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CS/CS/HB 935

2013 Legislature

1  
2 An act relating to the Florida False Claims Act;  
3 amending s. 68.081, F.S.; revising a cross-reference;  
4 deleting a statement of purpose; amending s. 68.082,  
5 F.S.; deleting, revising, and providing definitions;  
6 revising conditions under which a person is liable for  
7 a specified civil penalty; amending s. 68.083, F.S.;  
8 revising terminology; revising language concerning who  
9 may intervene or bring a related action after a person  
10 files an action under the act; creating s. 68.0831,  
11 F.S.; providing for contingent effect; providing a  
12 definition; authorizing the Department of Legal  
13 Affairs to issue subpoenas for specified purposes  
14 before the institution of civil proceedings; providing  
15 requirements for the content and service of subpoenas;  
16 providing that such subpoenas may not require  
17 specified protected documents or testimony; specifying  
18 that the department's power to require the appearance  
19 of witnesses or production of documents or other  
20 tangible evidence located outside the state is  
21 unaffected; providing for petitions to modify or set  
22 aside subpoenas; providing for orders to comply with  
23 subpoenas; providing for the examination of witnesses;  
24 providing for review of transcripts of testimony;  
25 authorizing the department to stipulate to protective  
26 orders of submitted documents and information;  
27 providing for natural persons who decline to testify  
28 or produce documents after asserting a privilege

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29 | against self-incrimination to be ordered to testify or  
30 | produce documents; providing for contempt to comply  
31 | with such orders; providing for examination of  
32 | testimony, answers, or materials by the person who  
33 | produced such materials or answers; providing for  
34 | construction; prohibiting specified actions by a  
35 | person knowing or having reason to believe that a  
36 | subpoena is pending; providing civil penalties;  
37 | amending s. 68.084, F.S.; clarifying that the  
38 | department may dismiss actions at any point; revising  
39 | language concerning the costs to the department for  
40 | continuing to receive pleadings and transcripts of an  
41 | action after it has elected to withdraw; providing  
42 | that the state may elect to pursue available  
43 | alternative remedies, including administrative  
44 | proceedings; specifying what constitutes a final  
45 | finding or conclusion in an alternative proceeding  
46 | that is binding on all parties to an action under the  
47 | act; amending s. 68.085, F.S.; providing for  
48 | successful plaintiffs to receive, in addition to a  
49 | portion of the amount recovered, awards of expenses  
50 | and attorney fees and costs; amending s. 68.086, F.S.;  
51 | deleting references to awards of attorney fees to  
52 | successful plaintiffs; revising provisions relating to  
53 | awards of attorney fees to the department; amending s.  
54 | 68.087, F.S.; revising terminology; revising  
55 | provisions relating to dismissal of an action if  
56 | substantially the same allegations or transactions as

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57 |       alleged in the action were publicly disclosed;  
58 |       amending s. 68.089, F.S.; providing for the treatment  
59 |       for statutes of limitations purposes of pleadings  
60 |       filed in interventions by the department; amending s.  
61 |       68.09, F.S.; providing for estoppel as to certain  
62 |       matters following a final judgment or decree rendered  
63 |       in favor of the state or the Federal Government in  
64 |       certain criminal proceedings; providing effective  
65 |       dates.

66 |  
67 | Be It Enacted by the Legislature of the State of Florida:

68 |  
69 |       Section 1. Section 68.081, Florida Statutes, is amended to  
70 |       read:

71 |       68.081 Florida False Claims Act; short title; ~~purpose.~~-

72 |       ~~(1)~~ Sections 68.081-68.092 ~~68.081-68.09~~ may be cited as  
73 |       the "Florida False Claims Act."

