



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB0742

Introduced 2/7/2007, by Rep. John A. Fritchey

#### SYNOPSIS AS INTRODUCED:

|                     |                         |
|---------------------|-------------------------|
| 740 ILCS 174/5      |                         |
| 740 ILCS 174/15     |                         |
| 740 ILCS 174/40 new |                         |
| 740 ILCS 175/2      | from Ch. 127, par. 4102 |
| 740 ILCS 175/3      | from Ch. 127, par. 4103 |

Amends the Whistleblower Act. Provides that "employer" includes the State or any political subdivision of the State, and a unit of local government, school district, or authority including a department, division, bureau, board, commission, or other agency of these entities; any person acting within the scope of his or her authority express or implied on behalf of those entities in dealing with its employers: a school district, combination of school districts, or governing body of a joint agreement of any type formed by two or more school districts; a community college district, State college or university, and any State agency whose major function is providing educational services (at present, the definition excludes any governmental entity). Provides that the State is preempting home rule units from the exercise of power in this area. Amends the Whistleblower Reward and Protection Act. Provides that "State" includes any unit of local government, school district, community college district, State college or university, or any entity created by an intergovernmental cooperation agreement (at present, the State, any State agency, and other governmental entities that adopted provisions of the Act). In both Acts, provides that it is unlawful for an employer to knowingly take an adverse action against an employee for disclosing information in a court or administrative hearing, legislative proceeding, or other type of proceeding if the employee has reasonable cause to believe the information discloses a violation of State or federal law or regulation.

LRB095 07030 AJO 27152 b

HOME RULE NOTE  
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Whistleblower Act is amended by changing  
5 Sections 5 and 15 and by adding Section 40 as follows:

6 (740 ILCS 174/5)

7 Sec. 5. Definitions. As used in this Act:

8 "Employer" means: an individual, sole proprietorship,  
9 partnership, firm, corporation, association, and any other  
10 entity that has one or more employees in this State, including  
11 a political subdivision of the State and a unit of local  
12 government, school district, or authority including a  
13 department, division, bureau, board, commission, or other  
14 agency of these entities; any person acting within the scope of  
15 his or her authority express or implied on behalf of those  
16 entities in dealing with its employers: a school district,  
17 combination of school districts, or governing body of a joint  
18 agreement of any type formed by two or more school districts; a  
19 community college district, State college or university, and  
20 any State agency whose major function is providing educational  
21 services ~~except that "employer" does not include any~~  
22 ~~governmental entity.~~

23 "Employee" means any individual who is employed on a

1 full-time, part-time, or contractual basis by an employer.

2 (Source: P.A. 93-544, eff. 1-1-04.)

3 (740 ILCS 174/15)

4 Sec. 15. Retaliation for certain disclosures prohibited.

5 (a) An employer may not retaliate against an employee who  
6 discloses information in a court, an administrative hearing, or  
7 before a legislative commission or committee, or in any other  
8 proceeding, where the employee has reasonable cause to believe  
9 that the information discloses a violation of a State or  
10 federal law, rule, or regulation.

11 (b) An employer may not retaliate against an employee for  
12 disclosing information to a government or law enforcement  
13 agency, where the employee has reasonable cause to believe that  
14 the information discloses a violation of a State or federal  
15 law, rule, or regulation.

16 (Source: P.A. 93-544, eff. 1-1-04.)

17 (740 ILCS 174/40 new)

18 Sec. 40. Home Rule Limitation. It is the public policy of  
19 this State, pursuant to paragraphs (h) and (i) of Section 6 of  
20 Article VII of the Illinois Constitution that the provisions of  
21 this Act are the exclusive exercise by the State of powers and  
22 functions which might otherwise be exercised by other home rule  
23 units. Such powers and functions may not be exercised  
24 concurrently, either directly or indirectly by any unit of

1 local government, including any home rule unit except as  
2 otherwise authorized by this Act.

