

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-554
HOUSE BILL 1135**

AN ACT TO DETER AND PUNISH PERSONS WHO MAKE FALSE OR FRAUDULENT CLAIMS FOR PAYMENT BY THE STATE AND TO PROVIDE REMEDIES IN THE FORM OF TREBLE DAMAGES AND CIVIL PENALTIES WHEN MONEY IS OBTAINED FROM THE STATE BY REASON OF SUCH CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 52.
"False Claims Act.

"§ 1-605. Short title; purpose.

- (a) This Article shall be known and may be cited as the False Claims Act.
- (b) The purpose of this Article is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim.

"§ 1-606. Definitions.

The following words and phrases when used in this act have the following meanings, unless the context clearly indicates otherwise:

- (1) "Attorney General." – The Attorney General of North Carolina, or any deputy, assistant, or associate attorney general.
- (2) "Claim." – Any request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee, or agent of the State or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the State's behalf or to advance a State program or interest and if the State government:
- a. Provides or has provided any portion of the money or property that is requested or demanded; or
- b. Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
- A claim does not include requests or demands for money or property that the State has paid to an individual as compensation for State employment or as an income subsidy with no restrictions on that individual's use of the money or property.
- (3) "Judiciary." – A justice or judge of the General Court of Justice or clerk of court.
- (4) "Knowing" and "knowingly." – Whenever a person, with respect to information, does any of the following:
- a. Has actual knowledge of the information.
- b. Acts in deliberate ignorance of the truth or falsity of the information.



c. Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

(5) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

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

(7) "Public employee," "public official," and "public employment" includes federal, State, and local employees and officials.

(8) "Senior executive branch official." – The Governor, Lieutenant Governor, member of the Council of State, or head of department as defined in G.S. 143B-3.

"§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and civil penalties; exceptions.

(a) Liability. – Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person. A person who commits any of the following acts also shall be liable to the State for the costs of a civil action brought to recover any of those penalties or damages and shall be liable to the State for a civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000) for each violation:

(1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.

(3) Conspires to commit a violation of subdivision (1), (2), (4), (5), (6), or (7) of this section.

(4) Has possession, custody, or control of property or money used or to be used by the State and knowingly delivers or causes to be delivered less than all of that money or property.

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true.

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who lawfully may not sell or pledge the property.

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State.

(b) Damages Limitation. – Notwithstanding the provisions of subsection (a) of this section, the court may limit the damages assessed under subsection (a) of this section to not less than two times the amount of damages that the State sustains because of the act of the person described in that subsection and may assess no civil penalty if the court finds all of the following:

(1) The person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.

- (2) The person fully cooperated with any investigation of the violation by the State.
- (3) At the time the person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action has commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Exclusion. – This section does not apply to claims, records, or statements made under Chapter 105 of the General Statutes.

"§ 1-608. Civil actions for false claims.

(a) Responsibilities of the Attorney General. – The Attorney General diligently shall investigate a violation under G.S. 1-607. If the Attorney General finds that a person has violated or is violating G.S. 1-607, the Attorney General may bring a civil action under this section against that person.

(b) Actions by Private Persons. – A person may bring a civil action for a violation of G.S. 1-607 or under G.S. 108A-70.12 for the person and for the State, as follows:

- (1) The action shall be brought in the name of the State, and the person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed voluntarily by the person bringing the action only if the court and Attorney General have given written consent to the dismissal.
- (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General pursuant to applicable rules of the North Carolina Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.
- (3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed and served upon the defendant pursuant to the North Carolina Rules of Civil Procedure.
- (4) Before the expiration of the 120-day period or any extensions obtained under subdivision (3) of this subsection, the State shall:
 - a. Proceed with the action, in which case the action shall be conducted by the State; or
 - b. Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.
- (5) When a person brings an action under this subsection, the federal False Claims Act, 31 U.S.C. § 3729 et seq., or any similar provision of law in any other state, no person other than the State may intervene or bring a related action based on the facts underlying the pending action; provided, however, that nothing in this subdivision prohibits a person from amending a pending action in another jurisdiction to allege a claim under this subsection.

(c) The Attorney General may retain a portion of the damages recovered for a State agency out of the proceeds of the action or settlement under this Article as reimbursement for costs incurred by the Attorney General in investigating and bringing a civil action under this

Article, including reasonable attorneys' fees and investigative costs. Retained funds shall be used by the Attorney General to carry out the provisions of this Article.

"§ 1-609. Rights of the parties to qui tam actions.

(a) If the State proceeds with an action under G.S. 1-608(b), it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the qui tam plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations set forth in subsections (b) through (e) of this section.

(b) The State may dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the State of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be heard in camera.

