

By Senator Thrasher

6-01313A-13

20131494

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

6-01313A-13

20131494

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

6-01313A-13

20131494__

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 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~~

6-01313A-13

20131494

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

6-01313A-13

20131494__

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;

6-01313A-13

20131494__

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

6-01313A-13

20131494

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 to
190 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;

6-01313A-13

20131494

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

6-01313A-13

20131494

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 department
248 to require the appearance of witnesses or production of
249 documents or other tangible evidence located outside the state.

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

6-01313A-13

20131494

262 constitutional or other legal right or privilege of such person.

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

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

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

6-01313A-13

20131494

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

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

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

6-01313A-13

20131494

320 fails to comply with such a court order to testify or produce
321 documents may be adjudged in contempt and imprisoned until the
322 time the person purges himself or herself of the contempt.

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

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

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

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

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

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

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

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

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

348 68.084 Rights of the parties in civil actions.-

6-01313A-13

20131494

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

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

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

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

366 2. Limiting the length of the testimony of the person's
367 witnesses;

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

369 4. Otherwise limiting the participation by the person in
370 the litigation.

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

377 (3) If the department elects not to proceed with the

6-01313A-13

20131494

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

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

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

6-01313A-13

20131494

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

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

424 68.085 Awards to plaintiffs bringing action.—

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

435 (b) ~~(2)~~ ~~If the department proceeds with an action which the~~

6-01313A-13

20131494

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

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

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

6-01313A-13

20131494__

465 fees, and costs shall be awarded against the defendant.

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

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

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

6-01313A-13

20131494__

494 action.

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

497 68.086 Expenses; attorney ~~attorney's~~ fees and costs.—

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

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

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

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

518 Section 8. Subsections (1), (2), (3), and (6) of section
519 68.087, Florida Statutes, are amended to read:

520 68.087 Exemptions to civil actions.—

521 (1) No court shall have jurisdiction over an action brought
522 under this act against a member of the Legislature, a member of

6-01313A-13

20131494

523 the judiciary, or a senior executive branch official if the
524 action is based on evidence or information known to the
525 department ~~state government~~ when the action was brought. For
526 purposes of this subsection, the term "senior executive branch
527 official" means any person employed in the executive branch of
528 government holding a position in the Senior Management Service
529 as defined in s. 110.402.

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

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

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

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

545 (c) From the news media,

546
547 unless the action is brought by the department, ~~or unless~~ the
548 person bringing the action is an original source of the
549 information. For purposes of this subsection, the term "original
550 source" means an individual who, before a public disclosure
551 under subsection (3), has voluntarily disclosed to the

6-01313A-13

20131494

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

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

564 Section 9. Section 68.089, Florida Statutes, is amended to
565 read:

566 68.089 Limitation of actions; effect of interventions by
567 department.—A civil action under this act may not be brought:

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

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

576 (3) If the department elects to intervene and proceed with
577 an action brought under s. 68.083(2), the department may file
578 its own complaint or amend the complaint of a person who has
579 brought an action under s. 68.083(2) to clarify or add detail to
580 the claims in which the department is intervening and to add any

6-01313A-13

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581 additional claims with respect to which the department contends
582 it is entitled to relief. For statute of limitations purposes,
583 any such pleading shall relate back to the filing date of the
584 complaint of the person who originally brought the action, to
585 the extent that the claim of the state arises out of the
586 conduct, transactions, or occurrences set forth, or attempted to
587 be set forth, in the prior complaint of that person. This
588 subsection applies to any actions under s. 68.083(2) pending on
589 or filed after July 1, 2013.

590 Section 10. Section 68.09, Florida Statutes, is amended to
591 read:

592 68.09 Burden of proof.—

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

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

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