74 |       ~~(2) The purpose of the Florida False Claims Act is to~~  
75 |       ~~deter persons from knowingly causing or assisting in causing~~  
76 |       ~~state government to pay claims that are false or fraudulent, and~~  
77 |       ~~to provide remedies for obtaining treble damages and civil~~  
78 |       ~~penalties for state government when money is obtained from state~~  
79 |       ~~government by reason of a false or fraudulent claim.~~

80 |       Section 2. Section 68.082, Florida Statutes, is amended to  
81 |       read:

82 |       68.082 False claims against the state; definitions;  
83 |       liability.-

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

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

88 ~~(a)(b)~~ "Claim" means ~~includes~~ any ~~written or~~  
89 ~~electronically submitted~~ request or demand, whether under a  
90 contract or otherwise, for money or, property, regardless of  
91 whether the state has title to the money or property, that: or  
92 ~~services, which~~

93 1. Is presented ~~made~~ to any employee, officer, or agent of  
94 the state; an agency, or

95 2. Is made to a any contractor, grantee, or other  
96 recipient if the state agency provides or has provided any  
97 portion of the money or property requested or demanded, or if  
98 the state agency will reimburse the contractor, grantee, or  
99 other recipient for any portion of the money or property that is  
100 requested or demanded.

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

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

105 1. Has actual knowledge of the information;

106 2. Acts in deliberate ignorance of the truth or falsity of  
107 the information; or

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

110  
111 No proof of specific intent to defraud is required. Innocent  
112 mistake shall be a defense to an action under this act.

113           (d) "Material" means having a natural tendency to  
 114 influence, or be capable of influencing, the payment or receipt  
 115 of money or property.

116           (e) "Obligation" means an established duty, fixed or  
 117 otherwise, arising from an express or implied contractual,  
 118 grantor-grantee, or licensor-licensee relationship, from a fee-  
 119 based or similar relationship, from statute or regulation, or  
 120 from the retention of any overpayment.

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

125           (2) Any person who:

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

129           (b) Knowingly makes, uses, or causes to be made or used a  
 130 false record or statement material to ~~get~~ a false or fraudulent  
 131 claim ~~paid or approved by an agency;~~

132           (c) Conspires to commit a violation of this subsection  
 133 ~~submit a false or fraudulent claim to an agency or to deceive an~~  
 134 ~~agency for the purpose of getting a false or fraudulent claim~~  
 135 ~~allowed or paid;~~

136           (d) Has possession, custody, or control of property or  
 137 money used or to be used by the state ~~an agency and,~~ intending  
 138 ~~to deceive the agency or knowingly conceal the property,~~  
 139 delivers or causes to be delivered less ~~property~~ than all of  
 140 that money or property ~~the amount for which the person receives~~

141 | ~~a certificate or receipt;~~

142 |       (e) Is authorized to make or deliver a document certifying  
143 | receipt of property used or to be used by the state ~~an agency~~  
144 | and, intending to defraud ~~deceive~~ the state ~~agency~~, makes or  
145 | delivers the receipt without knowing that the information on the  
146 | receipt is true;

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

151 |       (g) Knowingly makes, uses, or causes to be made or used a  
152 | false record or statement material to an obligation to pay or  
153 | transmit money or property to the state, or knowingly conceals  
154 | or knowingly and improperly avoids or decreases ~~to conceal,~~  
155 | ~~avoid, or decrease~~ an obligation to pay or transmit money or  
156 | property to the state ~~an agency,~~

157 |  
158 | is liable to the state for a civil penalty of not less than  
159 | \$5,500 and not more than \$11,000 and for treble the amount of  
160 | damages the state ~~agency~~ sustains because of the act ~~or omission~~  
161 | of that person.

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

165 |       (a) The person committing the violation furnished the  
166 | department ~~officials of the agency responsible for investigating~~  
167 | ~~false claims violations~~ with all information known to the person  
168 | about the violation within 30 days after the date on which the

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169 person first obtained the information;

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

172 (c) At the time the person furnished the department ~~agency~~  
173 with the information about the violation, no criminal  
174 prosecution, civil action, or administrative action had  
175 commenced under this section with respect to the violation, and  
176 the person did not have actual knowledge of the existence of an  
177 investigation into the violation;

178  
179 in which case the court shall award no less than 2 times the  
180 amount of damages sustained by the state ~~agency~~ because of the  
181 act of the person. The court shall set forth in a written order  
182 its findings and basis for reducing the treble damages award.