(d) Upon a showing by the State that the qui tam plaintiff's unrestricted participation during the course of the litigation would interfere with or unduly delay the State's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as any of the following:

- (1) Limiting the number of witnesses the qui tam plaintiff may call.
- (2) Limiting the length of the testimony of those witnesses.
- (3) Limiting the qui tam plaintiff's cross-examination of witnesses.
- (4) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

(e) Upon a showing by the defendant that the qui tam plaintiff's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

(f) If the State elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the qui tam plaintiff would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 120 days. Such a showing shall be conducted in camera. The court may extend the 120-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigations or proceedings.

(h) Notwithstanding the provisions of G.S. 1-608(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in that proceeding as the qui tam plaintiff would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"§ 1-610. Award to qui tam plaintiff.

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a qui tam plaintiff under G.S. 1-608(b), the qui tam plaintiff shall receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(b) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, or (iii) from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(c) Any payment to a qui tam plaintiff under subsection (a) or (b) of this section shall be made from the proceeds.

(d) The qui tam plaintiff also shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(e) If the State does not proceed with an action under this Article, the qui tam plaintiff shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The qui tam plaintiff also shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(f) Whether or not the State proceeds with the action, if the court finds that the qui tam plaintiff planned and initiated the violation of G.S. 1-607 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under subsection (a), (b), or (e) of this section, taking into account the role of the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation of G.S. 1-607, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such a dismissal shall not prejudice the right of the State to continue the action.

(g) If the State does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"§ 1-611. Certain actions barred.

(a) No court shall have jurisdiction over an action brought under G.S. 1-608(b) against a member of the General Assembly, a member of the judiciary, or a senior executive branch official acting in their official capacity if the action is based on evidence or information known to the State when the action was brought.

(b) In no event may a person bring an action under G.S. 1-608(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(c) No civil action may be brought under this Article by a person who is or was a public employee or public official if the allegations of such action are based substantially upon either of the following:

- (1) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office.
- (2) Information or records to which the person had access as a result of his or her public employment or office.

(d) No court shall have jurisdiction over an action under G.S. 108A-70.12 based upon the public disclosure of allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, or (iii) from the news media, unless the action is brought by the Attorney General, or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under G.S. 108A-70.12 that is based on the information.

"§ 1-612. State not liable for certain expenses.

The State is not liable for expenses that a person incurs in bringing an action under G.S. 1-608(b).

"§ 1-613. Private action for retaliation action.

Any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of an action under this Article, or in furtherance of other efforts to stop one or more violations of G.S. 1-607, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Article, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee, contractor, or agent may bring an action in superior court for the relief provided in this section.

"§ 1-614. Civil investigative demand.

(a) A civil investigative demand is an administrative subpoena. Whenever the Attorney General has reason to believe that a person has information or is in possession, custody, or control of any document or other object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 1-607, the Attorney General may issue in writing and cause to be served upon the person, before bringing or intervening or making an election in an action under G.S. 1-608 or other false claims law, a civil investigative demand requiring the person to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall comply with all of the following:

- (1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice.
- (2) Describe the nature of the conduct constituting the violation under investigation.
- (3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified.
- (4) Prescribe a reasonable date and time at which the person shall produce any document or object.

- (5) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time.
- (6) Designate a person to whom any document or object shall be produced.
- (7) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person.

(d) A civil investigative demand may include an express demand for any product of discovery. A product of discovery includes the original or duplicate of any deposition, interrogatory, document, thing, examination, or admission, that is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature, and any digest, compilation, and index of any product of discovery. Whenever a civil investigative demand is an express demand for any product of discovery, a copy of the demand shall be served on the person from whom the discovery was obtained, and the Attorney General shall notify the person to whom the demand is issued of the date on which the copy was served. A demand for a product of discovery shall not be returned or returnable until 30 days after a copy of the demand has been served on the person from whom the discovery was obtained. Within 30 days after service of the demand, the person from whom the discovery was obtained or the person on whom the demand was served will serve on the Attorney General a copy of any protective order that prevents or restrains disclosure of the product of discovery to the Attorney General. The Attorney General may petition the court that issued the protective order to modify the order to allow compliance with the demand. Disclosure of any product of discovery pursuant to any express demand does not constitute a waiver of any right or privilege that the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(e) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(f) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in which the person resides, is found, or transacts business. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules of Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 1-607, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(g) If the person fails to comply with an order entered pursuant to subsection (f) of this section, the court may do any of the following:

- (1) Adjudge the person to be in contempt of court.
- (2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation.
- (3) Grant any other relief as the court may deem proper.

