

By the Committee on Judiciary; and Senator Thrasher

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1 A bill to be entitled
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.; authorizing the Department of Legal Affairs to
12 issue subpoenas for specified purposes before the
13 institution of civil proceedings; providing
14 requirements for the content and service of subpoenas;
15 providing that such subpoenas may not require
16 specified protected documents or testimony; specifying
17 that the department's power to require the appearance
18 of witnesses or production of documents or other
19 tangible evidence located outside the state is
20 unaffected; providing for petitions to modify or set
21 aside subpoenas; providing for orders to comply with
22 subpoenas; providing for the examination of witnesses;
23 providing for review of transcripts of testimony;
24 authorizing the department to stipulate to protective
25 orders of submitted documents and information;
26 providing for natural persons who decline to testify
27 or produce documents after asserting a privilege
28 against self-incrimination to be ordered to testify or
29 produce documents; providing for contempt to comply

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30 with such orders; providing for examination of
31 testimony, answers, or materials by the person who
32 produced such materials or answers; providing for
33 construction; prohibiting specified actions by a
34 person knowing or having reason to believe that a
35 subpoena is pending; providing civil penalties;
36 amending s. 68.084, F.S.; clarifying that the
37 department may dismiss actions at any point; revising
38 language concerning the costs to the department for
39 continuing to receive pleadings and transcripts of an
40 action after it has elected to withdraw; providing
41 that the state may elect to pursue available
42 alternative remedies, including administrative
43 proceedings; specifying what constitutes a final
44 finding or conclusion in an alternative proceeding
45 that is binding on all parties to an action under the
46 act; amending s. 68.085, F.S.; providing for
47 successful plaintiffs to receive, in addition to a
48 portion of the amount recovered, awards of expenses
49 and attorney fees and costs; amending s. 68.086, F.S.;
50 deleting references to awards of attorney fees to
51 successful plaintiffs; revising provisions relating to
52 awards of attorney fees to the department; amending s.
53 68.087, F.S.; revising provisions relating to
54 dismissal of an action if substantially the same
55 allegations or transactions as alleged in the action
56 were publicly disclosed; amending s. 68.089, F.S.;
57 providing for the treatment for statutes of
58 limitations purposes of pleadings filed in

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59 interventions by the department; amending s. 68.09,
60 F.S.; providing for estoppel as to certain matters
61 following a final judgment or decree rendered in favor
62 of the state or the Federal Government in certain
63 criminal proceedings; providing an effective date.
64

65 Be It Enacted by the Legislature of the State of Florida:
66

67 Section 1. Section 68.081, Florida Statutes, is amended to
68 read:

69 68.081 Florida False Claims Act; short title; ~~purpose.~~

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

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

78 Section 2. Section 68.082, Florida Statutes, is amended to
79 read:

80 68.082 False claims against the state; definitions;
81 liability.-

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

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

86 ~~(a)~~ ~~(b)~~ "Claim" means ~~includes~~ any ~~written or electronically~~
87 ~~submitted~~ request or demand, whether under a contract or

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88 otherwise, for money ~~or~~ property, regardless of whether the
89 state has title to the money or property, that: ~~or services,~~
90 which

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

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

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

101 1. Has actual knowledge of the information;

102 2. Acts in deliberate ignorance of the truth or falsity of
103 the information; or

104 3. Acts in reckless disregard of the truth or falsity of
105 the information.

106
107 No proof of specific intent to defraud is required. Innocent
108 mistake shall be a defense to an action under this act.

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

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

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117 (f)~~(d)~~ "State ~~government~~" means the government of the state
118 or any department, division, bureau, commission, regional
119 planning agency, board, district, authority, agency, or other
120 instrumentality of the state.

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

123 (2) Any person who:

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

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

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

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

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

145 (f) Knowingly buys or receives, as a pledge of an

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146 obligation or a debt, public property from an officer or
147 employee of the state ~~an agency~~ who may not sell or pledge the
148 property ~~lawfully~~; or

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

155

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

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

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

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

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

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175 investigation into the violation;

176

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

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

183 68.083 Civil actions for false claims.—

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

188 Section 4. Section 68.0831, Florida Statutes, is created to
189 read:

190 68.0831 Subpoena.—

191 (1) Whenever the department has reason to believe that any
192 person may be in possession, custody, or control of any
193 documentary material or may have any information, which
194 documentary material or information is relevant to a civil
195 investigation authorized by s. 68.083, the department may,
196 before the institution of a civil proceeding thereon, issue in
197 writing and cause to be served upon the person a subpoena
198 requiring the person to:

199 (a) Produce such documentary material for inspection and
200 copying or reproduction;

201 (b) Answer, under oath and in writing, written
202 interrogatories;

203 (c) Give sworn oral testimony concerning the documentary

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204 material or information; or

205 (d) Furnish any combination of such material, answers, or
206 testimony.

