



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5951

Introduced 2/10/2010, by Rep. William D. Burns

SYNOPSIS AS INTRODUCED:

30 ILCS 500/50-2	
740 ILCS 175/1	from Ch. 127, par. 4101
740 ILCS 175/2	from Ch. 127, par. 4102
740 ILCS 175/3	from Ch. 127, par. 4103
740 ILCS 175/4	from Ch. 127, par. 4104
740 ILCS 175/5	from Ch. 127, par. 4105
740 ILCS 175/6	from Ch. 127, par. 4106
740 ILCS 175/8	from Ch. 127, par. 4108

Amends the Whistleblower Reward and Protection Act and changes the short title to the Illinois False Claims Act. Provides that penalties are remedial, not punitive, and are not precluded by any criminal prosecution. Defines "obligation" and "material". Provides relief necessary to make an employee, contractor, or agent (instead of an employee) whole from a retaliatory job action taken against him or her because of the person's lawful act to stop a violation of the Act. Provides that the State may intervene in an action brought under the Act and that, for statute of limitations purposes, a State claim is timely if the claim arises out of the conduct that is asserted in the complaint. Makes other changes. Amends the Illinois Procurement Code by making a conforming change. Effective immediately.

LRB096 15489 AJ0 35974 b

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 Illinois Procurement Code is amended by
5 changing Section 50-2 as follows:

6 (30 ILCS 500/50-2)

7 (This Section may contain text from a Public Act with a
8 delayed effective date)

9 Sec. 50-2. Continuing disclosure; false certification.
10 Every person that has entered into a multi-year contract and
11 every subcontractor with a multi-year subcontract shall
12 certify, by July 1 of each fiscal year covered by the contract
13 after the initial fiscal year, to the responsible chief
14 procurement officer whether it continues to satisfy the
15 requirements of this Article pertaining to eligibility for a
16 contract award. If a contractor or subcontractor is not able to
17 truthfully certify that it continues to meet all requirements,
18 it shall provide with its certification a detailed explanation
19 of the circumstances leading to the change in certification
20 status. A contractor or subcontractor that makes a false
21 statement material to any given certification required under
22 this Article is, in addition to any other penalties or
23 consequences prescribed by law, subject to liability under the

1 Illinois False Claims ~~Whistleblower Reward and Protection~~ Act

2 for submission of a false claim.

3 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793

4 for the effective date of P.A. 96-795).)

5 Section 10. The Whistleblower Reward and Protection Act is
6 amended by changing Sections 1, 2, 3, 4, 5, 6, and 8 as
7 follows:

8 (740 ILCS 175/1) (from Ch. 127, par. 4101)

9 Sec. 1. This Act may be cited as the Illinois False Claims
10 ~~Whistleblower Reward and Protection~~ Act.

11 (Source: P.A. 87-662.)

12 (740 ILCS 175/2) (from Ch. 127, par. 4102)

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

14 (a) "State" means the State of Illinois; any agency of
15 State government; the system of State colleges and
16 universities, any school district, community college district,
17 county, municipality, municipal corporation, unit of local
18 government, and any combination of the above under an
19 intergovernmental agreement that includes provisions for a
20 governing body of the agency created by the agreement.

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

22 (c) "Investigation" means any inquiry conducted by any
23 investigator for the purpose of ascertaining whether any person

1 is or has been engaged in any violation of this Act.

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

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

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

19 (g) "Product of discovery" includes:

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

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

1 (3) any index or other manner of access to any item
2 listed in paragraph (1).

3 (Source: P.A. 95-128, eff. 1-1-08.)

4 (740 ILCS 175/3) (from Ch. 127, par. 4103)

5 Sec. 3. False claims.

6 (a) Liability for certain acts.