183 Section 3. Subsection (7) of section 68.083, Florida  
184 Statutes, is amended to read:

185 68.083 Civil actions for false claims.—

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

190 Section 4. Effective upon the same date that HB 1297 or  
191 similar legislation takes effect, if such legislation is adopted  
192 in the same legislative session or an extension thereof and  
193 becomes a law, section 68.0831, Florida Statutes, is created to  
194 read:

195 68.0831 Subpoena.—

196 (1) As used in this section, the term "department" means

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197 | the Department of Legal Affairs.

198 |       (2) Whenever the department has reason to believe that any

199 | person may be in possession, custody, or control of any

200 | documentary material or may have any information, which

201 | documentary material or information is relevant to a civil

202 | investigation authorized by s. 68.083, the department may,

203 | before the institution of a civil proceeding thereon, issue in

204 | writing and cause to be served upon the person a subpoena

205 | requiring the person to:

206 |       (a) Produce such documentary material for inspection and

207 | copying or reproduction;

208 |       (b) Answer, under oath and in writing, written

209 | interrogatories;

210 |       (c) Give sworn oral testimony concerning the documentary

211 | material or information; or

212 |       (d) Furnish any combination of such material, answers, or

213 | testimony.

214 |       (3) The subpoena shall:

215 |       (a) Be served upon the person in the manner required for

216 | service of process in this state or by certified mail showing

217 | receipt by the addressee or by the authorized agent of the

218 | addressee.

219 |       (b) State the nature of the conduct that constitutes the

220 | violation of this act and that is alleged to have occurred or to

221 | be imminent.

222 |       (c) Describe the class or classes of documentary material

223 | to be produced thereunder with such definiteness and certainty

224 | as to permit such materials to be reasonably identified.



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225 (d) Prescribe a date and time at which the person must  
226 appear to testify, under oath or affirmation, or by which the  
227 person must answer written interrogatories or produce the  
228 documentary material for inspection or copying; however, such  
229 date shall not be earlier than 30 days after the date of service  
230 of the subpoena.

231 (e) Specify a place for the taking of testimony or for the  
232 submission of answers to interrogatories and identify the person  
233 who is to take custody of any documentary material. Inspection  
234 and copying of documentary material shall be carried out at the  
235 place where the documentary material is located or at such other  
236 place as may be thereafter agreed to by the person and such  
237 designated custodian. Upon written agreement between the person  
238 and the designated custodian, copies may be substituted for  
239 original documents.

240 (4) Such subpoena may not require the production of any  
241 documentary material, the submission of any answers to written  
242 interrogatories, or the giving of any oral testimony if such  
243 material, answers, or testimony would be protected from  
244 disclosure under:

245 (a) The standards applicable to subpoenas or subpoenas  
246 duces tecum issued by a court of this state in aid of a grand  
247 jury investigation; or

248 (b) The standards applicable to a discovery request under  
249 the Florida Rules of Civil Procedure, to the extent that the  
250 application of such standards to any such subpoena is  
251 appropriate and consistent with the provisions and purposes of  
252 this act.

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253       (5) This section does not limit the power of the  
 254 department to require the appearance of witnesses or production  
 255 of documents or other tangible evidence located outside the  
 256 state.

257       (6) Within 30 days after the service of a subpoena upon  
 258 any person or at any time before the return date specified  
 259 therein, whichever period is longer, the person served may file,  
 260 and serve on the department, a petition for an order of the  
 261 court modifying or setting aside the subpoena. Any such petition  
 262 shall be filed in the circuit court of the Second Judicial  
 263 Circuit in and for Leon County. The time allowed for compliance  
 264 in whole or in part with the subpoena as deemed proper and  
 265 ordered by the court shall not run while the petition is pending  
 266 before the court. The petition shall specify each ground upon  
 267 which the petitioner relies in seeking relief and may be based  
 268 upon the failure of the subpoena to comply with this section or  
 269 upon any constitutional or other legal right or privilege of  
 270 such person.