207 (2) The subpoena shall:

208 (a) Be served upon the person in the manner required for
209 service of process in this state or by certified mail showing
210 receipt by the addressee or by the authorized agent of the
211 addressee.

212 (b) State the nature of the conduct that constitutes the
213 violation of this act and that is alleged to have occurred or to
214 be imminent.

215 (c) Describe the class or classes of documentary material
216 to be produced thereunder with such definiteness and certainty
217 as to permit such materials to be reasonably identified.

218 (d) Prescribe a date and time at which the person must
219 appear to testify, under oath or affirmation, or by which the
220 person must answer written interrogatories or produce the
221 documentary material for inspection or copying; however, such
222 date shall not be earlier than 30 days after the date of service
223 of the subpoena.

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

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233 (3) Such subpoena may not require the production of any
234 documentary material, the submission of any answers to written
235 interrogatories, or the giving of any oral testimony if such
236 material, answers, or testimony would be protected from
237 disclosure under:

238 (a) The standards applicable to subpoenas or subpoenas
239 duces tecum issued by a court of this state in aid of a grand
240 jury investigation; or

241 (b) The standards applicable to a discovery request under
242 the Florida Rules of Civil Procedure, to the extent that the
243 application of such standards to any such subpoena is
244 appropriate and consistent with the provisions and purposes of
245 this act.

246 (4) This section does not limit the power of the department
247 to require the appearance of witnesses or production of
248 documents or other tangible evidence located outside the state.

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

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262 (6) In case of the failure of any person to comply in whole
263 or in part with a subpoena and when such person has not filed a
264 petition under subsection (5), the circuit court of the Second
265 Judicial Circuit in and for Leon County, upon application of the
266 department, may issue an order requiring compliance. The failure
267 to obey the order of the court shall be punishable as a contempt
268 of court.

269 (7) The examination of all witnesses under this section
270 shall be conducted by the department before an officer
271 authorized to administer oaths in this state. The testimony
272 shall be taken stenographically or by a sound-recording device.
273 Any person compelled to appear under a subpoena for oral
274 testimony pursuant to this section may be accompanied,
275 represented, and advised by counsel. Counsel may advise such
276 person, in confidence, either upon the request of such person or
277 upon counsel's own initiative, with respect to any question
278 asked of such person. Such person or counsel may object on the
279 record to any question, in whole or in part, and shall briefly
280 state for the record the reason for any such objection. If such
281 person refuses to answer any question, the person conducting the
282 examination may petition the circuit court as provided by
283 subsection (10).

284 (8) When the testimony is fully transcribed, the person
285 conducting the deposition shall afford the witness, and counsel,
286 if any, a reasonable opportunity to examine the transcript, and
287 the transcript shall be read to or by the witness, unless such
288 examination and reading is waived by the witness. Any changes in
289 form or substance that the witness desires to make shall be
290 entered and identified upon the transcript by the officer or the

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291 department, with a statement of the reasons given by the witness
292 for making such changes. The transcript shall then be signed by
293 the witness unless the witness waives the signing in writing, is
294 ill, cannot be found, or refuses to sign. If the transcript is
295 not signed by the witness within 30 days after his or her being
296 afforded a reasonable opportunity to examine it, the person
297 conducting the examination shall sign it and state on the record
298 the fact of the waiver, illness, absence, or refusal to sign,
299 together with the reason, if any, given therefor. Any person
300 required to testify or to submit documentary evidence is
301 entitled, on payment of reasonable costs, to procure a copy of
302 any document produced by such person and of his or her own
303 testimony as stenographically reported or, in the case of a
304 deposition, as reduced to writing by or under the direction of
305 the person taking the deposition.

306 (9) The department shall have the authority to stipulate to
307 protective orders with respect to documents and information
308 submitted in response to a subpoena under this section.

