



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB6202

by Rep. Michael J. Zalewski

#### SYNOPSIS AS INTRODUCED:

740 ILCS 175/4

from Ch. 127, par. 4104

740 ILCS 175/4.5 new

Amends the Illinois False Claims Act. Provides that no court has jurisdiction over a civil action relating to or involving a false claim regarding a tax Act administered by the Department unless the action is brought by the Attorney General at the request of the Department. Provides that: the Department has the sole authority to initiate an administrative or judicial action resulting from information provided by a person alleging a false claim, statement, or record pertaining to a tax Act administered by the Department; the Department shall establish a procedure for the reporting of those allegations; the Department shall diligently investigate allegations of a false claim, statement, or record and may bring an action for all applicable taxes, penalties, and interest due under the tax Act; if the Department proceeds with an administrative or judicial action based on information brought to its attention by a private person, that person shall receive an award, subject to specified limits, from the action or from a settlement in response to that action, taking into account the significance of the person's information and the role of the person and a legal representative of the person in contributing to the action; an award may not be issued if the information resulting in the initiation of the action was originally provided by the person alleging the false claim; if the Department determines that the claim for award is brought by a person who planned and initiated the actions that led to the false claim and a resulting underpayment of tax for the purpose of bringing an action, the Department may appropriately reduce the award; and a determination of the Department regarding an award may be appealed to the Court of Claims within 30 days of the determination.

LRB097 22059 KTG 70785 b

FISCAL 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 Illinois False Claims Act is amended by  
5 changing Section 4 and by adding Section 4.5 as follows:

6 (740 ILCS 175/4) (from Ch. 127, par. 4104)

7 Sec. 4. Civil actions for false claims.

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

14 The State shall receive an amount for reasonable expenses  
15 that the court finds to have been necessarily incurred by the  
16 Attorney General, including reasonable attorneys' fees and  
17 costs. All such expenses, fees, and costs shall be awarded  
18 against the defendant. The court may award amounts from the  
19 proceeds of an action or settlement that it considers  
20 appropriate to any governmental entity or program that has been  
21 adversely affected by a defendant. The Attorney General, if  
22 necessary, shall direct the State Treasurer to make a  
23 disbursement of funds as provided in court orders or settlement

1 agreements.

2 (b) Actions by private persons.

3 (1) A person may bring a civil action for a violation  
4 of Section 3 for the person and for the State. The action  
5 shall be brought in the name of the State. The action may  
6 be dismissed only if the court and the Attorney General  
7 give written consent to the dismissal and their reasons for  
8 consenting.

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

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

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

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

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

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

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

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

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

22 (B) The State may settle the action with the defendant  
23 notwithstanding the objections of the person initiating  
24 the action if the court determines, after a hearing, that  
25 the proposed settlement is fair, adequate, and reasonable  
26 under all the circumstances. Upon a showing of good cause,

1 such hearing may be held in camera.

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

9 (i) limiting the number of witnesses the person may  
10 call:

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

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

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

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

23 (3) If the State elects not to proceed with the action,  
24 the person who initiated the action shall have the right to  
25 conduct the action. If the State so requests, it shall be  
26 served with copies of all pleadings filed in the action and

1 shall be supplied with copies of all deposition transcripts  
2 (at the State's expense). When a person proceeds with the  
3 action, the court, without limiting the status and rights  
4 of the person initiating the action, may nevertheless  
5 permit the State to intervene at a later date upon a  
6 showing of good cause.

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

20 (5) Notwithstanding subsection (b), the State may  
21 elect to pursue its claim through any alternate remedy  
22 available to the State, including any administrative  
23 proceeding to determine a civil money penalty. If any such  
24 alternate remedy is pursued in another proceeding, the  
25 person initiating the action shall have the same rights in  
26 such proceeding as such person would have had if the action

1 had continued under this Section. Any finding of fact or  
2 conclusion of law made in such other proceeding that has  
3 become final shall be conclusive on all parties to an  
4 action under this Section. For purposes of the preceding  
5 sentence, a finding or conclusion is final if it has been  
6 finally determined on appeal to the appropriate court, if  
7 all time for filing such an appeal with respect to the  
8 finding or conclusion has expired, or if the finding or  
9 conclusion is not subject to judicial review.