271       (7) In case of the failure of any person to comply in  
 272 whole or in part with a subpoena and when such person has not  
 273 filed a petition under subsection (6), the circuit court of the  
 274 Second Judicial Circuit in and for Leon County, upon application  
 275 of the department, may issue an order requiring compliance. The  
 276 failure to obey the order of the court shall be punishable as a  
 277 contempt of court.

278       (8) The examination of all witnesses under this section  
 279 shall be conducted by the department before an officer  
 280 authorized to administer oaths in this state. The testimony

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281 shall be taken stenographically or by a sound-recording device.  
282 Any person compelled to appear under a subpoena for oral  
283 testimony pursuant to this section may be accompanied,  
284 represented, and advised by counsel. Counsel may advise such  
285 person, in confidence, either upon the request of such person or  
286 upon counsel's own initiative, with respect to any question  
287 asked of such person. Such person or counsel may object on the  
288 record to any question, in whole or in part, and shall briefly  
289 state for the record the reason for any such objection. If such  
290 person refuses to answer any question, the person conducting the  
291 examination may petition the circuit court as provided by  
292 subsection (11).

293 (9) When the testimony is fully transcribed, the person  
294 conducting the deposition shall afford the witness, and counsel,  
295 if any, a reasonable opportunity to examine the transcript, and  
296 the transcript shall be read to or by the witness, unless such  
297 examination and reading is waived by the witness. Any changes in  
298 form or substance that the witness desires to make shall be  
299 entered and identified upon the transcript by the officer or the  
300 department, with a statement of the reasons given by the witness  
301 for making such changes. The transcript shall then be signed by  
302 the witness unless the witness waives the signing in writing, is  
303 ill, cannot be found, or refuses to sign. If the transcript is  
304 not signed by the witness within 30 days after his or her being  
305 afforded a reasonable opportunity to examine it, the person  
306 conducting the examination shall sign it and state on the record  
307 the fact of the waiver, illness, absence, or refusal to sign,  
308 together with the reason, if any, given therefor. Any person

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309 required to testify or to submit documentary evidence is  
310 entitled, on payment of reasonable costs, to procure a copy of  
311 any document produced by such person and of his or her own  
312 testimony as stenographically reported or, in the case of a  
313 deposition, as reduced to writing by or under the direction of  
314 the person taking the deposition.

315 (10) The department shall have the authority to stipulate  
316 to protective orders with respect to documents and information  
317 submitted in response to a subpoena under this section.

318 (11) The department may request that any natural person  
319 who refuses to comply with this section on the ground that the  
320 testimony or documents may incriminate him or her be ordered by  
321 the circuit court to provide the testimony or the documents.  
322 Except in a prosecution for perjury, a natural person who  
323 complies with a court order to provide testimony or documents  
324 after asserting a privilege against self-incrimination to which  
325 he or she is entitled by law may not be subject to a criminal  
326 proceeding with respect to the transaction to which he or she is  
327 required to testify or produce documents. Any natural person who  
328 fails to comply with such a court order to testify or produce  
329 documents may be adjudged in contempt and imprisoned until the  
330 time the person purges himself or herself of the contempt.

331 (12) While in the possession of the custodian, documentary  
332 material, answers to interrogatories, and transcripts of oral  
333 testimony shall be available, under such reasonable terms and  
334 conditions as the department shall prescribe, for examination by  
335 the person who produced such materials or answers or that  
336 person's duly authorized representative.

337       (13) This section does not impair the authority of the  
 338 department to:

339       (a) Institute a civil proceeding under s. 68.083;  
 340       (b) Invoke the power of a court to compel the production  
 341 of evidence before a grand jury; or

342       (c) Maintain the confidential and exempt status of the  
 343 complaint and any other information as provided in s. 68.083(8).

344       (14) (a) A person who knows or has reason to believe that a  
 345 subpoena pursuant to this section is pending shall not:

346       1. Alter, destroy, conceal, or remove any record,  
 347 document, or thing with the purpose of impairing its verity or  
 348 availability in such proceeding or investigation; or

349       2. Make, present, or use any record, document, or thing  
 350 knowing it to be false.