7 (1) In general, any ~~Any~~ person who:

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

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

16 (C) ~~(3)~~ conspires to commit a violation of
17 subparagraph (A), (B), (D), (E), (F), or (G) ~~defraud~~
18 ~~the State by getting a false or fraudulent claim~~
19 ~~allowed or paid;~~

20 (D) ~~(4)~~ has possession, custody, or control of
21 property or money used, or to be used, by the State and
22 knowingly ~~, intending to defraud the State or willfully~~
23 ~~to conceal the property,~~ delivers, or causes to be
24 delivered, less than all the money or property ~~than the~~
25 ~~amount for which the person receives a certificate or~~

1 ~~receipt;~~

2 (E) ~~is (5)~~ authorized to make or deliver a document
3 certifying receipt of property used, or to be used, by
4 the State and, intending to defraud the State, makes or
5 delivers the receipt without completely knowing that
6 the information on the receipt is true;

7 (F) ~~(6)~~ knowingly buys, or receives as a pledge of
8 an obligation or debt, public property from an officer
9 or employee of the State, or a member of the Guard, who
10 lawfully may not sell or pledge ~~the~~ property; or

11 (G) ~~(7)~~ knowingly makes, uses, or causes to be made
12 or used, a false record or statement material to
13 ~~conceal, avoid or decrease~~ an obligation to pay or
14 transmit money or property to the State, or knowingly
15 conceals or knowingly and improperly avoids or
16 decreases an obligation to pay or transmit money or
17 property to the State, ~~+~~

18 ~~(8) knowingly takes adverse employment action against~~
19 ~~an employee for disclosing information to a government or~~
20 ~~law enforcement agency, if the employee has reasonable~~
21 ~~cause to believe that the information discloses a violation~~
22 ~~of State or federal law, rule, or regulation; or~~

23 ~~(9) knowingly retaliates against an employee who has~~
24 ~~disclosed information in a court, an administrative~~
25 ~~hearing, before a legislative commission or committee, or~~
26 ~~in another proceeding and discloses information, if the~~

1 ~~employee has reasonable cause to believe that the~~
2 ~~information discloses a violation of State or federal law,~~
3 ~~rule, or regulation,~~

4 is liable to the State for a civil penalty of not less than
5 \$5,500 and not more than \$11,000, plus 3 times the amount
6 of damages which the State sustains because of the act of
7 that person. The penalties in this Section are intended to
8 be remedial rather than punitive, and shall not preclude,
9 nor be precluded by, a criminal prosecution for the same
10 conduct.

11 (2) A person violating this subsection ~~(a)~~ shall also
12 be liable to the State for the costs of a civil action
13 brought to recover any such penalty or damages.

14 (b) Definitions. For purposes of this Section:

15 (1) The ~~Knowing and knowingly defined. As used in this~~
16 Section, the terms "knowing" and "knowingly":

17 (A) mean that a person, with respect to
18 information:

19 (i) ~~(1)~~ has actual knowledge of the
20 information;

21 (ii) ~~(2)~~ acts in deliberate ignorance of the
22 truth or falsity of the information; or

23 (iii) ~~(3)~~ acts in reckless disregard of the
24 truth or falsity of the information, and

25 (B) require no proof of specific intent to defraud
26 ~~is required.~~

1 (2) The term (c) Claim defined. As used in this
2 ~~Section, "claim": includes~~

3 (A) means any request or demand, whether under a
4 contract or otherwise, for money or property and
5 whether or not the State has title to the money or
6 property, that

7 (i) is presented to an officer, employee, or
8 agent of the State; or

9 (ii) which is made to a contractor, grantee, or
10 other recipient, if the money or property is to be
11 spent or used on the State's behalf or to advance a
12 State program or interest, and if the State:

13 (I) provides or has provided any portion
14 of the money or property which is requested or
15 demanded; or

16 (II) if the State will reimburse such
17 contractor, grantee, or other recipient for
18 any portion of the money or property which is
19 requested or demanded; and;

20 (B) does not include requests or demands for money
21 or property that the State has paid to an individual as
22 compensation for State employment or as an income
23 subsidy with no restrictions on that individual's use
24 of the money or property. A claim also includes a
25 request or demand for money damages or injunctive
26 relief on behalf of an employee who has suffered an

1 ~~adverse employment action taken in violation of~~
2 ~~paragraphs (8) or (9) of subsection (a).~~

3 (3) The term "obligation" means an established duty,
4 whether or not fixed, arising from an express or implied
5 contractual, grantor-grantee, or licensor-licensee
6 relationship, from a fee-based or similar relationship,
7 from statute or regulation, or from the retention of any
8 overpayment.