309 (10) The department may request that any natural person who
310 refuses to comply with this section on the ground that the
311 testimony or documents may incriminate him or her be ordered by
312 the circuit court to provide the testimony or the documents.
313 Except in a prosecution for perjury, a natural person who
314 complies with a court order to provide testimony or documents
315 after asserting a privilege against self-incrimination to which
316 he or she is entitled by law may not be subject to a criminal
317 proceeding with respect to the transaction to which he or she is
318 required to testify or produce documents. Any natural person who
319 fails to comply with such a court order to testify or produce

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320 documents may be adjudged in contempt and imprisoned until the
321 time the person purges himself or herself of the contempt.

322 (11) While in the possession of the custodian, documentary
323 material, answers to interrogatories, and transcripts of oral
324 testimony shall be available, under such reasonable terms and
325 conditions as the department shall prescribe, for examination by
326 the person who produced such materials or answers or that
327 person's duly authorized representative.

328 (12) This section does not impair the authority of the
329 department to:

330 (a) Institute a civil proceeding under s. 68.083; or

331 (b) Invoke the power of a court to compel the production of
332 evidence before a grand jury.

333 (13) (a) A person who knows or has reason to believe that a
334 subpoena pursuant to this section is pending shall not:

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

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

340 (b) Any natural person who violates this subsection is
341 subject to a civil penalty of not more than \$100,000, reasonable
342 attorney fees, and costs. Any other person who violates this
343 subsection is subject to a civil penalty of not more than \$1
344 million, reasonable attorney fees, and costs.

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

347 68.084 Rights of the parties in civil actions.—

348 (2) (a) The department may at any point voluntarily dismiss

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349 the action notwithstanding the objections of the person
350 initiating the action.

351 (b) Subject to s. 17.04, nothing in this act shall be
352 construed to limit the authority of the department or the qui
353 tam plaintiff to compromise a claim brought in a complaint filed
354 under this act if the court determines, after a hearing, that
355 the proposed settlement is fair, adequate, and reasonable under
356 all the circumstances.

357 (c) Upon a showing by the department that unrestricted
358 participation during the course of the litigation by the person
359 initiating the action would interfere with or unduly delay the
360 department's prosecution of the case, or would be repetitious,
361 irrelevant, or for purposes of harassment, the court may, in its
362 discretion, impose limitations on the person's participation,
363 including, but not limited to:

- 364 1. Limiting the number of witnesses the person may call;
365 2. Limiting the length of the testimony of the person's
366 witnesses;
367 3. Limiting the person's cross-examination of witnesses; or
368 4. Otherwise limiting the participation by the person in
369 the litigation.

370 (d) Upon a showing by the defendant that unrestricted
371 participation during the course of the litigation by the person
372 initiating the action would be for purposes of harassment or
373 would cause the defendant undue burden or unnecessary expense,
374 the court may limit the participation by the person in the
375 litigation.

376 (3) If the department elects not to proceed with the
377 action, the person who initiated the action has the right to

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378 conduct the action. If the Attorney General, as head of the
379 department, or the Chief Financial Officer, as head of the
380 Department of Financial Services, so requests, it shall be
381 served, ~~at the requesting department's expense,~~ with copies of
382 all pleadings and motions filed in the action along with ~~and~~
383 copies of all deposition transcripts at the requesting
384 department's expense. When a person proceeds with the action,
385 the court, without limiting the rights of the person initiating
386 the action, may nevertheless permit the department to intervene
387 and take over the action on behalf of the state at a later date
388 upon showing of good cause.

389 (4) Regardless of whether ~~or not~~ the department proceeds
390 with the action, upon a showing by the department that certain
391 actions of discovery by the person initiating the action would
392 interfere with an investigation by the state government or the
393 prosecution of a criminal or civil matter arising out of the
394 same facts, the court may stay such discovery for a period of
395 not more than 60 days. Such a showing shall be conducted in
396 camera. The court may extend the 60-day period upon a further
397 showing in camera by the department that the criminal or civil
398 investigation or proceeding has been pursued with reasonable
399 diligence and any proposed discovery in the civil action will
400 interfere with an ongoing criminal or civil investigation or
401 proceeding.

