

By the Committees on Rules; and Judiciary; and Senator Thrasher

595-04599-13

20131494c2

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.; defining the term "department"; authorizing the  
12          Department of Legal Affairs to issue subpoenas for  
13          specified purposes before the institution of civil  
14          proceedings; providing requirements for the content  
15          and service of subpoenas; providing that such  
16          subpoenas may not require specified protected  
17          documents or testimony; specifying that the  
18          department's power to require the appearance of  
19          witnesses or production of documents or other tangible  
20          evidence located outside the state is unaffected;  
21          providing for petitions to modify or set aside  
22          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  
29          against self-incrimination to be ordered to testify or

595-04599-13

20131494c2

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  
34 applicability; prohibiting a person knowing or having  
35 reason to believe that a subpoena is pending from  
36 tampering with evidence; 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 provisions relating to  
55 dismissal of an action if substantially the same  
56 allegations or transactions as alleged in the action  
57 were publicly disclosed; amending s. 68.089, F.S.;  
58 providing for the treatment for statutes of

595-04599-13

20131494c2

59 limitations purposes of pleadings filed in  
60 interventions by the department; amending s. 68.09,  
61 F.S.; providing for estoppel as to certain matters  
62 following a final judgment or decree rendered in favor  
63 of the state or the Federal Government in certain  
64 criminal proceedings; providing an effective date.  
65

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

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

70 68.081 Florida False Claims Act; short title; ~~purpose.~~

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

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

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

81 68.082 False claims against the state; definitions;  
82 liability.—

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

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

87 ~~(a) (b) "Claim" means includes any written or electronically~~

595-04599-13

20131494c2

88 ~~submitted~~ request or demand, whether under a contract or  
89 otherwise, for money ~~or~~ property, regardless of whether the  
90 state has title to the money or property, that: ~~or services,~~  
91 ~~which~~

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

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

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

102 1. Has actual knowledge of the information;

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

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

107

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

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

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

595-04599-13

20131494c2

117 from the retention of any overpayment.

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

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

124 (2) Any person who:

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

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

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

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

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

595-04599-13

20131494c2

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

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

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

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

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

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

171 (c) At the time the person furnished the department ~~agency~~  
172 with the information about the violation, no criminal  
173 prosecution, civil action, or administrative action had  
174 commenced under this section with respect to the violation, and

595-04599-13

20131494c2

175 the person did not have actual knowledge of the existence of an  
176 investigation into the violation;

177

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

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

184 68.083 Civil actions for false claims.—

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

189 Section 4. Effective on the same date that SB 1496 or  
190 similar legislation takes effect, if such legislation is adopted  
191 in the same legislative session or an extension thereof and  
192 becomes a law, section 68.0831, Florida Statutes, is created to  
193 read:

194 68.0831 Subpoena.—

195 (1) As used in this section, the term "department" means  
196 the Department of Legal Affairs.

197 (2) Whenever the department has reason to believe that any  
198 person may be in possession, custody, or control of any  
199 documentary material or may have any information, which  
200 documentary material or information is relevant to a civil  
201 investigation authorized by s. 68.083, the department may,  
202 before the institution of a civil proceeding thereon, issue in  
203 writing and cause to be served upon the person a subpoena

595-04599-13

20131494c2

204 requiring the person to:

205 (a) Produce such documentary material for inspection and  
206 copying or reproduction;

207 (b) Answer, under oath and in writing, written  
208 interrogatories;

209 (c) Give sworn oral testimony concerning the documentary  
210 material or information; or

211 (d) Furnish any combination of such material, answers, or  
212 testimony.

213 (3) The subpoena shall:

214 (a) Be served upon the person in the manner required for  
215 service of process in this state or by certified mail showing  
216 receipt by the addressee or by the authorized agent of the  
217 addressee.

218 (b) State the nature of the conduct that constitutes the  
219 violation of this act and that is alleged to have occurred or to  
220 be imminent.