351       (b) Any natural person who violates this subsection is  
 352 subject to a civil penalty of not more than \$100,000, reasonable  
 353 attorney fees, and costs. Any other person who violates this  
 354 subsection is subject to a civil penalty of not more than \$1  
 355 million, reasonable attorney fees, and costs.

356       Section 5. Subsections (2) through (5) of section 68.084,  
 357 Florida Statutes, are amended to read:

358       68.084 Rights of the parties in civil actions.—

359       (2) (a) The department may at any point voluntarily dismiss  
 360 the action notwithstanding the objections of the person  
 361 initiating the action.

362       (b) Subject to s. 17.04, nothing in this act shall be  
 363 construed to limit the authority of the department or the qui  
 364 tam plaintiff to compromise a claim brought in a complaint filed

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365 | under this act if the court determines, after a hearing, that  
366 | the proposed settlement is fair, adequate, and reasonable under  
367 | all the circumstances.

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

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

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

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

380 |           4. Otherwise limiting the participation by the person in  
381 | the litigation.

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

388 |       (3) If the department elects not to proceed with the  
389 | action, the person who initiated the action has the right to  
390 | conduct the action. If the Attorney General, as head of the  
391 | department, or the Chief Financial Officer, as head of the  
392 | Department of Financial Services, so requests, it shall be

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393 | served, ~~at the requesting department's expense,~~ with copies of  
394 | all pleadings and motions filed in the action along with ~~and~~  
395 | copies of all deposition transcripts at the requesting  
396 | department's expense. When a person proceeds with the action,  
397 | the court, without limiting the rights of the person initiating  
398 | the action, may nevertheless permit the department to intervene  
399 | and take over the action on behalf of the state at a later date  
400 | upon showing of good cause.

401 |       (4) Regardless of whether ~~or not~~ the department proceeds  
402 | with the action, upon a showing by the department that certain  
403 | actions of discovery by the person initiating the action would  
404 | interfere with an investigation by the state ~~government~~ or the  
405 | prosecution of a criminal or civil matter arising out of the  
406 | same facts, the court may stay such discovery for a period of  
407 | not more than 60 days. Such a showing shall be conducted in  
408 | camera. The court may extend the 60-day period upon a further  
409 | showing in camera by the department that the criminal or civil  
410 | investigation or proceeding has been pursued with reasonable  
411 | diligence and any proposed discovery in the civil action will  
412 | interfere with an ongoing criminal or civil investigation or  
413 | proceeding.

414 |       (5) Notwithstanding paragraph (2) (b), the state may elect  
415 | to pursue its claim through any available alternate remedy,  
416 | including any administrative proceeding to determine a civil  
417 | money penalty. If any such alternate remedy is pursued in  
418 | another proceeding, the person initiating the action shall have  
419 | the same rights in such proceeding as the person would have had  
420 | if the action had continued under this section ~~The application~~

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421 ~~of one civil remedy under this act does not preclude the~~  
 422 ~~application of any other remedy, civil or criminal, under this~~  
 423 ~~act or any other provision of law. Civil remedies under this act~~  
 424 ~~are supplemental, not mutually exclusive.~~ Any finding of fact or  
 425 conclusion of law made in such other proceeding that has become  
 426 final shall be conclusive on all parties to an action under this  
 427 section. For purposes of ~~As used in~~ this subsection, a finding  
 428 or conclusion is final if it has been finally determined on  
 429 appeal to the appropriate court, if all time for filing such an  
 430 appeal with respect to the finding or conclusion has expired, or  
 431 if the finding or conclusion is ~~the term "final" means not~~  
 432 subject to judicial review.

