FOR WHISTLEBLOWERS

ORGANIZATIONS

Attorney Referral Service
National Whistleblower Legal Defense and Education Fund
PO Box 3768
Washington, DC 20027
Fax 202-342-1904
http://www.whistleblowers.org/html/ars_intake.html

The Fund operates an Attorney Referral Service (ARS) which provides referrals to employee whistleblowers.

Equal Employment Opportunity Commission (EEOC)
1801 L Street, NW
Washington, DC 20507
http://www.eeoc.gov/

The EEOC has jurisdiction over the anti-retaliation laws governing traditional employment discrimination matters. The web site catalogues laws prohibiting discrimination in employment, indicating those which the organization oversees.

Ignet
Federal Inspectors General Web Page
http://www.ignet.gov/

This web site contains a central point of contact for all 57 Offices of Inspector General and contact points for OIG oversight bodies.

The National Whistleblower Center
3238 P Street, NW
Washington, DC 20007-2756
Phone 202-342-1902/Fax 202-342-1904
http://www.whistleblowers.org/

The National Whistleblower Center (NWC) is a non-profit public interest organization devoted to the protection of whistleblowers. Founded in 1988, the NWC conducts educational programs and supports test case litigation. The Center's website provides information on legislative updates, publications, referrals and employee rights.

Regulations.gov
http://www.regulations.gov/

Regulations.gov is a U.S. government web site that publishes all proposed federal rules published in the *Federal Register* and permits citizens to provide rulemaking comments on-line. Most federal whistleblower regulations are approved through the rule making process.

U.S. Department of Justice
Freedom of Information Act Homepage
http://www.usdoj.gov/oip/index.html

The Department of Justice web page on the Freedom of Information Act (FOIA) lists FOIA contact personnel at every federal agency and provides detailed information on filing FOIA requests.

U.S. Office of Special Counsel
1730 M Street, NW, Suite 201
Washington, DC 20036-4505
http://www.osc.gov/

The Office of Special Counsel ("OSC") website contains information on the Whistleblower Protection Act (WPA), the law which covers most federal employee whistleblowers The site contains the OSC Form 11, which federal employees must use to file WPA claims with OSC.

FEDERAL AND STATE OFFICES FOR FILING FRAUD DISCLOSURE INFORMATION

United States of America

The Attorney General of the United States
National Place Building
1331 Pennsylvania Avenue, N.W.
Suite 520 N
Washington, DC 20530

Arkansas

Office of the Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201

Phone: (501) 682-2007

California

Supervising Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550

Phone: (916) 445-9555

Delaware

Attorney General for the State of Delaware
The Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801

Phone: (302) 577-8600

District of Columbia

Office of the Attorney General
441 Fourth Street N.W.
Suite 1060 N
Washington, D.C. 20001

Phone: (202) 727-3400

Florida

Attorney General for the State of Florida
The Capitol, PL-01
Tallahassee, Florida 32399-1050

Phone: (850) 414-3300

Medicaid Fraud Control Unit
Office of the Attorney General
444 Bickell Avenue,
Suite 650
Miami, FL 33131

Phone: (305) 377-5925

Georgia

Attorney General for the State of Georgia
40 Capitol Square
SW Atlanta, Georgia 30334

Phone: (404) 656-3300

Hawaii

Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

Phone: (808) 586-1239

Illinois

Attorney General's Office
100 West Randolph Street
Chicago, IL 60601

Phone: (312) 814-3000

City of Chicago

Office of the Inspector General
P.O. Box 2996
Chicago, Illinois 60654-2996

Indiana

Office of the Indiana Attorney General
Medicaid Fraud Control Unit
302 W. Washington Street
Indianapolis, IN 46204

Phone: (317) 232-6330

Louisiana

Attorney General for the State of Louisiana
300 Capitol Drive
Baton Rouge, LA 70804

Phone: (225) 326-6705

Medicaid Fraud Control Unit
1885 North 3rd Street
Baton Rouge, LA 70802

Massachusetts

Attorney General for the State of Massachusetts
One Ashburton Place
Boston, MA 02108

Phone: (617) 727-2200

Michigan

Michigan Department of Attorney General
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909

Phone: (517) 373-1110

Montana

Attorney General's Office
Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

Phone: (406) 444-2026

Nevada
Office of the Attorney General
Carson City Office
100 North Carson Street
Carson City, Nevada 89701-4717

Phone: (775) 684-1100

New Hampshire

Office of the Attorney General
Medicaid/Healthcare Fraud Unit
33 Capitol Street
Concord, NH 03301

Phone: (603) 271-1246

New Mexico

Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Phone: (505) 827-6060

New York State

Deputy Attorney General
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

Phone: (518) 447-7330

City of New York

New York City Dept. of Investigations
Complaint Bureau
80 Maiden Lane
New York, NY 10038