9 (4) The term "material" means having a natural tendency
10 to influence, or be capable of influencing, the payment or
11 receipt of money or property.

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

14 (Source: P.A. 94-1059, eff. 7-31-06; 95-128, eff. 1-1-08.)

15 (740 ILCS 175/4) (from Ch. 127, par. 4104)

16 Sec. 4. Civil actions for false claims.

17 (a) Responsibilities of the Attorney General and the
18 Department of State Police. The Attorney General or the
19 Department of State Police shall diligently investigate a civil
20 violation under Section 3, ~~except for civil violations under~~
21 ~~Section 3 that relate to and adversely affect primarily the~~
22 ~~system of State colleges and universities, any school district,~~
23 ~~any public community college district, any municipality,~~
24 ~~municipal corporations, units of local government, or any~~
25 ~~combination of the above under an intergovernmental agreement~~

1 ~~that includes provisions for a governing board of the agency~~
2 ~~created by the agreement.~~ If the ~~The~~ Attorney General finds
3 that a person violated or is violating Section 3, the Attorney
4 General may bring a civil action under this Section against the
5 ~~any person that has violated or is violating Section 3.~~

6 The State shall receive an amount for reasonable expenses
7 that the court finds to have been necessarily incurred by the
8 Attorney General, including reasonable attorneys' fees and
9 costs. All such expenses, fees, and costs shall be awarded
10 against the defendant. The court may award amounts from the
11 proceeds of an action or settlement that it considers
12 appropriate to any affected entity, if the court finds that
13 such an allocation would meet the goals of disgorging unlawful
14 profit, restitution, or alleviation of the State's increased
15 costs due to fraud. The Attorney General, if necessary, shall
16 direct the State Treasurer to make a disbursement of funds as
17 provided in court orders or settlement agreements.

18 (b) Actions by private persons.

19 (1) A person may bring a civil action for a violation
20 of Section 3 for the person and for the State. The action
21 shall be brought in the name of the State. The action may
22 be dismissed only if the court and the Attorney General
23 give written consent to the dismissal and their reasons for
24 consenting.

25 (2) A copy of the complaint and written disclosure of
26 substantially all material evidence and information the

1 person possesses shall be served on the State. The
2 complaint shall be filed in camera, shall remain under seal
3 for at least 60 days, and shall not be served on the
4 defendant until the court so orders. The State may elect to
5 intervene and proceed with the action within 60 days after
6 it receives both the complaint and the material evidence
7 and information.

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

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

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

19 (B) notify the court that it declines to take over
20 the action, in which case the person bringing the
21 action shall have the right to conduct the action.

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

26 (c) Rights of the parties to Qui Tam actions.

1 (1) If the State proceeds with the action, it shall
2 have the primary responsibility for prosecuting the
3 action, and shall not be bound by an act of the person
4 bringing the action. Such person shall have the right to
5 continue as a party to the action, subject to the
6 limitations set forth in paragraph (2).

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

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

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

1 (i) limiting the number of witnesses the
2 person may call:

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

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

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

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

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

26 (4) Whether or not the State proceeds with the action,

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

13 (5) Notwithstanding subsection (b), the State may
14 elect to pursue its claim through any alternate remedy
15 available to the State, including any administrative
16 proceeding to determine a civil money penalty. If any such
17 alternate remedy is pursued in another proceeding, the
18 person initiating the action shall have the same rights in
19 such proceeding as such person would have had if the action
20 had continued under this Section. Any finding of fact or
21 conclusion of law made in such other proceeding that has
22 become final shall be conclusive on all parties to an
23 action under this Section. For purposes of the preceding
24 sentence, a finding or conclusion is final if it has been
25 finally determined on appeal to the appropriate court, if
26 all time for filing such an appeal with respect to the

1 finding or conclusion has expired, or if the finding or
2 conclusion is not subject to judicial review.

3 (d) Award to Qui Tam plaintiff.