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

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

230 (e) Specify a place for the taking of testimony or for the  
231 submission of answers to interrogatories and identify the person  
232 who is to take custody of any documentary material. Inspection



595-04599-13

20131494c2

233 and copying of documentary material shall be carried out at the  
234 place where the documentary material is located or at such other  
235 place as may be thereafter agreed to by the person and such  
236 designated custodian. Upon written agreement between the person  
237 and the designated custodian, copies may be substituted for  
238 original documents.

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

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

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

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

255 (6) Within 30 days after the service of a subpoena upon any  
256 person or at any time before the return date specified therein,  
257 whichever period is longer, the person served may file, and  
258 serve on the department, a petition for an order of the court  
259 modifying or setting aside the subpoena. Any such petition shall  
260 be filed in the circuit court of the Second Judicial Circuit in  
261 and for Leon County. The time allowed for compliance in whole or

595-04599-13

20131494c2

262 in part with the subpoena as deemed proper and ordered by the  
263 court shall not run while the petition is pending before the  
264 court. The petition shall specify each ground upon which the  
265 petitioner relies in seeking relief and may be based upon the  
266 failure of the subpoena to comply with this section or upon any  
267 constitutional or other legal right or privilege of such person.

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

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

290 (9) When the testimony is fully transcribed, the person

595-04599-13

20131494c2

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

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

315 (11) The department may request that any natural person who  
316 refuses to comply with this section on the ground that the  
317 testimony or documents may incriminate him or her be ordered by  
318 the circuit court to provide the testimony or the documents.  
319 Except in a prosecution for perjury, a natural person who

595-04599-13

20131494c2

320 complies with a court order to provide testimony or documents  
321 after asserting a privilege against self-incrimination to which  
322 he or she is entitled by law may not be subject to a criminal  
323 proceeding with respect to the transaction to which he or she is  
324 required to testify or produce documents. Any natural person who  
325 fails to comply with such a court order to testify or produce  
326 documents may be adjudged in contempt and imprisoned until the  
327 time the person purges himself or herself of the contempt.

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

334 (13) This section does not impair the authority of the  
335 department to:

336 (a) Institute a civil proceeding under s. 68.083;

337 (b) Invoke the power of a court to compel the production of  
338 evidence before a grand jury; or

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

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

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

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

348 (b) Any natural person who violates this subsection is

595-04599-13

20131494c2

349 subject to a civil penalty of not more than \$100,000, reasonable  
350 attorney fees, and costs. Any other person who violates this  
351 subsection is subject to a civil penalty of not more than \$1  
352 million, reasonable attorney fees, and costs.

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

355 68.084 Rights of the parties in civil actions.—

356 (2) (a) The department may at any point voluntarily dismiss  
357 the action notwithstanding the objections of the person  
358 initiating the action.

359 (b) Subject to s. 17.04, nothing in this act shall be  
360 construed to limit the authority of the department or the qui  
361 tam plaintiff to compromise a claim brought in a complaint filed  
362 under this act if the court determines, after a hearing, that  
363 the proposed settlement is fair, adequate, and reasonable under  
364 all the circumstances.

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

372 1. Limiting the number of witnesses the person may call;

373 2. Limiting the length of the testimony of the person's  
374 witnesses;

375 3. Limiting the person's cross-examination of witnesses; or

376 4. Otherwise limiting the participation by the person in  
377 the litigation.

595-04599-13

20131494c2

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

384 (3) If the department elects not to proceed with the  
385 action, the person who initiated the action has the right to  
386 conduct the action. If the Attorney General, as head of the  
387 department, or the Chief Financial Officer, as head of the  
388 Department of Financial Services, so requests, it shall be  
389 served, ~~at the requesting department's expense,~~ with copies of  
390 all pleadings and motions filed in the action along with ~~and~~  
391 copies of all deposition transcripts at the requesting  
392 department's expense. When a person proceeds with the action,  
393 the court, without limiting the rights of the person initiating  
394 the action, may nevertheless permit the department to intervene  
395 and take over the action on behalf of the state at a later date  
396 upon showing of good cause.