Phone: (212) 825-5900

Oklahoma

Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Phone: (405) 521-3921

Tennessee

Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207

Phone: (615) 741-3491

Texas

Medicaid Fraud Control Unit
Office of the Attorney General
P.O. Box 12307
Austin, TX 78711-2307

Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Phone: (512) 463-2100

Utah

Office of the Attorney General
Utah State Capitol Complex
East Office Bldg, Suite 320
SLC UT 84114-2320

P.O. Box 142320
SLC UT 84114-2320

Phone: (801) 366-0260

Virginia

Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

Phone: (804) 786-2071

IRS Reports

Send the completed Form 211 to the following Address:

Ogden Campus Center
Internal Revenue Service
1973 N. Rulon White Blvd.
MS/4110 — ICE
Ogden, UT 84404

Send the completed Form 3949 A to the following Address:

Internal Revenue Service
Fresno, CA 93888

Form 211
(Rev. December 2007)

Department of the Treasury - **Internal Revenue Service**

Application for Award for Original Information

OMB No. 1545-0409

Date Claim Received:

Claim No. (completed by IRS)

1. Name of individual claimant	2. Claimant's Date of Birth Month Day Year	3. Claimant's SSN or ITIN
4. Name of spouse *(if applicable)*	5. Spouse's Date of Birth Month Day Year	6. Spouse's SSN or ITIN

7. Address of claimant, including zip code, and telephone number

8. Name & Title of IRS employee to whom violation was reported	9. Date violation reported:
10. Name of taxpayer (include aliases) and any related taxpayers who committed the violation:	11. Taxpayer Identification Number(s) (e.g., SSN, ITIN, or EIN):
12. Taxpayer's address, including zip code:	13. Taxpayer's date of birth or approximate age:

14. State the facts pertinent to the alleged violation. (Attach a detailed explanation and all supporting information in your possession and describe the availability and location of any additional supporting information not in your possession.) Explain why you believe the act described constitutes a violation of the tax laws.

15. Describe how you learned about and/or obtained the information that supports this claim and describe your present or former relationship to the alleged noncompliant taxpayer(s). (Attach sheet if needed.)

16. Describe the amount owed by the taxpayer(s). Please provide a summary of the information you have that supports your claim as to the amount owed. (Attach sheet if needed.)

Declaration under Penalty of Perjury
I declare under penalty of perjury that I have examined this application, my accompanying statement, and supporting documentation and aver that such application is true, correct, and complete, to the best of my knowledge.

17. Signature of Claimant

18. Date

MAIL THE COMPLETED FORM TO THE ADDRESS SHOWN ON THE BACK

General Information:
On December 20, 2006, Congress made provision for the establishment of a Whistleblower Office within the IRS. This office has responsibility for the administration of the informant award program under section 7623 of the Internal Revenue Code. Section 7623 authorizes the payment of awards from the proceeds of amounts the Government collects by reason of the information provided by the claimant. Payment of awards under 7623(a) is made at the discretion of the IRS. To be eligible for an award under Section 7623(b), the amount in dispute (including tax, penalties, interest, additions to tax, and additional amounts) must exceed $2,000,000.00; if the taxpayer is an individual, the individual's gross income must exceed $200,000.00 for any taxable year at issue.

Send completed form along with any supporting information to:

Internal Revenue Service
Whistleblower Office
SE: WO
1111 Constitution Ave., NW
Washington, DC 20224

Instructions for Completion of Form 211:
Questions 1 - 7
Information regarding Claimant (informant): Name, Date of Birth, Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN), address including zip code, and telephone number (telephone number is optional).

Questions 8 - 9
If you reported the violation to an IRS employee, provide the employee's name and title and the date the violation was reported.

Questions 10 - 13
Information about Taxpayer - Provide specific and credible information regarding the taxpayer or entities that you believe have failed to comply with tax laws and that will lead to the collection of unpaid taxes.

Question 14
Attach all supporting documentation (for example, books and records) to substantiate the claim. If documents or supporting evidence are not in your possession, describe these documents and their location.

Question 15
Describe how the information which forms the basis of the claim came to your attention, including the date(s) on which this information was acquired, and a complete description of your relationship to the taxpayer.

Question 16
Describe the facts supporting the amount you claim is owed by the taxpayer.

Question 17
Information provided in connection with a claim submitted under this provision of law must be made under an original signed Declaration under Penalty of Perjury. Joint claims must be signed by each claimant.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE: We ask for the information on this form to carry out the internal revenue laws of the United States. Our authority to ask for this information is 26 USC 6109 and 7623. We collect this information for use in determining the correct amount of any award payable to you under 26 USC 7623. We may disclose this information as authorized by 26 USC 6103, including to the subject taxpayer(s) as needed in a tax compliance investigation and to the Department of Justice for civil and criminal litigation. You are not required to apply for an award. However, if you apply for an award you must provide as much of the requested information as possible. Failure to provide information may delay or prevent processing your request for an award; providing false information may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 35 minutes. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can email us at *taxforms@irs.gov (please type "Forms Comment" on the subject line) or write to the Internal Revenue Service, Tax Forms Coordinating Committee, SE: W: CAR: MP: T: T: SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224.