10 (d) Award to Qui Tam plaintiff.

11 (1) If the State proceeds with an action brought by a  
12 person under subsection (b), such person shall, subject to  
13 the second sentence of this paragraph, receive at least 15%  
14 but not more than 25% of the proceeds of the action or  
15 settlement of the claim, depending upon the extent to which  
16 the person substantially contributed to the prosecution of  
17 the action. Where the action is one which the court finds  
18 to be based primarily on disclosures of specific  
19 information (other than information provided by the person  
20 bringing the action) relating to allegations or  
21 transactions in a criminal, civil, or administrative  
22 hearing, in a legislative, administrative, or Auditor  
23 General's report, hearing, audit, or investigation, or  
24 from the news media, the court may award such sums as it  
25 considers appropriate, but in no case more than 10% of the  
26 proceeds, taking into account the significance of the

1 information and the role of the person bringing the action  
2 in advancing the case to litigation. Any payment to a  
3 person under the first or second sentence of this paragraph  
4 (1) shall be made from the proceeds. Any such person shall  
5 also receive an amount for reasonable expenses which the  
6 court finds to have been necessarily incurred, plus  
7 reasonable attorneys' fees and costs. The State shall also  
8 receive an amount for reasonable expenses which the court  
9 finds to have been necessarily incurred by the Attorney  
10 General, including reasonable attorneys' fees and costs.  
11 All such expenses, fees, and costs shall be awarded against  
12 the defendant. The court may award amounts from the  
13 proceeds of an action or settlement that it considers  
14 appropriate to any governmental entity or program that has  
15 been adversely affected by a defendant. The Attorney  
16 General, if necessary, shall direct the State Treasurer to  
17 make a disbursement of funds as provided in court orders or  
18 settlement agreements.

19 (2) If the State does not proceed with an action under  
20 this Section, the person bringing the action or settling  
21 the claim shall receive an amount which the court decides  
22 is reasonable for collecting the civil penalty and damages.  
23 The amount shall be not less than 25% and not more than 30%  
24 of the proceeds of the action or settlement and shall be  
25 paid out of such proceeds. Such person shall also receive  
26 an amount for reasonable expenses which the court finds to



1           have been necessarily incurred, plus reasonable attorneys'  
2           fees and costs. All such expenses, fees, and costs shall be  
3           awarded against the defendant. The court may award amounts  
4           from the proceeds of an action or settlement that it  
5           considers appropriate to any governmental entity or  
6           program that has been adversely affected by a defendant.  
7           The Attorney General, if necessary, shall direct the State  
8           Treasurer to make a disbursement of funds as provided in  
9           court orders or settlement agreements.

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

26           (4) If the State does not proceed with the action and

1 the person bringing the action conducts the action, the  
2 court may award to the defendant its reasonable attorneys'  
3 fees and expenses if the defendant prevails in the action  
4 and the court finds that the claim of the person bringing  
5 the action was clearly frivolous, clearly vexatious, or  
6 brought primarily for purposes of harassment.

7 (e) Certain actions barred.

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

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

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

26 (3) In no event may a person bring an action under

1 subsection (b) which is based upon allegations or  
2 transactions which are the subject of a civil suit or an  
3 administrative civil money penalty proceeding in which the  
4 State is already a party.

5 (4) (A) No court shall have jurisdiction over an action  
6 under this Section based upon the public disclosure of  
7 allegations or transactions in a criminal, civil, or  
8 administrative hearing, in a legislative, administrative,  
9 or Auditor General's report, hearing, audit, or  
10 investigation, or from the news media, unless the action is  
11 brought by the Attorney General or the person bringing the  
12 action is an original source of the information.

13 (B) For purposes of this paragraph (4), "original  
14 source" means an individual who has direct and independent  
15 knowledge of the information on which the allegations are  
16 based and has voluntarily provided the information to the  
17 State before filing an action under this Section which is  
18 based on the information.