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

595-04599-13

20131494c2

407 diligence and any proposed discovery in the civil action will  
408 interfere with an ongoing criminal or civil investigation or  
409 proceeding.

410 (5) Notwithstanding paragraph (2) (b), the state may elect  
411 to pursue its claim through any available alternate remedy,  
412 including any administrative proceeding to determine a civil  
413 money penalty. If any such alternate remedy is pursued in  
414 another proceeding, the person initiating the action shall have  
415 the same rights in such proceeding as the person would have had  
416 if the action had continued under this section ~~The application~~  
417 ~~of one civil remedy under this act does not preclude the~~  
418 ~~application of any other remedy, civil or criminal, under this~~  
419 ~~act or any other provision of law. Civil remedies under this act~~  
420 ~~are supplemental, not mutually exclusive.~~ Any finding of fact or  
421 conclusion of law made in such other proceeding that has become  
422 final shall be conclusive on all parties to an action under this  
423 section. For purposes of As used in this subsection, a finding  
424 or conclusion is final if it has been finally determined on  
425 appeal to the appropriate court, if all time for filing such an  
426 appeal with respect to the finding or conclusion has expired, or  
427 if the finding or conclusion is ~~the term "final" means not~~  
428 subject to judicial review.

429 Section 6. Section 68.085, Florida Statutes, is amended to  
430 read:

431 68.085 Awards to plaintiffs bringing action.—

432 (1) (a) If the department proceeds with ~~and prevails in~~ an  
433 action brought by a person under this act, subject to the  
434 requirements of paragraph (b), the person shall receive ~~except~~  
435 ~~as provided in subsection (2), the court shall order the~~

595-04599-13

20131494c2

436 ~~distribution to the person of at least 15 percent but not more~~  
437 ~~than 25 percent of the proceeds of the recovered under any~~  
438 ~~judgment obtained by the department in an action under s. 68.082~~  
439 ~~or of the proceeds of any settlement of the claim, depending~~  
440 ~~upon the extent to which the person substantially contributed to~~  
441 ~~the prosecution of the action.~~

442 ~~(b)(2)~~ If the ~~department proceeds with an action which the~~  
443 ~~court finds the action to be based primarily on disclosures of~~  
444 ~~specific information, other than information that provided by~~  
445 ~~the person bringing the action, relating to allegations or~~  
446 ~~transactions in a criminal, civil, or administrative hearing; a~~  
447 ~~legislative, administrative, inspector general, or auditor~~  
448 ~~general report, hearing, audit, or investigation; or from the~~  
449 ~~news media, the court may award such sums as it considers~~  
450 ~~appropriate, but in no case more than 10 percent of the proceeds~~  
451 ~~recovered under a judgment or received in settlement of a claim~~  
452 ~~under this act, taking into account the significance of the~~  
453 ~~information and the role of the person bringing the action in~~  
454 ~~advancing the case to litigation.~~

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

461 ~~(2)(3)~~ If the department does not proceed with an action  
462 under this section, the person bringing the action or settling  
463 the claim shall receive an amount ~~that~~ which the court decides  
464 is reasonable for collecting the civil penalty and damages. The



595-04599-13

20131494c2

465 amount shall be not less than 25 percent and not more than 30  
466 percent of the proceeds of the action or settlement and shall be  
467 paid out of such proceeds ~~recovered under a judgment rendered in~~  
468 ~~an action under this act or in settlement of a claim under this~~  
469 ~~act.~~ The person shall also receive an amount for reasonable  
470 expenses that the court finds to have been necessarily incurred,  
471 plus reasonable attorney fees and costs. All such expenses,  
472 fees, and costs shall be awarded against the defendant.