Send the completed Form 211 to the above Washington address of the Whistleblower Office. Do NOT send the Form 211 to the Tax Forms Coordinating Committee.

Form **3949 A** (12-2005)	Department of the Treasury - **Internal Revenue Service** **Information Referral** (*See instructions on reverse*)	OMB # 1545-1960

1. Taxpayer Name	2. Business Name
a. Street Address	a. Street Address
b. City/State/ZIP	b. City/State/ZIP
c. Social Security Number (SSN)	c. Employer Identification Number
d. Occupation	d. Principal Bus Activity
e. Date of Birth	
3. Marital Status ☐ Married ☐ Single ☐ Head of Household ☐ Divorced ☐ Separated	3a. Name of Spouse

4. Alleged Violation of Income Tax Law (Check all that apply).

☐ False Exemption	☐ Unsubstantiated Income	☐ Unreported Income	☐ Failure to Withhold Tax
☐ False Deductions	☐ Kickback	☐ Narcotics Income	☐ Wagering/Gambling
☐ Multiple Filing	☐ False/Altered Documents	☐ Public/Political Corruption	☐ Earned Income Credit
☐ Organized Crime	☐ Failure to Pay Tax	☐ Failure to File Return	☐ Other (Describe below)

5. Unreported Income and Tax Years (Fill in Tax Years and dollar amount(s), if known, e.g., TY2005 $10,000)

TY____ $_____ TY____ $_____ TY____ $_____ TY____ $_____ TY____ $_____ TY____ $_____

a. Comments (Briefly describe the facts of the alleged violation - Who/What/Where/When/How. Attach another sheet, if needed).

b. Are books/records available? ☐ Yes ☐ No	c. Do you consider the taxpayer dangerous? ☐ Yes ☐ No

d. Banks, Financial Institutions used by the taxpayer:

Name:	Name:
Address:	Address:
City/State/ZIP:	City/State/ZIP:

e. Please describe how you learned and/or obtained the information in this report (Attach another sheet, if needed):

6. Your Name:

a. Address:

b. City/State/ZIP:

c. Telephone Number (Please include the Area Code):

For Paperwork Reduction Act, see Instructions

Instructions

Provide the following information for the Person/Business You Are Reporting if Known:

1. Name
   a. Street Address of Residence
   b. City, State, and Zip Code
   c. Social Security Number
   d. Date of the Person's Birth

2. Business Name
   a. Street Address of Business
   b. City/State/Zip Code
   c. Enter Employer Identification Number
   d. Describe the Primary Business Activity

3. Indicate Martial Status
   M - Married **S** - Single **HH** - Head of Household **Div** - Divorced **Sep** - Separated
   3a. Enter name of spouse, if applicable.

4. Check all Tax Violations That Apply to Your Report or Describe in Comments If Not Listed.

5. If your report involves unreported income, indicate the year(s) and the dollar amount(s)
   5a. Briefly describe the facts of the alleged violation(s) as you know them. Please attach another sheet, if you need more room.
   5b. Indicate (Yes or No) if books and/or records are available that substantiate your report.
   5c. Indicate (Yes or No) if you consider the person to be violent or dangerous and provide an explanation in the comments section of this form.
   5d. List name and address of bank(s) and/or financial institution(s) used by the taxpayer if known.
   5e. Briefly explain how you learned of or obtained the information contained in your report. Please attach another sheet, if you need more room.

6. Enter your name, street address, city, state, zip code and a telephone number where you can be contacted. Indicate time of day you may be contacted if appropriate. **This Information is not Required to Process Your Report.**

Send the completed Form to the Internal Revenue Service Campus Location below:

Internal Revenue Service
Fresno, CA 93888

PAPERWORK REDUCTION NOTICE: We ask for the information on this form to carry out the Internal Revenue laws of the United States. This report is voluntary and the information requested helps us determine if there has been a violation of Income Tax Law. We need it to insure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administrations of any Internal Revenue laws. Generally, tax returns and tax return information are confidential, as required by Code section 6103.

The time required to complete this form will vary depending on individual circumstances. The estimated average time is 15 minutes. If you have comments concerning the accuracy of these time estimates or suggestions for making the form simpler, we would be happy to hear from you. You can email us at *taxforms@irs.gov (please type "Forms Comment" on the subject line) or write the Internal Revenue Service, Tax forms Coordinating Committee, SE:W:CAR:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224.

Do not send this completed form to the Tax Form Coordinating Committee. Instead, send it to the IRS location shown above.