(h) A petition for an order of the court to modify or set aside a civil investigative demand issued under this section may be filed by any person who has received a civil investigative demand or in the case of an express demand for any product of discovery, the person on whom the discovery was obtained. The petition may be filed in superior court in either Wake County or the county in which the person resides, is found, or transacts business, or, in the case of a petition to modify an express demand for any product of discovery, the petition shall be filed in the court in which the proceeding was pending when the product of discovery was obtained. Any petition under this subsection must be filed within 30 days after the date of service of the civil investigative demand or before the return date specified in the demand, whichever date is earlier, or within a longer period as may be prescribed in writing by the investigator identified in the demand. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(i) Any documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 1-608 and for any use that is consistent with the law, and the regulations and policies of the Attorney General, including use in connection with internal Attorney General memoranda and reports; communications between the Attorney General and a federal, State, or local governmental agency, or a contractor of a federal, State, or local governmental agency, undertaken in furtherance of an Attorney General investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case, or proceeding. Any documents and objects obtained by the Attorney General under this section may be shared with any qui tam relator if the Attorney General determines it is necessary as part of any false claims act investigation. Before using or sharing documents and objects obtained by the Attorney General under this section with any person, the Attorney General may require that the person agree to an order of the court protecting the documents or objects, or any information contained in the documents or objects, from disclosure by that person. In the case of documents or objects the producing party has designated as a trade secret or other confidential research, development, or commercial information, the Attorney General shall either (i) require that the person with whom documents or objects are shared be prohibited from disclosing the documents or objects, or any information contained in the documents or objects, or (ii) petition the court for an order directing the producing party to either appear and support the designation or withdraw the designation.

(j) The Attorney General may designate an employee of the North Carolina Department of Justice to serve as a custodian of documents and objects.

(k) Except as otherwise provided in this section, no documents or objects, or copies thereof, while in the possession of the North Carolina Department of Justice, shall be available for examination by any person other than an employee of the North Carolina Department of Justice. The prohibition in the preceding sentence on the availability of documents or objects shall not apply if consent is given by the person who produced the documents or objects, or, in the case of any product of discovery produced pursuant to an express demand, consent is given by the person from whom the discovery was obtained, or prevent disclosure to any other federal or State agency for use by that agency in furtherance of its statutory responsibilities upon

application made by the Attorney General to the superior court showing substantial need for the use of the documents or objects by any agency in furtherance of its statutory responsibilities.

(l) While in the possession of the custodian and under reasonable terms and conditions as the Attorney General shall prescribe, documents or objects shall be available for examination by the person who produced the documents or objects, or by a representative of that person authorized by that person to examine the documents or objects.

(m) If any documents or objects have been produced by any person in the course of any investigation pursuant to a civil investigative demand under this section, and any case or proceeding before any court arising out of the investigation, or any proceeding before any agency involving the documents or objects, has been completed, or no case or proceeding in which the documents or objects may be used has been commenced within a reasonable time after completion of the investigation, the custodian shall, upon written request of the person who produced the documents or objects, return to the person any documents or objects that have not passed into the control of any court or agency.

(n) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section.

"§ 1-615. False claims procedure.

(a) Statute of Limitations. – A civil action under G.S. 1-608 may not be brought (i) more than six years after the date on which the violation of G.S. 1-607 was committed or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of North Carolina charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(b) If the Attorney General elects to intervene and proceed with an action brought under G.S. 1-608(b), the State may file its own complaint or amend the complaint of a person who has brought an action under G.S. 1-608(b) to clarify or add detail to the claims with respect to which the State is intervening and to add any additional claims with respect to which the State contends it is entitled to relief. For statute of limitations purposes, any such State pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the State arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(c) Burden of Proof. – In any action brought under G.S. 1-608, the State or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Estoppel. – Notwithstanding any other provision of law, a final judgment rendered in favor of the State in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under G.S. 1-608.

(e) Venue. – Venue for any action brought pursuant to G.S. 1-608 shall be in either Wake County or in any county in which a claim originated, or in which any statement or record was made, or acts done, or services or property rendered in connection with any act constituting part of the violation of this Article.

(f) Service on Federal, State, or Local Authorities. – With respect to the United States or any State or local government that is named as a co-plaintiff in an action brought under G.S. 1-608, a seal on the action ordered by the court under G.S. 1-608(b) shall not preclude the State or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of the co-plaintiff government to investigate and prosecute such actions on behalf of that

co-plaintiff government, except that the seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

(g) A civil action may not be brought under both this Article and Part 7 of Article 2 of Chapter 108A of the General Statutes.

"§ 1-616. Remedies under other laws; severability of provisions; liberality of legislative construction; adoption of legislative history.