4 (1) If the State proceeds with an action brought by a
5 person under subsection (b), such person shall, subject to
6 the second sentence of this paragraph, receive at least 15%
7 but not more than 25% of the proceeds of the action or
8 settlement of the claim, depending upon the extent to which
9 the person substantially contributed to the prosecution of
10 the action. Where the action is one which the court finds
11 to be based primarily on disclosures of specific
12 information (other than information provided by the person
13 bringing the action) relating to allegations or
14 transactions in a criminal, civil, or administrative
15 hearing, in a legislative, administrative, or Auditor
16 General's report, hearing, audit, or investigation, or
17 from the news media, the court may award such sums as it
18 considers appropriate, but in no case more than 10% of the
19 proceeds, taking into account the significance of the
20 information and the role of the person bringing the action
21 in advancing the case to litigation. Any payment to a
22 person under the first or second sentence of this paragraph
23 (1) shall be made from the proceeds. Any such person shall
24 also receive an amount for reasonable expenses which the
25 court finds to have been necessarily incurred, plus
26 reasonable attorneys' fees and costs. The State shall also

1 receive an amount for reasonable expenses which the court
2 finds to have been necessarily incurred by the Attorney
3 General, including reasonable attorneys' fees and costs,
4 ~~and the amount received shall be deposited in the~~
5 ~~Whistleblower Reward and Protection Fund created under~~
6 ~~this Act.~~ All such expenses, fees, and costs shall be
7 awarded against the defendant. The court may award amounts
8 from the proceeds of an action or settlement that it
9 considers appropriate to any affected entity, if the court
10 finds that such an allocation would meet the goals of
11 disgorging unlawful profit, restitution, or alleviation of
12 the State's increased costs due to fraud. The Attorney
13 General, if necessary, shall direct the State Treasurer to
14 make a disbursement of funds as provided in court orders or
15 settlement agreements. ~~When the system of State colleges~~
16 ~~and universities, any school district, any public~~
17 ~~community college district, any municipality, any~~
18 ~~municipal corporation, any unit of local government, or any~~
19 ~~combination of the above under an intergovernmental~~
20 ~~agreement has been adversely affected by a defendant, the~~
21 ~~court may award such sums as it considers appropriate to~~
22 ~~the affected entity, specifying in its order the amount to~~
23 ~~be awarded to the entity from the net proceeds that are~~
24 ~~deposited in the Whistleblower Reward and Protection Fund.~~

25 (2) If the State does not proceed with an action under
26 this Section, the person bringing the action or settling

1 the claim shall receive an amount which the court decides
2 is reasonable for collecting the civil penalty and damages.
3 The amount shall be not less than 25% and not more than 30%
4 of the proceeds of the action or settlement and shall be
5 paid out of such proceeds. Such person shall also receive
6 an amount for reasonable expenses which the court finds to
7 have been necessarily incurred, plus reasonable attorneys'
8 fees and costs. The State shall also receive an amount for
9 reasonable expenses that the court finds to have been
10 necessarily incurred by the Attorney General, including
11 reasonable attorneys' fees and costs. All such expenses,
12 fees, and costs shall be awarded against the defendant. The
13 court may award amounts from the proceeds of an action or
14 settlement that it considers appropriate to any affected
15 entity, if the court finds that such an allocation would
16 meet the goals of disgorging unlawful profit, restitution,
17 or alleviation of the State's increased costs due to fraud.
18 The Attorney General, if necessary, shall direct the State
19 Treasurer to make a disbursement of funds as provided in
20 court orders or settlement agreements.

21 (3) Whether or not the State proceeds with the action,
22 if the court finds that the action was brought by a person
23 who planned and initiated the violation of Section 3 upon
24 which the action was brought, then the court may, to the
25 extent the court considers appropriate, reduce the share of
26 the proceeds of the action which the person would otherwise

1 receive under paragraph (1) or (2) of this subsection (d),
2 taking into account the role of that person in advancing
3 the case to litigation and any relevant circumstances
4 pertaining to the violation. If the person bringing the
5 action is convicted of criminal conduct arising from his or
6 her role in the violation of Section 3, that person shall
7 be dismissed from the civil action and shall not receive
8 any share of the proceeds of the action. Such dismissal
9 shall not prejudice the right of the State to continue the
10 action, represented by the Attorney General.