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

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

487 (4) ~~(6)~~ Regardless of whether or not the department proceeds  
488 with the action, if the court finds that the action was brought  
489 by a person who planned and initiated the violation of s. 68.082  
490 upon which the action was brought, the court may, to the extent  
491 the court considers appropriate, reduce the share of the  
492 proceeds of the action that ~~which~~ the person would otherwise  
493 receive under this section, taking into account the role of the

595-04599-13

20131494c2

494 person in advancing the case to litigation and any relevant  
495 circumstances pertaining to the violation. If the person  
496 bringing the action is convicted of criminal conduct arising  
497 from his or her role in the violation of s. 68.082, the person  
498 shall be dismissed from the civil action and shall not receive  
499 any share of the proceeds of the action. Such dismissal shall  
500 not prejudice the right of the department to continue the  
501 action.

502 Section 7. Section 68.086, Florida Statutes, is amended to  
503 read:

504 68.086 Expenses; attorney ~~attorney's~~ fees and costs.—

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

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

514 (2) ~~(3)~~ If the department does not proceed with an action  
515 under this act and the person bringing the action conducts the  
516 action, the court may award to the defendant its reasonable  
517 attorney ~~attorney's~~ fees and expenses ~~costs~~ if the defendant  
518 prevails in the action and the court finds that the claim of the  
519 person bringing the action was clearly frivolous, clearly  
520 vexatious, or brought primarily for purposes of harassment.

521 (3) ~~(4)~~ No liability shall be incurred by the state  
522 ~~government, the affected agency,~~ or the department for any

595-04599-13

20131494c2

523 expenses, attorney ~~attorney's~~ fees, or other costs incurred by  
524 any person in bringing or defending an action under this act.

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

527 68.087 Exemptions to civil actions.—

528 (2) In no event may a person bring an action under s.  
529 68.083(2) based upon allegations or transactions that are the  
530 subject of a civil action or an administrative proceeding in  
531 which the state ~~agency~~ is already a party.

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

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

539 (b) In a legislative, administrative, inspector general, or  
540 other state ~~Auditor General, Chief Financial Officer, or~~  
541 ~~Department of Financial Services~~ report, hearing, audit, or  
542 investigation; or

543 (c) From the news media,

544  
545 unless the action is brought by the department, ~~or unless~~ the  
546 person bringing the action is an original source of the  
547 information. For purposes of this subsection, the term "original  
548 source" means an individual who, before a public disclosure  
549 under subsection (3), has voluntarily disclosed to the  
550 department the information on which allegations or transactions  
551 in a claim are based, or who has knowledge that is independent

595-04599-13

20131494c2

552 of and materially adds to the publicly disclosed allegations or  
553 transactions ~~has direct and independent knowledge of the~~  
554 ~~information on which the allegations are based~~ and has  
555 voluntarily provided the information to the department before  
556 filing an action under this section ~~act based on the~~  
557 ~~information.~~

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

562 Section 9. Section 68.089, Florida Statutes, is amended to  
563 read:

564 68.089 Limitation of actions; effect of interventions by  
565 department.—A civil action under this act may not be brought:

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

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

574 (3) If the department elects to intervene and proceed with  
575 an action brought under s. 68.083(2), the department may file  
576 its own complaint or amend the complaint of a person who has  
577 brought an action under s. 68.083(2) to clarify or add detail to  
578 the claims in which the department is intervening and to add any  
579 additional claims with respect to which the department contends  
580 it is entitled to relief. For statute of limitations purposes,

595-04599-13

20131494c2

581 any such pleading shall relate back to the filing date of the  
582 complaint of the person who originally brought the action, to  
583 the extent that the claim of the state arises out of the  
584 conduct, transactions, or occurrences set forth, or attempted to  
585 be set forth, in the prior complaint of that person. This  
586 subsection applies to any actions under s. 68.083(2) pending on  
587 or filed after July 1, 2013.

588 Section 10. Section 68.09, Florida Statutes, is amended to  
589 read:

590 68.09 Burden of proof.—

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

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

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