433 Section 6. Section 68.085, Florida Statutes, is amended to  
 434 read:

435 68.085 Awards to plaintiffs bringing action.—

436 (1) (a) If the department proceeds with ~~and prevails in~~ an  
 437 action brought by a person under this act, subject to the  
 438 requirements of paragraph (b), the person shall receive ~~except~~  
 439 ~~as provided in subsection (2), the court shall order the~~  
 440 ~~distribution to the person of~~ at least 15 percent but not more  
 441 than 25 percent of the proceeds of the ~~recovered under any~~  
 442 ~~judgment obtained by the department in an action under s. 68.082~~  
 443 ~~or of the proceeds of any~~ settlement of the claim, depending  
 444 upon the extent to which the person substantially contributed to  
 445 the prosecution of the action.

446 (b)-(2) If the department proceeds with ~~an action which the~~  
 447 court finds the action to be based primarily on disclosures of  
 448 specific information, other than information ~~that~~ provided by



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449 the person bringing the action, relating to allegations or  
450 transactions in a criminal, civil, or administrative hearing; a  
451 legislative, administrative, inspector general, or auditor  
452 general report, hearing, audit, or investigation; or from the  
453 news media, the court may award such sums as it considers  
454 appropriate, but in no case more than 10 percent of the proceeds  
455 ~~recovered under a judgment or received in settlement of a claim~~  
456 ~~under this act~~, taking into account the significance of the  
457 information and the role of the person bringing the action in  
458 advancing the case to litigation.

459 (c) Any payment to a person under paragraph (a) or  
460 paragraph (b) shall be made from the proceeds. The person shall  
461 also receive an amount for reasonable expenses that the court  
462 finds to have been necessarily incurred, plus reasonable  
463 attorney fees and costs. All such expenses, fees, and costs  
464 shall be awarded against the defendant.

465 (2)(3) If the department does not proceed with an action  
466 under this section, the person bringing the action or settling  
467 the claim shall receive an amount that ~~which~~ the court decides  
468 is reasonable for collecting the civil penalty and damages. The  
469 amount shall be not less than 25 percent and not more than 30  
470 percent of the proceeds of the action or settlement and shall be  
471 paid out of such proceeds ~~recovered under a judgment rendered in~~  
472 ~~an action under this act or in settlement of a claim under this~~  
473 ~~act.~~ The person shall also receive an amount for reasonable  
474 expenses that the court finds to have been necessarily incurred,  
475 plus reasonable attorney fees and costs. All such expenses,  
476 fees, and costs shall be awarded against the defendant.

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477           ~~(3)(4)~~ Following any distributions under subsection (1)  
478 ~~or~~ subsection (2), ~~or subsection (3)~~, the state entity agency  
479 injured by the submission of a false or fraudulent claim shall  
480 be awarded an amount not to exceed its compensatory damages. If  
481 the action was based on a claim of funds from the state Medicaid  
482 program, 10 percent of any remaining proceeds shall be deposited  
483 into the Operating Trust Fund to fund rewards for persons who  
484 report and provide information relating to Medicaid fraud  
485 pursuant to s. 409.9203. Any remaining proceeds, including civil  
486 penalties awarded under s. 68.082, shall be deposited in the  
487 General Revenue Fund.

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

491           ~~(4)(6)~~ Regardless of whether ~~or not~~ the department  
492 proceeds with the action, if the court finds that the action was  
493 brought by a person who planned and initiated the violation of  
494 s. 68.082 upon which the action was brought, the court may, to  
495 the extent the court considers appropriate, reduce the share of  
496 the proceeds of the action that ~~which~~ the person would otherwise  
497 receive under this section, taking into account the role of the  
498 person in advancing the case to litigation and any relevant  
499 circumstances pertaining to the violation. If the person  
500 bringing the action is convicted of criminal conduct arising  
501 from his or her role in the violation of s. 68.082, the person  
502 shall be dismissed from the civil action and shall not receive  
503 any share of the proceeds of the action. Such dismissal shall  
504 not prejudice the right of the department to continue the

505 action.

506 Section 7. Section 68.086, Florida Statutes, is amended to  
507 read:

508 68.086 Expenses; attorney ~~attorney's~~ fees and costs.—

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

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

518 (2)~~(3)~~ If the department does not proceed with an action  
519 under this act and the person bringing the action conducts the  
520 action, the court may award to the defendant its reasonable  
521 attorney ~~attorney's~~ fees and expenses ~~costs~~ if the defendant  
522 prevails in the action and the court finds that the claim of the  
523 person bringing the action was clearly frivolous, clearly  
524 vexatious, or brought primarily for purposes of harassment.