402 (5) Notwithstanding paragraph (2) (b), the state may elect
403 to pursue its claim through any available alternate remedy,
404 including any administrative proceeding to determine a civil
405 money penalty. If any such alternate remedy is pursued in
406 another proceeding, the person initiating the action shall have

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407 the same rights in such proceeding as the person would have had
 408 if the action had continued under this section ~~The application~~
 409 ~~of one civil remedy under this act does not preclude the~~
 410 ~~application of any other remedy, civil or criminal, under this~~
 411 ~~act or any other provision of law. Civil remedies under this act~~
 412 ~~are supplemental, not mutually exclusive. Any finding of fact or~~
 413 ~~conclusion of law made in such other proceeding that has become~~
 414 ~~final shall be conclusive on all parties to an action under this~~
 415 ~~section. For purposes of~~ As used in this subsection, a finding
 416 or conclusion is final if it has been finally determined on
 417 appeal to the appropriate court, if all time for filing such an
 418 appeal with respect to the finding or conclusion has expired, or
 419 if the finding or conclusion is ~~the term "final" means not~~
 420 ~~subject to judicial review.~~

421 Section 6. Section 68.085, Florida Statutes, is amended to
 422 read:

423 68.085 Awards to plaintiffs bringing action.—

424 (1) (a) ~~If the department proceeds with and prevails in an~~
 425 ~~action brought by a person under this act, subject to the~~
 426 ~~requirements of paragraph (b), the person shall receive except~~
 427 ~~as provided in subsection (2), the court shall order the~~
 428 ~~distribution to the person of at least 15 percent but not more~~
 429 ~~than 25 percent of the proceeds of the recovered under any~~
 430 ~~judgment obtained by the department in an action under s. 68.082~~
 431 ~~or of the proceeds of any settlement of the claim, depending~~
 432 ~~upon the extent to which the person substantially contributed to~~
 433 ~~the prosecution of the action.~~

434 (b) ~~(2)~~ ~~If the department proceeds with an action which the~~
 435 ~~court finds~~ the action ~~to be based primarily on disclosures of~~

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436 specific information, other than information ~~that~~ provided by
437 the person bringing the action, relating to allegations or
438 transactions in a criminal, civil, or administrative hearing; a
439 legislative, administrative, inspector general, or auditor
440 general report, hearing, audit, or investigation; or from the
441 news media, the court may award such sums as it considers
442 appropriate, but in no case more than 10 percent of the proceeds
443 ~~recovered under a judgment or received in settlement of a claim~~
444 ~~under this act~~, taking into account the significance of the
445 information and the role of the person bringing the action in
446 advancing the case to litigation.

447 (c) Any payment to a person under paragraph (a) or
448 paragraph (b) shall be made from the proceeds. The person shall
449 also receive an amount for reasonable expenses that the court
450 finds to have been necessarily incurred, plus reasonable
451 attorney fees and costs. All such expenses, fees, and costs
452 shall be awarded against the defendant.

453 (2) ~~(3)~~ If the department does not proceed with an action
454 under this section, the person bringing the action or settling
455 the claim shall receive an amount that ~~which~~ the court decides
456 is reasonable for collecting the civil penalty and damages. The
457 amount shall be not less than 25 percent and not more than 30
458 percent of the proceeds of the action or settlement and shall be
459 paid out of such proceeds ~~recovered under a judgment rendered in~~
460 ~~an action under this act or in settlement of a claim under this~~
461 ~~act~~. The person shall also receive an amount for reasonable
462 expenses that the court finds to have been necessarily incurred,
463 plus reasonable attorney fees and costs. All such expenses,
464 fees, and costs shall be awarded against the defendant.

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465 (3)~~(4)~~ Following any distributions under subsection (1) or~~r~~
466 subsection (2), ~~or subsection (3)~~, the state entity ~~agency~~
467 injured by the submission of a false or fraudulent claim shall
468 be awarded an amount not to exceed its compensatory damages. If
469 the action was based on a claim of funds from the state Medicaid
470 program, 10 percent of any remaining proceeds shall be deposited
471 into the Operating Trust Fund to fund rewards for persons who
472 report and provide information relating to Medicaid fraud
473 pursuant to s. 409.9203. Any remaining proceeds, including civil
474 penalties awarded under s. 68.082, shall be deposited in the
475 General Revenue Fund.

