

An Act

HOUSE BILL 22-1119

BY REPRESENTATIVE(S) Gray and Weissman, Bird, Exum, Herod, Hooton, Jodeh, Lindsay, Ricks, Valdez A.;
also SENATOR(S) Winter, Buckner, Gonzales, Lee.

CONCERNING CIVIL LIABILITY FOR PRESENTING FALSE CLAIMS FOR PAYMENT TO THE STATE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-31-101, **amend** (1)(p) and (1)(q); and **add** (1)(s) as follows:

24-31-101. Powers and duties of attorney general. (1) The attorney general:

(p) May bring a civil action to enforce the provisions of section 24-31-113; and

(q) May bring a civil action to enforce the provisions of section 24-31-307 (2) or a criminal action to enforce the provisions of section 24-31-307 (3);

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(s) MAY BRING OR INTERVENE IN A CIVIL ACTION, CONDUCT INVESTIGATIONS, AND ISSUE CIVIL INVESTIGATION DEMANDS PURSUANT TO THE "COLORADO FALSE CLAIMS ACT", PART 12 OF THIS ARTICLE 31; AND

SECTION 2. In Colorado Revised Statutes, **add** part 12 to article 31 of title 24 as follows:

PART 12
COLORADO FALSE CLAIMS ACT

24-31-1201. Short title. THE SHORT TITLE OF THIS PART 12 IS THE "COLORADO FALSE CLAIMS ACT".

24-31-1202. Definitions. AS USED IN THIS PART 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) (a) "CLAIM" MEANS A REQUEST OR DEMAND, WHETHER UNDER A CONTRACT OR OTHERWISE, FOR MONEY OR PROPERTY AND WHETHER OR NOT THE STATE OR A POLITICAL SUBDIVISION HAS TITLE TO THE MONEY OR PROPERTY, THAT IS:

(I) PRESENTED TO AN OFFICER, EMPLOYEE, OR AGENT OF THE STATE OR POLITICAL SUBDIVISION; OR

(II) MADE TO A CONTRACTOR, GRANTEE, OR OTHER RECIPIENT, IF THE MONEY OR PROPERTY IS TO BE SPENT OR USED ON THE STATE'S OR POLITICAL SUBDIVISION'S BEHALF OR TO ADVANCE A GOVERNMENT PROGRAM OR INTEREST, AND IF THE STATE OR POLITICAL SUBDIVISION:

(A) PROVIDES OR HAS PROVIDED ANY PORTION OF THE MONEY OR PROPERTY REQUESTED OR DEMANDED; OR

(B) WILL REIMBURSE SUCH CONTRACTOR, GRANTEE, OR OTHER RECIPIENT FOR ANY PORTION OF THE MONEY OR PROPERTY THAT IS REQUESTED OR DEMANDED.

(b) "CLAIM" INCLUDES THE FAILURE TO PAY OR THE UNDERPAYMENT OF AN OBLIGATION OWED TO THE STATE.

(c) "CLAIM" DOES NOT INCLUDE A REQUEST OR DEMAND FOR MONEY OR PROPERTY THAT THE STATE OR A POLITICAL SUBDIVISION HAS PAID:

(I) TO AN INDIVIDUAL AS COMPENSATION FOR EMPLOYMENT BY THE STATE OR POLITICAL SUBDIVISION;

(II) AS AN INCOME SUBSIDY WITH NO RESTRICTIONS ON THAT INDIVIDUAL'S USE OF THE MONEY OR PROPERTY;

(III) TO AN INDIVIDUAL AS PART OF A GOVERNMENT ASSISTANCE PROGRAM IN AN AMOUNT LESS THAN TEN THOUSAND DOLLARS IN A CALENDAR YEAR; OR

(IV) TO A PERSON UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4, 5, AND 6 OF TITLE 25.5.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF LAW.

(3) "FUND" MEANS THE FALSE CLAIMS RECOVERY CASH FUND CREATED IN SECTION 24-31-1209.