19 (5) No court shall have jurisdiction over a civil  
20 action brought under subsection (b) that relates to or  
21 involves a false claim regarding a tax Act administered by  
22 the Department of Revenue unless the action is brought by  
23 the Attorney General at the request of the Department of  
24 Revenue pursuant to Section 4.5 of this Act.

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

1 under this Section.

2 (g) Relief from retaliatory actions.

3 (1) In general, any employee, contractor, or agent is  
4 entitled to all relief necessary to make that employee,  
5 contractor, or agent whole, if that employee, contractor,  
6 or agent is discharged, demoted, suspended, threatened,  
7 harassed, or in any other manner discriminated against in  
8 the terms and conditions of employment because of lawful  
9 acts done by the employee, contractor, or agent on behalf  
10 of the employee, contractor, or agent or associated others  
11 in furtherance of other efforts to stop one or more  
12 violations of this Act.

13 (2) Relief under paragraph (1) shall include  
14 reinstatement with the seniority status that the employee,  
15 contractor, or agent would have had but for the  
16 discrimination, 2 times the amount of back pay, interest on  
17 the back pay, and compensation for any special damages  
18 sustained as a result of the discrimination, including  
19 litigation costs and reasonable attorneys' fees. An action  
20 under this subsection (g) may be brought in the appropriate  
21 circuit court for the relief provided in this subsection  
22 (g).

23 (Source: P.A. 96-1304, eff. 7-27-10.)

24 (740 ILCS 175/4.5 new)

25 Sec. 4.5. Actions for false claims relating to tax Acts

1 administered by the Department of Revenue.

2 (a) The Department of Revenue shall have the sole authority  
3 to initiate an administrative or judicial action resulting from  
4 information provided by any person alleging a false claim,  
5 statement, or record, as set forth in Section 3 of this Act,  
6 pertaining to any tax Act administered by the Department of  
7 Revenue.

8 (b) The Department of Revenue shall establish, by rule, a  
9 procedure for the reporting of any allegation of a false claim,  
10 statement, or record to the Department.

11 (c) The Department of Revenue shall diligently investigate  
12 all allegations of a false claim, statement, or record and may  
13 bring an action under this Act for all applicable taxes,  
14 penalties, and interest it determines is due under the  
15 appropriate tax Act.

16 (d) If the Department of Revenue proceeds with an  
17 administrative or judicial action based on information brought  
18 to its attention by a private person, that person shall,  
19 subject to subsection (e), receive as an award an amount equal  
20 to at least 15% but not more than 30% of the collected proceeds  
21 (including any additional penalties and interest that may be  
22 assessed on the underlying liability) from the action or from  
23 any settlement in response to that action, taking into account  
24 the significance of the person's information and the role of  
25 the person and any legal representative of the person in  
26 contributing to the action.

1       (e) In the event the action is one which the Department of  
2 Revenue determines to be based principally on disclosures of  
3 specific allegations resulting from a judicial or  
4 administrative hearing, from a governmental report, hearing,  
5 audit, or investigation, or from the news media, the Department  
6 may award such sums as it considers appropriate, but in no case  
7 may it award more than 10% of the collected proceeds (including  
8 all penalties and interest) resulting from the action or from  
9 any settlement in response to the action, taking into account  
10 the significance of the person's information and the role of  
11 the person and any legal representative of the person in  
12 contributing to the action.

13       (f) No award shall be issued if the information resulting  
14 in the initiation of the action was originally provided by the  
15 person alleging the false claim.

16       (g) If the Department of Revenue determines that the claim  
17 for award is brought by a person who planned and initiated the  
18 actions that led to the false claim and any resulting  
19 underpayment of tax for the purpose of bringing an action under  
20 this Act, the Department may appropriately reduce the award.

21       (h) Any determination of the Department of Revenue  
22 regarding an award under this Section may be appealed to the  
23 Court of Claims within 30 days of the determination.