525 (3)~~(4)~~ No liability shall be incurred by the state  
526 ~~government, the affected agency,~~ or the department for any  
527 expenses, attorney ~~attorney's~~ fees, or other costs incurred by  
528 any person in bringing or defending an action under this act.

529 Section 8. Subsections (2), (3), and (6) of section  
530 68.087, Florida Statutes, are amended to read:

531 68.087 Exemptions to civil actions.—

532 (2) In no event may a person bring an action under s.

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533 68.083(2) based upon allegations or transactions that are the  
534 subject of a civil action or an administrative proceeding in  
535 which the state agency is already a party.

536 (3) The ~~No~~ court shall dismiss ~~have jurisdiction over~~ an  
537 action brought under this act unless opposed by the department,  
538 if substantially the same based upon the public disclosure of  
539 allegations or transactions as alleged in the action were  
540 publicly disclosed:

541 (a) In a criminal, civil, or administrative hearing in  
542 which the state is a party;

543 (b) In a legislative, administrative, inspector general,  
544 or other state Auditor General, Chief Financial Officer, or  
545 Department of Financial Services report, hearing, audit, or  
546 investigation; or

547 (c) From the news media,

548  
549 unless the action is brought by the department, ~~or unless~~ the  
550 person bringing the action is an original source of the  
551 information. For purposes of this subsection, the term "original  
552 source" means an individual who, before a public disclosure  
553 under subsection (3), has voluntarily disclosed to the  
554 department the information on which allegations or transactions  
555 in a claim are based, or who has knowledge that is independent  
556 of and materially adds to the publicly disclosed allegations or  
557 transactions ~~has direct and independent knowledge of the~~  
558 ~~information on which the allegations are based~~ and has  
559 voluntarily provided the information to the department before  
560 filing an action under this section ~~act based on the~~

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561 ~~information.~~

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

566 Section 9. Section 68.089, Florida Statutes, is amended to  
567 read:

568 68.089 Limitation of actions; effect of interventions by  
569 department.—A civil action under this act may not be brought:

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

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

578 (3) If the department elects to intervene and proceed with  
579 an action brought under s. 68.083(2), the department may file  
580 its own complaint or amend the complaint of a person who has  
581 brought an action under s. 68.083(2) to clarify or add detail to  
582 the claims in which the department is intervening and to add any  
583 additional claims with respect to which the department contends  
584 it is entitled to relief. For statute of limitations purposes,  
585 any such pleading shall relate back to the filing date of the  
586 complaint of the person who originally brought the action, to  
587 the extent that the claim of the state arises out of the  
588 conduct, transactions, or occurrences set forth, or attempted to

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589 be set forth, in the prior complaint of that person. This  
590 subsection applies to any actions under s. 68.083(2) pending on  
591 or filed after July 1, 2013.

592 Section 10. Section 68.09, Florida Statutes, is amended to  
593 read:

594 68.09 Burden of proof.—

595 (1) In any action brought under this act, the department  
596 ~~State of Florida~~ or the qui tam plaintiff shall be required to  
597 prove all essential elements of the cause of action, including  
598 damages, by a preponderance of the evidence.

599 (2) Notwithstanding any other provision of law, a final  
600 judgment or decree rendered in favor of the state or the Federal  
601 Government in any criminal proceeding concerning the conduct of  
602 the defendant that forms the basis for a civil cause of action  
603 under this act, whether upon a verdict after trial or upon a  
604 plea of guilty or nolo contendere, shall estop the defendant in  
605 any action by the department pursuant to this act as to all  
606 matters as to which such judgment or decree would be an estoppel  
607 as if the department had been a party in the criminal  
608 proceeding.

609 Section 11. Except as otherwise expressly provided in this  
610 act, this act shall take effect July 1, 2013.