(a) Remedies Under Other Laws. – The provisions of this Article are not exclusive, and the remedies provided for in this Article shall be in addition to any other remedies provided for in any other law or available under common law. No criminal or administrative action need be brought against any person as a condition for establishing civil liability under this section.

(b) If any provision of this Article or the application of this Article to any person or circumstance is held to be unconstitutional, the remainder of this Article and the application of the provision to other persons or circumstances shall not be affected by that holding.

(c) This Article shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act.

"§ 1-617. Reporting.

(a) In reporting on the terms and disbursements set forth in any settlement agreement or final order or judgment in a case filed under this Article as required by G.S. 114-2.5, the report shall include the percentage of the proceeds and the amount paid to any qui tam plaintiff under G.S. 1-610.

(b) On or before February 1 of each year, the Attorney General shall submit to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate a report on the number of qui tam cases under this Article pending in the State and the number of qui tam cases pending in other jurisdictions involving the State, the number of qui tam cases under this Article that were settled, the number of qui tam cases in which judgment was entered, and the amount of proceeds paid to qui tam plaintiffs during the previous calendar year.

"§ 1-618. Rules.

The Attorney General may adopt rules necessary to carry out the purposes set forth in this Article."

SECTION 2. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section to read:

"§ 108A-63.1. Health care fraud subpoena to produce documents.

(a) The Attorney General, acting through the Medicaid Investigations Unit of the Department of Justice, may, when engaged in an investigation of an alleged violation of G.S. 108A-63 and prior to the arrest of a suspect, issue in writing and cause to be served a subpoena to produce documents upon any corporation or governmental entity requiring the production of any records, books, papers, electronic media, objects, or other documents which may be relevant to a criminal investigation of a violation of G.S. 108A-63.

(b) A subpoena under this section may require the custodian of records of the corporation or governmental entity to produce an affidavit certifying that the custodian made a thorough and diligent search for the documents requested and that the documents produced constitute all the records requested to the best of the custodian's knowledge, information, and belief.

(c) A subpoena under this section shall describe the documents required to be produced and prescribe a return date within a reasonable period of time, of no less than 20 days from the date of service, within which the documents can be assembled and made available.

(d) A corporation or governmental entity may comply with a subpoena issued under this section by delivering the documents to the Medicaid Investigations Unit by any of the following methods:

- (1) By hand delivery.
- (2) By mailing the documents by certified mail.
- (3) By making the documents reasonably available for transfer to an agent of the Medicaid Investigations Unit at a place of business of the corporation or governmental entity.
- (4) If agreed to by the Medicaid Investigations Unit and the corporation or governmental entity, by any other means.

(e) A corporation or governmental entity may move to quash or modify a subpoena issued under this section if it is oppressive or unreasonable or does not comply with the requirements of this section. The motion must be made before the time specified in the subpoena for production and may be made before a judge of the superior court.

(f) In the case of failure by any corporation or governmental entity without adequate excuse to obey a subpoena issued under this section, the Attorney General may invoke the aid of a judge of the superior court. The court may issue an order requiring the subpoenaed corporation or governmental entity to appear before the Attorney General to produce records. Failure to obey the order of the court may be punished as contempt of court."

SECTION 3. G.S. 108A-63 reads as rewritten:

"§ 108A-63. Medical assistance provider fraud.

(a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

- (1) In any application for payment under this Part, or for use in determining entitlement to such payment; or
- (2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

- (1) His initial or continued entitlement to payment under this Part; or
- (2) The amount of payment to which such person is or may be entitled.

(c) ~~Any~~ Except as otherwise provided in subsection (e) of this section, any person who violates a provision of this section shall be guilty of a Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

(e) In connection with the delivery of or payment for benefits, items, or services under this Part, it shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

- (1) Defraud the Medical Assistance Program.
- (2) Obtain, by means of false or fraudulent pretenses, representations, or promises of material fact, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program.

A violation of this subsection is a Class H felony. A conspiracy to violate this subsection is a Class I felony.

(f) It shall be unlawful for any provider, with the intent to obstruct, delay, or mislead an investigation of a violation of this section by the Attorney General's office, to knowingly and willfully make or cause to be made a false entry in, alter, destroy, or conceal, or make a false statement about a financial, medical, or other record related to the provision of a benefit, item, or service under this Part."

SECTION 4. Section 1 of this act becomes effective January 1, 2010, and applies to acts committed on or after that date. A civil action may be filed after January 1, 2010, under Section 1 of this act based on acts committed prior to that date if the activity would also be

covered under Part 7 of Article 2 of Chapter 108A of the General Statutes and if the limitation period set forth in G.S. 1-615(a) and G.S. 108A-70.13 has not lapsed. Section 3 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 10:45 a.m. this 28th day of August, 2009