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

479 (4)~~(6)~~ Regardless of whether ~~or not~~ the department proceeds
480 with the action, if the court finds that the action was brought
481 by a person who planned and initiated the violation of s. 68.082
482 upon which the action was brought, the court may, to the extent
483 the court considers appropriate, reduce the share of the
484 proceeds of the action that ~~which~~ the person would otherwise
485 receive under this section, taking into account the role of the
486 person in advancing the case to litigation and any relevant
487 circumstances pertaining to the violation. If the person
488 bringing the action is convicted of criminal conduct arising
489 from his or her role in the violation of s. 68.082, the person
490 shall be dismissed from the civil action and shall not receive
491 any share of the proceeds of the action. Such dismissal shall
492 not prejudice the right of the department to continue the
493 action.

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494 Section 7. Section 68.086, Florida Statutes, is amended to
495 read:

496 68.086 Expenses; attorney ~~attorney's~~ fees and costs.—

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

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

506 (2) ~~(3)~~ If the department does not proceed with an action
507 under this act and the person bringing the action conducts the
508 action, the court may award to the defendant its reasonable
509 attorney ~~attorney's~~ fees and expenses ~~costs~~ if the defendant
510 prevails in the action and the court finds that the claim of the
511 person bringing the action was clearly frivolous, clearly
512 vexatious, or brought primarily for purposes of harassment.

513 (3) ~~(4)~~ No liability shall be incurred by the state
514 ~~government, the affected agency,~~ or the department for any
515 expenses, attorney ~~attorney's~~ fees, or other costs incurred by
516 any person in bringing or defending an action under this act.

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

519 68.087 Exemptions to civil actions.—

520 (2) In no event may a person bring an action under s.
521 68.083(2) based upon allegations or transactions that are the
522 subject of a civil action or an administrative proceeding in

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523 which the state agency is already a party.

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

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

531 (b) In a legislative, administrative, inspector general, or
532 other state Auditor General, Chief Financial Officer, or
533 Department of Financial Services report, hearing, audit, or
534 investigation; or

535 (c) From the news media,

536
537 unless the action is brought by the department, ~~or unless~~ the
538 person bringing the action is an original source of the
539 information. For purposes of this subsection, the term "original
540 source" means an individual who, before a public disclosure
541 under subsection (3), has voluntarily disclosed to the
542 department the information on which allegations or transactions
543 in a claim are based, or who has knowledge that is independent
544 of and materially adds to the publicly disclosed allegations or
545 transactions has direct and independent knowledge of the
546 information on which the allegations are based and has
547 voluntarily provided the information to the department before
548 filing an action under this section act based on the
549 information.

550 (6) No court shall have jurisdiction over an action brought
551 under this act against a ~~local government. For the purposes of~~

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552 ~~this subsection, the term "local government" means any county or~~
553 ~~municipality.~~

554 Section 9. Section 68.089, Florida Statutes, is amended to
555 read:

556 68.089 Limitation of actions; effect of interventions by
557 department.—A civil action under this act may not be brought:

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

560 (2) More than 3 years after the date when facts material to
561 the right of action are known or reasonably should have been
562 known by the department ~~state official charged with~~
563 ~~responsibility to act in the circumstances,~~ but in no event more
564 than 10 years after the date on which the violation is
565 committed, whichever occurs last; or.

566 (3) If the department elects to intervene and proceed with
567 an action brought under s. 68.083(2), the department may file
568 its own complaint or amend the complaint of a person who has
569 brought an action under s. 68.083(2) to clarify or add detail to
570 the claims in which the department is intervening and to add any
571 additional claims with respect to which the department contends
572 it is entitled to relief. For statute of limitations purposes,
573 any such pleading shall relate back to the filing date of the
574 complaint of the person who originally brought the action, to
575 the extent that the claim of the state arises out of the
576 conduct, transactions, or occurrences set forth, or attempted to
577 be set forth, in the prior complaint of that person. This
578 subsection applies to any actions under s. 68.083(2) pending on
579 or filed after July 1, 2013.

580 Section 10. Section 68.09, Florida Statutes, is amended to

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581 read:

582 68.09 Burden of proof.—

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

587 (2) Notwithstanding any other provision of law, a final
588 judgment or decree rendered in favor of the state or the Federal
589 Government in any criminal proceeding concerning the conduct of
590 the defendant that forms the basis for a civil cause of action
591 under this act, whether upon a verdict after trial or upon a
592 plea of guilty or nolo contendere, shall estop the defendant in
593 any action by the department pursuant to this act as to all
594 matters as to which such judgment or decree would be an estoppel
595 as if the department had been a party in the criminal
596 proceeding.

597 Section 11. This act shall take effect July 1, 2013.