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

18 (e) Certain actions barred.

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

23 (2) (A) No court shall have jurisdiction over an action
24 brought under subsection (b) against a member of the
25 General Assembly, a member of the judiciary, or an
26 exempt official if the action is based on evidence or

1 information known to the State when the action was
2 brought.

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

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

17 (4) (A) No court shall have jurisdiction over an
18 action under this Section based upon the public
19 disclosure of allegations or transactions in a
20 criminal, civil, or administrative hearing, in a
21 legislative, administrative, or Auditor General's
22 report, hearing, audit, or investigation, or from the
23 news media, unless the action is brought by the
24 Attorney General or the person bringing the action is
25 an original source of the information.

26 (B) For purposes of this paragraph (4), "original

1 source" means an individual who has direct and
2 independent knowledge of the information on which the
3 allegations are based and has voluntarily provided the
4 information to the State before filing an action under
5 this Section which is based on the information.

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

9 (g) Relief from retaliatory actions.

10 (1) In general, any ~~Any~~ employee, contractor, or agent
11 is entitled to all relief necessary to make that employee,
12 contractor, or agent whole, if that employee, contractor,
13 or agent ~~who~~ is discharged, demoted, suspended,
14 threatened, harassed, or in any other manner discriminated
15 against in the terms and conditions of employment ~~by his or~~
16 ~~her employer~~ because of lawful acts done by the employee,
17 contractor, or agent on behalf of the employee, contractor,
18 or agent or associated others in furtherance of other
19 efforts to stop one or more violations of this Act ~~an~~
20 ~~action under this Section, including investigation for,~~
21 ~~initiation of, testimony for, or assistance in an action~~
22 ~~filed or to be filed under this Section, shall be entitled~~
23 ~~to all relief necessary to make the employee whole. Such~~
24 ~~relief~~

25 (2) Relief under paragraph (1) shall include
26 reinstatement with the seniority status that the ~~such~~

1 employee, contractor, or agent would have had but for the
2 discrimination, 2 times the amount of back pay, interest on
3 the back pay, and compensation for any special damages
4 sustained as a result of the discrimination, including
5 litigation costs and reasonable attorneys' fees. An action
6 under this subsection (g) may be brought ~~employee may bring~~
7 ~~an action~~ in the appropriate circuit court for the relief
8 provided in this subsection (g).

9 (Source: P.A. 89-260, eff. 1-1-96.)

10 (740 ILCS 175/5) (from Ch. 127, par. 4105)

11 Sec. 5. False claims procedure.

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

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

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

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

24 whichever occurs last.

25 (c) If the State elects to intervene and proceed with an

1 action brought under subsection (b) of Section 4, the State may
2 file its own complaint or amend the complaint of a person who
3 has brought an action under under subsection (b) of Section 4
4 to clarify or add detail to the claims in which the State is
5 intervening and to add any additional claims with respect to
6 which the State contends it is entitled to relief. For statute
7 of limitations purposes, any such State pleading shall relate
8 back to the filing date of the complaint of the person who
9 originally brought the action, to the extent that the claim of
10 the State arises out of the conduct, transactions, or
11 occurrences set forth, or attempted to be set forth, in the
12 prior complaint of that person.

13 (d) ~~(e)~~ In any action brought under Section 4, the State
14 shall be required to prove all essential elements of the cause
15 of action, including damages, by a preponderance of the
16 evidence.

17 (e) ~~(d)~~ Notwithstanding any other provision of law, a final
18 judgement rendered in favor of the State in any criminal
19 proceeding charging fraud or false statements, whether upon a
20 verdict after trial or upon a plea of guilty, shall estop the
21 defendant from denying the essential elements of the offense in
22 any action which involves the same transaction as in the
23 criminal proceeding and which is brought under subsection (a)
24 or (b) of Section 4.

25 (Source: P.A. 87-662.)

1 (740 ILCS 175/6) (from Ch. 127, par. 4106)

2 Sec. 6. Subpoenas.

3 (a) In general.