(4) (a) "KNOWING" OR "KNOWINGLY" MEAN THAT A PERSON, WITH RESPECT TO INFORMATION ABOUT A CLAIM:

(I) HAS ACTUAL KNOWLEDGE OF THE FALSITY OF THE INFORMATION;

(II) ACTS IN DELIBERATE IGNORANCE OF THE TRUTH OR FALSITY OF THE INFORMATION; OR

(III) ACTS IN RECKLESS DISREGARD OF THE TRUTH OR FALSITY OF THE INFORMATION.

(b) "KNOWING" OR "KNOWINGLY" DOES NOT REQUIRE PROOF OF SPECIFIC INTENT TO DEFRAUD. A PERSON WHO ACTS MERELY NEGLIGENTLY WITH RESPECT TO INFORMATION IS NOT DEEMED TO HAVE ACTED KNOWINGLY, UNLESS THE PERSON ACTS WITH RECKLESS DISREGARD OF THE TRUTH OR FALSITY OF THE INFORMATION.

(5) "MATERIAL" MEANS HAVING A NATURAL TENDENCY TO INFLUENCE, OR BE CAPABLE OF INFLUENCING, THE PAYMENT OR RECEIPT OF

MONEY OR PROPERTY.

(6) "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.

(7) "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, OR OTHER NONGOVERNMENTAL LEGAL ENTITY.

(8) "POLITICAL SUBDIVISION" HAS THE SAME MEANING AS SET FORTH IN SECTION 24-72-202.

(9) "PROCEEDS" MEANS ALL MONEY, PROPERTY, DAMAGES, DOUBLE DAMAGES, TREBLE DAMAGES, CIVIL PENALTIES, AND PAYMENTS FOR COSTS OF COMPLIANCE, INCLUDING REASONABLE COSTS AND ATTORNEY FEES, REALIZED BY THE STATE WHETHER AS A RESULT OF ANY SETTLEMENT OF OR JUDGMENT ENTERED IN ANY ACTION BROUGHT PURSUANT TO THIS PART 12.

24-31-1203. False claims - civil liability for certain acts - penalty - exception. (1) SUBJECT TO SUBSECTION (2) OF THIS SECTION AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5) OF THIS SECTION, A PERSON IS LIABLE TO THE STATE FOR A CIVIL PENALTY OF NOT LESS THAN ELEVEN THOUSAND EIGHT HUNDRED DOLLARS AND NOT MORE THAN TWENTY-THREE THOUSAND SIX HUNDRED DOLLARS PER VIOLATION, PLUS THREE TIMES THE AMOUNT OF DAMAGES THAT THE STATE SUSTAINS BECAUSE OF THE ACT OF THAT PERSON, IF THAT PERSON:

(a) KNOWINGLY PRESENTS, OR CAUSES TO BE PRESENTED, A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OR APPROVAL;

(b) KNOWINGLY MAKES, USES, OR CAUSES TO BE MADE OR USED A FALSE RECORD OR STATEMENT MATERIAL TO A FALSE OR FRAUDULENT CLAIM;

(c) HAS POSSESSION, CUSTODY, OR CONTROL OF PROPERTY OR MONEY USED, OR TO BE USED, BY THE STATE OR POLITICAL SUBDIVISION AND KNOWINGLY DELIVERS, OR CAUSES TO BE DELIVERED, LESS THAN ALL OF THE

MONEY OR PROPERTY;

(d) AUTHORIZES THE MAKING OR DELIVERY OF A DOCUMENT CERTIFYING RECEIPT OF PROPERTY USED, OR TO BE USED, BY THE STATE OR POLITICAL SUBDIVISION AND, WITH THE INTENT TO DEFRAUD THE STATE OR POLITICAL SUBDIVISION, MAKES OR DELIVERS THE RECEIPT WITHOUT COMPLETELY KNOWING THAT THE INFORMATION ON THE RECEIPT IS TRUE;

(e) KNOWINGLY BUYS, OR RECEIVES AS A PLEDGE OF AN OBLIGATION OR DEBT, PUBLIC PROPERTY FROM AN OFFICER OR EMPLOYEE OF THE STATE OR POLITICAL SUBDIVISION WHO LAWFULLY MAY NOT SELL OR PLEDGE THE PROPERTY;

(f) 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 POLITICAL SUBDIVISION, OR KNOWINGLY CONCEALS OR KNOWINGLY AND IMPROPERLY AVOIDS OR DECREASES AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO THE STATE OR POLITICAL SUBDIVISION;

