

1 AN ACT concerning State government.

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 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) The court shall dismiss an action or claim under
6 this Section, unless opposed by the State, if substantially
7 the same allegations or transactions as alleged in the
8 action or claim were publicly disclosed: ~~No court shall~~
9 ~~have jurisdiction over an action under this Section based~~
10 ~~upon the public disclosure of allegations or transactions~~

11 (i) in a criminal, civil, or administrative
12 hearing in which the State or its agent is a party; 7

13 (ii) in a State legislative, State administrative,
14 ~~or Auditor General,~~ or other State General's report,
15 hearing, audit, or investigation; 7 or

16 (iii) from the news media,

17 unless the action is brought by the Attorney General or the
18 person bringing the action is an original source of the
19 information.

20 (B) For purposes of this paragraph (4), "original
21 source" means an individual who either (i) prior to a
22 public disclosure under subparagraph (A) of this paragraph
23 (4), has voluntarily disclosed to the State the information
24 on which allegations or transactions in a claim are based,
25 or (ii) has knowledge that is independent of and materially
26 adds to the publicly disclosed allegations or

1 transactions, ~~has direct and independent knowledge of the~~
2 ~~information on which the allegations are based~~ and who has
3 voluntarily provided the information to the State before
4 filing an action under this Section ~~which is based on the~~
5 ~~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 employee, contractor, or agent
11 shall be ~~is~~ entitled to all relief necessary to make that
12 employee, contractor, or agent whole, if that employee,
13 contractor, or agent is discharged, demoted, suspended,
14 threatened, harassed, or in any other manner discriminated
15 against in the terms and conditions of employment because
16 of lawful acts done by the employee, contractor, ~~or agent~~
17 ~~on behalf of the employee, contractor, or agent,~~ or
18 associated others in furtherance of an action under this
19 Section or other efforts to stop one or more violations of
20 this Act.

21 (2) Relief under paragraph (1) shall include
22 reinstatement with the same seniority status that the
23 employee, contractor, or agent would have had but for the
24 discrimination, 2 times the amount of back pay, interest on
25 the back pay, and compensation for any special damages
26 sustained as a result of the discrimination, including

1 litigation costs and reasonable attorneys' fees. An action
2 under this subsection (g) may be brought in the appropriate
3 circuit court for the relief provided in this subsection
4 (g).

5 (3) A civil action under this subsection may not be
6 brought more than 3 years after the date when the
7 retaliation occurred.

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

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.