4 (1) Issuance and service. Whenever the Attorney
5 General, or a designee (for purposes of this Section), has
6 reason to believe that any person may be in possession,
7 custody, or control of any documentary material or
8 information relevant to an investigation, the Attorney
9 General, or a designee, may, before commencing a civil
10 proceeding under this Act or making an election under
11 paragraph (4) of subsection (b) of Section 4, issue in
12 writing and cause to be served upon such person, a subpoena
13 requiring such person:

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

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

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

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

23 The Attorney General may delegate the authority to issue
24 subpoenas under this subsection (a) to the Department of
25 State Police subject to conditions as the Attorney General
26 deems appropriate. Whenever a subpoena is an express demand

1 for any product of discovery, the Attorney General or his
2 or her delegate shall cause to be served, in any manner
3 authorized by this Section, a copy of such demand upon the
4 person from whom the discovery was obtained and shall
5 notify the person to whom such demand is issued of the date
6 on which such copy was served. Any information obtained by
7 the Attorney General or a designee under this Section may
8 be shared with any qui tam relator if the Attorney General
9 or designee determines it necessary as part of any False
10 Claims Act investigation.

11 (1.5) Where a subpoena requires the production of
12 documentary material, the respondent shall produce the
13 original of the documentary material, provided, however,
14 that the Attorney General, or a designee, may agree that
15 copies may be substituted for the originals. All
16 documentary material kept or stored in electronic form,
17 including electronic mail, shall be produced in native
18 format, as kept in the normal course of business, or as
19 otherwise directed by ~~hard copy, unless~~ the Attorney
20 General or designee ~~agrees that electronic versions may be~~
21 ~~substituted for the hard copy.~~ The production of
22 documentary material shall be made at the respondent's
23 expense.

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

26 (A) Shall state the nature of the conduct

1 constituting an alleged violation that is under
2 investigation and the applicable provision of law
3 alleged to be violated.

4 (B) Shall identify the individual causing the
5 subpoena to be served and to whom communications
6 regarding the subpoena should be directed.

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

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

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

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

26 (b) Protected material or information.

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

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

10 (B) the standards applicable to discovery requests
11 under the Code of Civil Procedure, to the extent that
12 the application of such standards to any such subpoena
13 is appropriate and consistent with the provisions and
14 purposes of this Section.

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

25 (c) Service in general. Any subpoena issued under
26 subsection (a) may be served by any person so authorized by the

1 Attorney General or by any person authorized to serve process
2 on individuals within Illinois, through any method prescribed
3 in the Code of Civil Procedure or as otherwise set forth in
4 this Act.

5 (d) Service upon legal entities and natural persons.

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

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

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

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

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

26 (A) delivering an executed copy of such subpoena or

1 petition to the person; or

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

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

14 (f) Documentary material.

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

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

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

25 The certificate shall state that all of the documentary
26 material required by the demand and in the possession,

1 custody, or control of the person to whom the subpoena is
2 directed has been produced and made available to the
3 Attorney General.

4 (2) Production of materials. Any person upon whom any
5 subpoena for the production of documentary material has
6 been served under this Section shall make such material
7 available for inspection and copying to the Attorney
8 General at the place designated in the subpoena, or at such
9 other place as the Attorney General and the person
10 thereafter may agree and prescribe in writing, or as the
11 court may direct under subsection (j)(1). Such material
12 shall be made so available on the return date specified in
13 such subpoena, or on such later date as the Attorney
14 General may prescribe in writing. Such person may, upon
15 written agreement between the person and the Attorney
16 General, substitute copies for originals of all or any part
17 of such material.

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

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

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

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

10 (h) Oral examinations.

11 (1) Procedures. The examination of any person pursuant
12 to a subpoena for oral testimony served under this Section
13 shall be taken before an officer authorized to administer
14 oaths and affirmations by the laws of this State or of the
15 place where the examination is held. The officer before
16 whom the testimony is to be taken shall put the witness on
17 oath or affirmation and shall, personally or by someone
18 acting under the direction of the officer and in the
19 officer's presence, record the testimony of the witness.
20 The testimony shall be taken stenographically and shall be
21 transcribed. When the testimony is fully transcribed, the
22 officer before whom the testimony is taken shall promptly
23 transmit a certified copy of the transcript of the
24 testimony in accordance with the instructions of the
25 Attorney General. This subsection shall not preclude the
26 taking of testimony by any means authorized by, and in a

1 manner consistent with, the Code of Civil Procedure.