(g) KNOWINGLY MAKES, USES, OR CAUSES TO BE MADE OR USED, A FALSE RECORD OR STATEMENT RESULTING IN THE UNDERPAYMENT OF PREMIUMS OWED TO THE UNEMPLOYMENT COMPENSATION FUND ESTABLISHED IN SECTION 8-77-101 OR IN THE PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS OF MORE THAN FIFTEEN THOUSAND DOLLARS IN A CALENDAR YEAR; OR

(h) CONSPIRES TO COMMIT A VIOLATION OF SUBSECTIONS (1)(a) TO (1)(g) OF THIS SECTION.

(2)(a) NOTWITHSTANDING THE AMOUNT OF DAMAGES AUTHORIZED IN SUBSECTION (1) OF THIS SECTION, FOR A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION, THE COURT MAY ASSESS REDUCED DAMAGES AND PENALTIES AS DESCRIBED IN SUBSECTION (2)(b) OR (2)(c) OF THIS SECTION IF THE COURT FINDS THAT:

(I) THE PERSON WHO COMMITTED THE VIOLATION FURNISHED TO THE OFFICIALS OF THE STATE OR POLITICAL SUBDIVISION RESPONSIBLE FOR INVESTIGATING FALSE CLAIMS VIOLATIONS ALL INFORMATION ABOUT THE VIOLATION KNOWN TO THE PERSON AND FURNISHED SAID INFORMATION

WITHIN THIRTY DAYS AFTER THE DATE ON WHICH THE PERSON FIRST LEARNED OF A POTENTIAL VIOLATION;

(II) AT THE TIME THE PERSON FURNISHED THE INFORMATION ABOUT THE VIOLATION TO THE OFFICIALS OF THE STATE OR POLITICAL SUBDIVISION, THE PERSON DID NOT HAVE ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE EXISTENCE OF AN INVESTIGATION INTO THE VIOLATION; AND

(III) THE PERSON FULLY COOPERATED WITH ANY INVESTIGATION OF THE VIOLATION BY THE STATE.

(b) IF A PERSON DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION FURNISHED INFORMATION ABOUT THE VIOLATION TO THE OFFICIALS OF THE STATE OR POLITICAL SUBDIVISION BEFORE A CRIMINAL PROSECUTION, CIVIL ACTION, OR ADMINISTRATIVE ACTION WAS COMMENCED WITH RESPECT TO THE VIOLATION, THE COURT SHALL ASSESS ONE AND ONE-HALF THE AMOUNT OF ACTUAL DAMAGES RESULTING FROM THE FALSE CLAIM, INCLUDING INTEREST FROM THE DATE OF THE FRAUD TO THE DATE OF FULL REPAYMENT OF ALL DAMAGES, THAT THE STATE OR POLITICAL SUBDIVISION SUSTAINS BECAUSE OF THE VIOLATION AND A CIVIL PENALTY OF NOT LESS THAN FIVE THOUSAND NINE HUNDRED DOLLARS AND NOT MORE THAN ELEVEN THOUSAND EIGHT HUNDRED DOLLARS PER VIOLATION.

(c) IF A PERSON DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION FURNISHED INFORMATION ABOUT THE VIOLATION TO THE OFFICIALS OF THE STATE WHILE A CRIMINAL PROSECUTION, CIVIL ACTION, OR ADMINISTRATIVE ACTION CONCERNING THE VIOLATION WAS UNDER SEAL PURSUANT TO SECTION 24-31-1204 (3)(b), THE COURT SHALL ASSESS DOUBLE THE AMOUNT OF ACTUAL DAMAGES RESULTING FROM THE FALSE CLAIM, INCLUDING INTEREST FROM THE DATE OF THE FRAUD TO THE DATE OF FULL REPAYMENT OF ALL DAMAGES, THAT THE STATE OR POLITICAL SUBDIVISION SUSTAINS BECAUSE OF THE VIOLATION AND A CIVIL PENALTY OF NOT LESS THAN SEVEN THOUSAND EIGHT HUNDRED DOLLARS AND NOT MORE THAN FIFTEEN THOUSAND SEVEN HUNDRED DOLLARS PER VIOLATION.

