

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
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 terminology; revising
54 | provisions relating to dismissal of an action if
55 | substantially the same allegations or transactions as
56 | alleged in the action were publicly disclosed;

57 | amending s. 68.089, F.S.; providing for the treatment
 58 | for statutes of limitations purposes of pleadings
 59 | filed in interventions by the department; amending s.
 60 | 68.09, F.S.; providing for estoppel as to certain
 61 | matters following a final judgment or decree rendered
 62 | in favor of the state or the Federal Government in
 63 | certain criminal proceedings; providing an effective
 64 | 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
 72 | the "Florida False Claims Act."

73 | ~~(2) The purpose of the Florida False Claims Act is to~~
 74 | ~~deter persons from knowingly causing or assisting in causing~~
 75 | ~~state government to pay claims that are false or fraudulent, and~~
 76 | ~~to 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~~
 88 ~~electronically submitted~~ request or demand, whether under a
 89 contract or otherwise, for money or, property, regardless of
 90 whether the state has title to the money or property, that: or
 91 ~~services, 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
 95 recipient if the state agency provides or has provided any
 96 portion of the money or property requested or demanded, or if
 97 the state agency will reimburse the contractor, grantee, or
 98 other recipient for any portion of the money or property that is
 99 requested or demanded.

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

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

- 104 1. Has actual knowledge of the information;
- 105 2. Acts in deliberate ignorance of the truth or falsity of
 106 the information; or
- 107 3. Acts in reckless disregard of the truth or falsity of
 108 the information.

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

112 (d) "Material" means having a natural tendency to

113 influence, or be capable of influencing, the payment or receipt
114 of money or property.

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

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

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 ~~receive~~ the state ~~agency~~, makes or
 144 delivers the receipt without knowing that the information on the
 145 receipt is true;

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
 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. Section 68.0831, Florida Statutes, is created
 190 to read:

191 68.0831 Subpoena.—

192 (1) Whenever the department has reason to believe that any
 193 person may be in possession, custody, or control of any
 194 documentary material or may have any information, which
 195 documentary material or information is relevant to a civil
 196 investigation authorized by s. 68.083, the department may,

197 | before the institution of a civil proceeding thereon, issue in
 198 | writing and cause to be served upon the person a subpoena
 199 | requiring the person to:

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

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

204 | (c) Give sworn oral testimony concerning the documentary
 205 | material or information; or

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

208 | (2) The subpoena shall:

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

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

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

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

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

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

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

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

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

251 (5) Within 30 days after the service of a subpoena upon
252 any person or at any time before the return date specified

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

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

272 (7) The examination of all witnesses under this section
273 shall be conducted by the department before an officer
274 authorized to administer oaths in this state. The testimony
275 shall be taken stenographically or by a sound-recording device.
276 Any person compelled to appear under a subpoena for oral
277 testimony pursuant to this section may be accompanied,
278 represented, and advised by counsel. Counsel may advise such
279 person, in confidence, either upon the request of such person or
280 upon counsel's own initiative, with respect to any question

281 asked of such person. Such person or counsel may object on the
282 record to any question, in whole or in part, and shall briefly
283 state for the record the reason for any such objection. If such
284 person refuses to answer any question, the person conducting the
285 examination may petition the circuit court as provided by
286 subsection (10).

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

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

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

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

331 (12) This section does not impair the authority of the
332 department to:

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

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

336 (13) (a) A person who knows or has reason to believe that a

337 subpoena pursuant to this section is pending shall not:

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

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

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

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

350 68.084 Rights of the parties in civil actions.-

351 (2) (a) The department may at any point voluntarily dismiss
352 the action notwithstanding the objections of the person
353 initiating the action.

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

360 (c) Upon a showing by the department that unrestricted
361 participation during the course of the litigation by the person
362 initiating the action would interfere with or unduly delay the
363 department's prosecution of the case, or would be repetitious,
364 irrelevant, or for purposes of harassment, the court may, in its

365 discretion, impose limitations on the person's participation,
366 including, but not limited to:

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

368 2. Limiting the length of the testimony of the person's
369 witnesses;

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

371 or

372 4. Otherwise limiting the participation by the person in
373 the litigation.

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

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

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

406 (5) Notwithstanding paragraph (2) (b), the state may elect
407 to pursue its claim through any available alternate remedy,
408 including any administrative proceeding to determine a civil
409 money penalty. If any such alternate remedy is pursued in
410 another proceeding, the person initiating the action shall have
411 the same rights in such proceeding as the person would have had
412 if the action had continued under this section ~~The application~~
413 ~~of one civil remedy under this act does not preclude the~~
414 ~~application of any other remedy, civil or criminal, under this~~
415 ~~act or any other provision of law. Civil remedies under this act~~
416 ~~are supplemental, not mutually exclusive. Any finding of fact or~~
417 ~~conclusion of law made in such other proceeding that has become~~
418 ~~final shall be conclusive on all parties to an action under this~~
419 ~~section. For purposes of~~ As used in this subsection, a finding
420 or conclusion is final if it has been finally determined on

CS/HB 935

2013

421 appeal to the appropriate court, if all time for filing such an
422 appeal with respect to the finding or conclusion has expired, or
423 if the finding or conclusion is the term "final" means not
424 subject to judicial review.

425 Section 6. Section 68.085, Florida Statutes, is amended to
426 read:

427 68.085 Awards to plaintiffs bringing action.—

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

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

449 information and the role of the person bringing the action in
450 advancing the case to litigation.

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

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

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

477 pursuant to s. 409.9203. Any remaining proceeds, including civil
 478 penalties awarded under s. 68.082, shall be deposited in the
 479 General Revenue Fund.

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

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

498 Section 7. Section 68.086, Florida Statutes, is amended to
 499 read:

500 68.086 Expenses; attorney ~~attorney's~~ fees and costs.—

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

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

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

517 (3)~~(4)~~ No liability shall be incurred by the state
 518 ~~government, the affected agency,~~ or the department for any
 519 expenses, attorney ~~attorney's~~ fees, or other costs incurred by
 520 any person in bringing or defending an action under this act.

521 Section 8. Subsections (2), (3), and (6) of section
 522 68.087, Florida Statutes, are amended to read:

523 68.087 Exemptions to civil actions.—

524 (2) In no event may a person bring an action under s.
 525 68.083(2) based upon allegations or transactions that are the
 526 subject of a civil action or an administrative proceeding in
 527 which the state ~~agency~~ is already a party.

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

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

535 (b) In a legislative, administrative, inspector general,
 536 or other state Auditor General, Chief Financial Officer, or
 537 Department of Financial Services report, hearing, audit, or
 538 investigation; or

539 (c) From the news media,

540

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

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

558 Section 9. Section 68.089, Florida Statutes, is amended to
 559 read:

560 68.089 Limitation of actions; effect of interventions by

561 department.—A civil action under this act may not be brought:

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

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

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

584 Section 10. Section 68.09, Florida Statutes, is amended to
585 read:

586 68.09 Burden of proof.—

587 (1) In any action brought under this act, the department
588 ~~State of Florida~~ or the qui tam plaintiff shall be required to

CS/HB 935

2013

589 | prove all essential elements of the cause of action, including
590 | damages, by a preponderance of the evidence.

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

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