3 Section 10. The Whistleblower Reward and Protection Act is  
4 amended by changing Sections 2 and 3 as follows:

5 (740 ILCS 175/2) (from Ch. 127, par. 4102)

6 Sec. 2. Definitions. As used in this Act:

7 (a) "State" means the State of Illinois; any agency of  
8 State government; the system of State colleges and  
9 universities, any school district, community college district,  
10 county, municipality, municipal corporation, unit of local  
11 government, and any combination of the above under an  
12 intergovernmental agreement that includes provisions for a  
13 governing body of the agency created by the agreement. and any  
14 ~~of the following entities which may elect to adopt the~~  
15 ~~provisions of this Act by ordinance or resolution, a copy of~~  
16 ~~which shall be filed with the Attorney General within 30 days~~  
17 ~~of its adoption: the system of State colleges and universities,~~  
18 ~~any school district, any public community college district, any~~  
19 ~~municipality, municipal corporations, units of local~~  
20 ~~government, and any combination of the above under an~~  
21 ~~intergovernmental agreement that includes provisions for a~~  
22 ~~governing body of the agency created by the agreement.~~

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

24 (c) "Investigation" means any inquiry conducted by any

1 investigator for the purpose of ascertaining whether any person  
2 is or has been engaged in any violation of this Act.

3 (d) "Investigator" means a person who is charged by the  
4 Department of State Police with the duty of conducting any  
5 investigation under this Act, or any officer or employee of the  
6 State acting under the direction and supervision of the  
7 Department of State Police, through the Division of Operations  
8 or the Division of Internal Investigation, in the course of an  
9 investigation.

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

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

20 (g) "Product of discovery" includes:

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

26 (2) any digest, analysis, selection, compilation, or

1 derivation of any item listed in paragraph (1); and  
2 (3) any index or other manner of access to any item  
3 listed in paragraph (1).  
4 (Source: P.A. 91-760, eff. 1-1-01.)

5 (740 ILCS 175/3) (from Ch. 127, par. 4103)  
6 Sec. 3. False claims.

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

8 (1) knowingly presents, or causes to be presented, to  
9 an officer or employee of the State or a member of the  
10 Guard a false or fraudulent claim for payment or approval;

11 (2) knowingly makes, uses, or causes to be made or  
12 used, a false record or statement to get a false or  
13 fraudulent claim paid or approved by the State;

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

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

22 (5) authorized to make or deliver a document certifying  
23 receipt of property used, or to be used, by the State and,  
24 intending to defraud the State, makes or delivers the  
25 receipt without completely knowing that the information on

1 the receipt is true;

2 (6) knowingly buys, or receives as a pledge of an  
3 obligation or debt, public property from an officer or  
4 employee of the State, or a member of the Guard, who  
5 lawfully may not sell or pledge the property; ~~or~~

6 (7) knowingly makes, uses, or causes to be made or  
7 used, a false record or statement to conceal, avoid or  
8 decrease an obligation to pay or transmit money or property  
9 to the State;~~;~~

10 (8) knowingly takes adverse employment action against  
11 an employee for disclosing information to a government or  
12 law enforcement agency, if the employee has reasonable  
13 cause to believe that the information discloses a violation  
14 of State or federal law, rule, or regulation; or

15 (9) knowingly retaliates against an employee who has  
16 disclosed information in a court, an administrative  
17 hearing, before a legislative commission or committee, or  
18 in another proceeding and discloses information, if the  
19 employee has reasonable cause to believe that the  
20 information discloses a violation of State or federal law,  
21 rule, or regulation,

22 is liable to the State for a civil penalty of not less than  
23 \$5,500 and not more than \$11,000, plus 3 times the amount of  
24 damages which the State sustains because of the act of that  
25 person. A person violating this subsection (a) shall also be  
26 liable to the State for the costs of a civil action brought to

1 recover any such penalty or damages.

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

5 (1) has actual knowledge of the information;

6 (2) acts in deliberate ignorance of the truth or  
7 falsity of the information; or

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

11 (c) Claim defined. As used in this Section, "claim"  
12 includes any request or demand, whether under a contract or  
13 otherwise, for money or property which is made to a contractor,  
14 grantee, or other recipient if the State provides any portion  
15 of the money or property which is requested or demanded, or if  
16 the State will reimburse such contractor, grantee, or other  
17 recipient for any portion of the money or property which is  
18 requested or demanded. A claim also includes a request or  
19 demand for money damages or injunctive relief on behalf of an  
20 employee who has suffered an adverse employment action taken in  
21 violation of paragraphs (8) or (9) of subsection (a).

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

24 (Source: P.A. 94-1059, eff. 7-31-06.)