(d) THE ATTORNEY GENERAL MAY DETERMINE WHETHER A PERSON MEETS THE CRITERIA DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION AND SUBMIT THE DETERMINATION AND REASONING TO THE COURT, WHICH THE COURT MAY CONSIDER WHEN MAKING A FINDING AS TO WHETHER THE PERSON SATISFIES THE CRITERIA DESCRIBED IN SUBSECTION (2)(a) OF THIS

SECTION.

(3) ANY INFORMATION FURNISHED PURSUANT TO SUBSECTION (2) OF THIS SECTION IS EXEMPT FROM DISCLOSURE PURSUANT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24.

(4) A PERSON WHO VIOLATES THIS SECTION IS ALSO LIABLE TO THE STATE FOR REASONABLE ATTORNEY FEES AND THE COSTS INCURRED DURING THE ENFORCEMENT OF THIS PART 12.

(5) THIS SECTION DOES NOT APPLY TO CLAIMS, RECORDS, OR STATEMENTS MADE PURSUANT TO TITLE 39.

(6) (a) THE MAXIMUM AND MINIMUM AMOUNTS FOR THE CIVIL PENALTIES DESCRIBED IN THIS SECTION MUST BE ADJUSTED FOR INFLATION ON JULY 1, 2023, AND EACH JULY 1 THEREAFTER. THE ADJUSTMENT MADE PURSUANT TO THIS SUBSECTION (6) MUST BE ROUNDED UPWARD OR DOWNWARD TO THE NEAREST TEN-DOLLAR INCREMENT. THE SECRETARY OF STATE SHALL CERTIFY THE ADJUSTED MAXIMUM AND MINIMUM AMOUNTS FOR CIVIL PENALTIES WITHIN FOURTEEN DAYS AFTER THE APPROPRIATE INFORMATION IS AVAILABLE.

(b) FOR EACH ACTION BROUGHT PURSUANT TO THIS PART 12, THE APPLICABLE MINIMUM AND MAXIMUM AMOUNTS FOR A CIVIL PENALTY ARE THE AMOUNTS IN EFFECT ON THE DATE THE CAUSE OF ACTION ACCRUES.

(c) AS USED IN THIS SECTION, "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE DENVER-AURORA-LAKEWOOD CONSUMER PRICE INDEX, OR ITS APPLICABLE SUCCESSOR INDEX, PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS.

(7) FOR ACCOUNTING PURPOSES, A FINE OR PENALTY RECEIVED BY THE STATE PURSUANT TO THIS PART 12 IS A DAMAGE AWARD.

(8) (a) SUBJECT TO SECTION 24-31-1204 (4)(e), IF THE ATTORNEY GENERAL HAS AUTHORITY TO BRING OR INTERVENE IN A CIVIL ACTION PURSUANT TO THIS PART 12, THE ATTORNEY GENERAL MAY ACCEPT FROM A PERSON ALLEGED TO HAVE VIOLATED SUBSECTION (1) OF THIS SECTION, IN LIEU OF OR AS A PART OF A CIVIL ACTION, AN ASSURANCE OF DISCONTINUANCE OR A CONSENT ORDER APPROVED BY A COURT OF

COMPETENT JURISDICTION OF THE ALLEGED VIOLATION OF THIS PART 12. THE ASSURANCE OR CONSENT ORDER MAY INCLUDE A STIPULATION FOR THE VOLUNTARY PAYMENT BY THE ALLEGED VIOLATOR OF ANY RELIEF AUTHORIZED BY THIS PART 12, INCLUDING PAYMENT FOR INVESTIGATION AND LITIGATION COSTS INCURRED BY THE ATTORNEY GENERAL OR PRIVATE PERSON WHO BROUGHT AN ACTION PURSUANT TO SECTION 24-31-1204 (3), AND ACTUAL DAMAGES RESULTING FROM THE FALSE CLAIM PLUS ANY AUTHORIZED MULTIPLIER, INTEREST, AND CIVIL MONEY PENALTY.