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

11 (3) Where testimony taken. The oral testimony of any
12 person taken pursuant to a subpoena served under this
13 Section shall be taken in the county within which such
14 person resides, is found, or transacts business, or in such
15 other place as may be agreed upon by the Attorney General
16 and such person.

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

1 official transcript of the witness' testimony.

2 (5) Conduct of oral testimony.

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

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

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

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

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

26 (2) Except as otherwise provided in this Section, no

1 documentary material, answers to interrogatories, or
2 transcripts of oral testimony, or copies thereof, while in
3 the possession of the custodian, shall be available for
4 examination by any individual, except as determined
5 necessary by the Attorney General and subject to the
6 conditions imposed by him or her for effective enforcement
7 of the laws of this State, or as otherwise provided by
8 court order.

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

13 (A) any case or proceeding before the court or
14 grand jury arising out of such investigation, or any
15 proceeding before any State agency involving such
16 material, has been completed, or

17 (B) no case or proceeding in which such material
18 may be used has been commenced within a reasonable time
19 after completion of the examination and analysis of all
20 documentary material and other information assembled
21 in the course of such investigation,

22 the custodian shall, upon written request of the person who
23 produced such material, return to such person any such
24 material which has not passed into the control of any
25 court, grand jury, or agency through introduction into the
26 record of such case or proceeding.

1 (j) Judicial proceedings.

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

14 (2) Petition to modify or set aside subpoena.

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

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

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

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

19 (3) Petition to modify or set aside demand for product
20 of discovery. In the case of any subpoena issued under
21 subsection (a) which is an express demand for any product
22 of discovery, the person from whom such discovery was
23 obtained may file, in the circuit court of the county in
24 which the proceeding in which such discovery was obtained
25 is or was last pending, a petition for an order of such
26 court to modify or set aside those portions of the subpoena

1 requiring production of any such product of discovery,
2 subject to the same terms, conditions, and limitations set
3 forth in subparagraph (j) (2) of this Section.

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

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

18 (Source: P.A. 93-579, eff. 1-1-04; 94-940, eff. 1-1-07.)

19 (740 ILCS 175/8) (from Ch. 127, par. 4108)

20 Sec. 8. Funds; Grants.

21 (a) There is hereby created the Whistleblower Reward and
22 Protection Fund as a special fund in the State Treasury. All
23 proceeds of an action or settlement of a claim brought under
24 this Act shall be deposited in the Fund. Any attorneys' fees,
25 expenses, and costs paid by or awarded against any defendant

1 pursuant to Section 4 of this Act shall not be considered part
2 of the proceeds to be deposited in the Fund.

3 (b) Monies in the Fund shall be allocated, subject to
4 appropriation, as follows: One-sixth of the monies shall be
5 paid to the Attorney General and one-sixth of the monies shall
6 be paid to the Department of State Police for State law
7 enforcement purposes. The remaining two-thirds of the monies in
8 the Fund shall be used for payment of awards to Qui Tam
9 plaintiffs, ~~for attorneys' fees and expenses,~~ and as otherwise
10 specified in this Act, with any remainder to the General
11 Revenue Fund. The Attorney General shall direct the State
12 Treasurer to make disbursement of funds ~~as provided in court~~
13 ~~orders setting those awards, fees, and expenses.~~ The State
14 ~~Treasurer shall transfer any fund balances in excess of those~~
15 ~~required for these purposes to the General Revenue Fund.~~

16 (Source: P.A. 87-662.)

17 Section 95. No acceleration or delay. Where this Act makes
18 changes in a statute that is represented in this Act by text
19 that is not yet or no longer in effect (for example, a Section
20 represented by multiple versions), the use of that text does
21 not accelerate or delay the taking effect of (i) the changes
22 made by this Act or (ii) provisions derived from any other
23 Public Act.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.