(b) AN ASSURANCE OF DISCONTINUANCE OR CONSENT ORDER ACCEPTED BY THE ATTORNEY GENERAL PRECLUDES A SEPARATE ACTION PURSUANT TO SECTION 24-31-1204 (3) BY ANY PERSON BASED ON THE SAME FACTUAL CIRCUMSTANCES, EXCEPT FOR AN ACTION BASED ON A VIOLATION OF THE ASSURANCE OF DISCONTINUANCE OR CONSENT ORDER.

(c) AN ASSURANCE OF DISCONTINUANCE ACCEPTED BY THE ATTORNEY GENERAL AND ANY CONSENT ORDER FILED WITH THE COURT AS A PART OF AN ACTION IS A MATTER OF PUBLIC RECORD UNLESS THE ATTORNEY GENERAL DETERMINES, AT THE ATTORNEY GENERAL'S DISCRETION, THAT IT IS CONFIDENTIAL TO THE PARTIES TO THE ACTION OR PROCEEDING AND TO THE COURT AND ITS EMPLOYEES. UPON THE FILING OF A CIVIL ACTION OR A MOTION OR PETITION IN A PENDING CIVIL ACTION BY THE ATTORNEY GENERAL ALLEGING THAT A PERSON HAS VIOLATED A CONFIDENTIAL ASSURANCE OF DISCONTINUANCE OR CONSENT ORDER ACCEPTED PURSUANT TO THIS SUBSECTION (8), THE ASSURANCE OF DISCONTINUANCE OR CONSENT ORDER IS A PUBLIC RECORD AND OPEN TO INSPECTION BY ANY PERSON.

(d) PROOF BY A PREPONDERANCE OF THE EVIDENCE OF A VIOLATION OF AN ASSURANCE OR STIPULATION OR CONSENT ORDER IS PRIMA FACIE EVIDENCE OF A VIOLATION FOR THE PURPOSES OF ANY CIVIL ACTION OR PROCEEDING BROUGHT BY THE ATTORNEY GENERAL AFTER THE ALLEGED VIOLATION OF THE ASSURANCE OR STIPULATION OR CONSENT ORDER, WHETHER A NEW ACTION OR A MOTION OR PETITION IN A PENDING ACTION OR PROCEEDING.

24-31-1204. Civil actions for false claims - claims for retaliation - definitions. (1) **Responsibility of attorney general.** (a) THE ATTORNEY GENERAL SHALL DILIGENTLY INVESTIGATE A VIOLATION OF SECTION 24-31-1203. IF THE ATTORNEY GENERAL FINDS THAT A PERSON HAS

VIOLATED OR IS VIOLATING SECTION 24-31-1203, THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AGAINST THE PERSON PURSUANT TO THIS SECTION.

(b) IN ANY ACTION BROUGHT PURSUANT TO THIS PART 12 IN WHICH THE ATTORNEY GENERAL IS A PARTY, EITHER AS THE PLAINTIFF OR AS AN INTERVENOR, THE COURT MAY DISMISS THE ACTION UPON MOTION OF THE ATTORNEY GENERAL FOLLOWING THE NOTICE AND OPPORTUNITY FOR A HEARING PURSUANT TO SUBSECTION (4)(b)(I) OF THIS SECTION. IN DETERMINING WHETHER TO FILE A MOTION TO DISMISS, THE ATTORNEY GENERAL SHALL CONSIDER THE SEVERITY OF THE FALSE CLAIM, PROGRAM OR POPULATION IMPACTED BY THE FALSE CLAIM, DURATION OF THE FRAUD, WEIGHT AND MATERIALITY OF THE EVIDENCE, OTHER MEANS TO MAKE THE PROGRAM WHOLE, AND OTHER FACTORS THE ATTORNEY GENERAL DEEMS RELEVANT. THE ATTORNEY GENERAL'S DECISION-MAKING PROCESS CONCERNING A MOTION TO DISMISS AND ANY RECORDS RELATED TO THE DECISION-MAKING PROCESS ARE NOT DISCOVERABLE IN ANY ACTION.

(2) **Role of the office of the state auditor.** (a) NOTWITHSTANDING ANY OTHER STATE LAW REQUIRING THE STATE AUDITOR TO KEEP INFORMATION CONFIDENTIAL, IF IN THE COURSE OF ITS AUDIT AUTHORITY, THE OFFICE OF THE STATE AUDITOR IDENTIFIES INFORMATION OF POTENTIAL FALSE CLAIMS SUBMITTED TO THE STATE OR A POLITICAL SUBDIVISION, THE STATE AUDITOR MAY SHARE ANY INFORMATION WITH THE ATTORNEY GENERAL OR THE POLITICAL SUBDIVISION. THE STATE AUDITOR MAY PARTICIPATE, WITH THE CONSENT OF THE ATTORNEY GENERAL, IN ANY SUBSEQUENT INVESTIGATION OR PROSECUTION OF THAT FALSE CLAIM.

(b) IF THE STATE AUDITOR ELECTS TO PARTICIPATE IN ANY INVESTIGATION AND PROSECUTION OF A FALSE CLAIM, THE STATE AUDITOR'S INTERESTS WILL BE REPRESENTED BY THE ATTORNEY GENERAL.

(3) **Actions by private persons.** (a) A PERSON MAY BRING A CIVIL ACTION FOR A VIOLATION OF SECTION 24-31-1203 FOR THE PERSON AND FOR THE STATE. THE ACTION MUST BE BROUGHT IN THE NAME OF THE STATE. THE COURT SHALL NOT DISMISS AN ACTION UPON MOTION OF THE PRIVATE PERSON WHO BROUGHT THE ACTION UNLESS THE ATTORNEY GENERAL GIVES WRITTEN CONSENT TO THE DISMISSAL AND REASONS FOR CONSENTING.

(b) (I) A PERSON WHO BRINGS AN ACTION SHALL SERVE ON THE

STATE, PURSUANT TO RULE 4 OF THE COLORADO RULES OF CIVIL PROCEDURE, A COPY OF THE COMPLAINT AND WRITTEN DISCLOSURE OF SUBSTANTIALLY ALL MATERIAL EVIDENCE AND INFORMATION THE PERSON POSSESSES; EXCEPT THAT THE PERSON SHALL NOT DISCLOSE ANY EVIDENCE OR INFORMATION THAT THE PERSON REASONABLY BELIEVES IS PROTECTED BY THE DEFENDANT'S ATTORNEY-CLIENT PRIVILEGE UNLESS THE PRIVILEGE WAS WAIVED, INADVERTENTLY OR OTHERWISE, BY THE PERSON WHO HOLDS THE PRIVILEGE; AN EXCEPTION TO THE PRIVILEGE APPLIES; OR DISCLOSURE OF THE INFORMATION IS PERMITTED BY AN ATTORNEY PURSUANT TO 17 CFR 205.3 (d)(2), THE APPLICABLE COLORADO RULES OF PROFESSIONAL CONDUCT, OR OTHERWISE. THE COMPLAINT MUST BE FILED IN CAMERA, MUST REMAIN UNDER SEAL FOR AT LEAST SIXTY-THREE DAYS, AND MUST NOT BE SERVED ON THE DEFENDANT UNTIL THE COURT SO ORDERS. THE STATE MAY ELECT TO INTERVENE AND PROCEED WITH THE ACTION WITHIN SIXTY-THREE DAYS AFTER IT RECEIVES BOTH THE COMPLAINT AND THE MATERIAL EVIDENCE AND INFORMATION.

(II) IN DETERMINING WHETHER TO INTERVENE AND PROCEED WITH AN ACTION PURSUANT TO THIS SUBSECTION (3)(b), THE ATTORNEY GENERAL SHALL CONSIDER THE FACTORS DESCRIBED IN SUBSECTION (1)(d) OF THIS SECTION. THE ATTORNEY GENERAL'S DECISION-MAKING PROCESS CONCERNING WHETHER TO INTERVENE AND ANY RECORDS RELATED TO THE DECISION-MAKING PROCESS ARE NOT DISCOVERABLE IN ANY ACTION.

(c) THE STATE MAY, FOR GOOD CAUSE SHOWN, MOVE THE COURT FOR EXTENSIONS OF THE TIME DURING WHICH THE COMPLAINT REMAINS UNDER SEAL PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION. THE MOTION MAY BE SUPPORTED BY AFFIDAVITS OR OTHER SUBMISSIONS IN CAMERA. THE DEFENDANT IS NOT REQUIRED TO RESPOND TO ANY COMPLAINT FILED PURSUANT TO THIS SECTION UNTIL TWENTY-ONE DAYS AFTER THE COMPLAINT IS UNSEALED AND SERVED UPON THE DEFENDANT PURSUANT TO RULE 4 OF THE COLORADO RULES OF CIVIL PROCEDURE.

(d) BEFORE THE EXPIRATION OF THE SIXTY-THREE-DAY PERIOD PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION AND ANY EXTENSIONS OBTAINED PURSUANT TO SUBSECTION (3)(c) OF THIS SECTION, THE STATE SHALL:

(I) PROCEED WITH THE ACTION, IN WHICH CASE THE STATE SHALL CONDUCT THE ACTION; OR

(II) NOTIFY THE COURT THAT IT DECLINES TO TAKE OVER THE ACTION, IN WHICH CASE THE PERSON WHO BROUGHT THE ACTION HAS THE RIGHT TO CONTINUE THE ACTION.

(e) WHEN A PERSON BRINGS AN ACTION PURSUANT TO THIS SUBSECTION (3), ONLY THE STATE MAY INTERVENE OR BRING A RELATED ACTION BASED ON THE FACTS UNDERLYING THE PENDING ACTION.

(f) ANY INFORMATION PROVIDED BY A PERSON TO THE STATE PURSUANT TO THIS SUBSECTION (3) IS EXEMPT FROM DISCLOSURE PURSUANT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24.

(4) Rights of parties to private actions. (a) IF THE STATE PROCEEDS WITH AN ACTION BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION, IT HAS THE PRIMARY RESPONSIBILITY FOR PROSECUTING THE ACTION AND IS NOT BOUND BY AN ACT OF THE PERSON WHO BROUGHT THE ACTION. THE PERSON HAS THE RIGHT TO CONTINUE AS A PARTY TO THE ACTION, SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (3)(b) OF THIS SECTION.

(b) (I) THE STATE MAY, AT ANY TIME, DISMISS THE ACTION, IN WHOLE OR IN PART, NOTWITHSTANDING THE OBJECTIONS OF THE PERSON WHO BROUGHT THE ACTION IF THE PERSON HAS BEEN NOTIFIED BY THE STATE OF THE FILING OF THE MOTION AND THE COURT HAS PROVIDED THE PERSON WITH AN OPPORTUNITY FOR A HEARING ON THE MOTION.

(II) THE STATE MAY SETTLE THE ACTION WITH THE DEFENDANT NOTWITHSTANDING THE OBJECTIONS OF THE PERSON WHO BROUGHT THE ACTION 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 COURT MAY HOLD THE HEARING IN CAMERA.

(III) UPON A SHOWING BY THE STATE THAT UNRESTRICTED PARTICIPATION DURING THE COURSE OF THE LITIGATION BY THE PERSON WHO BROUGHT THE ACTION 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,

INCLUDING BUT NOT LIMITED TO:

(A) LIMITING THE NUMBER OF WITNESSES THE PERSON MAY CALL;

(B) LIMITING THE LENGTH OF THE TESTIMONY OF THE WITNESSES CALLED BY THE PERSON;

(C) LIMITING THE PERSON'S CROSS-EXAMINATION OF WITNESSES;
AND

(D) OTHERWISE LIMITING THE PARTICIPATION BY THE PERSON IN THE LITIGATION.

(IV) UPON A SHOWING BY THE DEFENDANT THAT UNRESTRICTED PARTICIPATION DURING THE COURSE OF THE LITIGATION BY THE PERSON WHO BROUGHT THE ACTION WOULD BE FOR PURPOSES OF HARASSMENT OR WOULD CAUSE THE DEFENDANT UNDUE BURDEN OR UNNECESSARY EXPENSE, THE COURT MAY LIMIT THE PARTICIPATION BY THE PERSON IN THE LITIGATION AS DESCRIBED IN SUBSECTION (4)(b)(III) OF THIS SECTION.

(c) THE FACT THAT THE STATE HAS ELECTED NOT TO PROCEED WITH AN ACTION IS NOT A BASIS FOR A MOTION TO DISMISS, MOTION FOR DETERMINATION OF A QUESTION OF LAW, OR MOTION FOR SUMMARY JUDGMENT, NOR IS IT A BASIS TO DENY THE COURT JURISDICTION OVER THE ACTION, BUT IF THE ATTORNEY GENERAL SUBMITS TO THE COURT THE ATTORNEY GENERAL'S REASONS FOR NOT PROCEEDING WITH THE ACTION, THE COURT MAY CONSIDER THE REASONS WHEN DECIDING A MOTION OR WHETHER THE COURT HAS JURISDICTION. IF THE STATE SO REQUESTS, IT MUST BE SERVED WITH COPIES OF ALL PLEADINGS FILED IN THE ACTION AND, AT THE STATE'S EXPENSE, BE SUPPLIED WITH COPIES OF ALL DEPOSITION TRANSCRIPTS. WHEN THE PERSON PROCEEDS WITH THE ACTION, THE COURT, WITHOUT LIMITING THE STATUS AND RIGHTS OF THE PERSON, MAY NEVERTHELESS PERMIT THE STATE TO INTERVENE AT A LATER DATE UPON A SHOWING OF GOOD CAUSE.

(d) REGARDLESS OF WHETHER THE STATE PROCEEDS WITH THE ACTION, UPON A SHOWING BY THE STATE OR POLITICAL SUBDIVISION THAT CERTAIN ACTIONS OF DISCOVERY BY THE PERSON WHO BROUGHT THE ACTION 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 THE DISCOVERY FOR A PERIOD OF NOT MORE THAN SIXTY-THREE DAYS. THE SHOWING BY THE STATE MUST BE CONDUCTED IN CAMERA. THE COURT MAY EXTEND THE SIXTY-THREE-DAY PERIOD UPON A FURTHER SHOWING THAT THE STATE HAS PURSUED THE CRIMINAL OR CIVIL INVESTIGATION OR PROCEEDINGS WITH REASONABLE DILIGENCE AND THAT ANY PROPOSED DISCOVERY IN THE CIVIL ACTION WILL INTERFERE WITH THE ONGOING CRIMINAL OR CIVIL INVESTIGATION OR PROCEEDINGS.

(e) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, THE STATE MAY ELECT TO PURSUE ITS CLAIM THROUGH ANY ALTERNATE REMEDY AVAILABLE TO THE STATE. IF AN ALTERNATE REMEDY IS PURSUED IN ANOTHER PROCEEDING, THE PERSON WHO BROUGHT THE ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION HAS THE SAME RIGHTS IN THAT PROCEEDING AS THE PERSON WOULD HAVE HAD IF THE ACTION HAD CONTINUED PURSUANT TO THIS SECTION. ANY FINDING OF FACT OR CONCLUSION OF LAW MADE IN THE OTHER PROCEEDING THAT HAS BECOME FINAL IS BINDING ON ALL PARTIES TO AN ACTION BROUGHT PURSUANT TO THIS SECTION. FOR PURPOSES OF THIS SUBSECTION (4)(e), 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.

(5) **Award to a person who brings an action.** (a) (I) SUBJECT TO SUBSECTION (5)(a)(II) OF THIS SECTION, IF THE STATE PROCEEDS WITH AN ACTION BROUGHT BY A PERSON PURSUANT TO SUBSECTION (3) OF THIS SECTION, THE COURT SHALL AWARD THE PERSON AT LEAST FIFTEEN PERCENT BUT NOT MORE THAN TWENTY-FIVE PERCENT OF THE PROCEEDS RECEIVED FROM THE ACTION OR SETTLEMENT OF THE CLAIM, DEPENDING UPON THE EXTENT TO WHICH THE PERSON SUBSTANTIALLY CONTRIBUTED TO THE INVESTIGATION AND PROSECUTION OF THE ACTION.

(II) IF THE COURT FINDS THE ACTION TO BE BASED PRIMARILY ON DISCLOSURES OF SPECIFIC INFORMATION, OTHER THAN INFORMATION PROVIDED BY THE PERSON WHO BROUGHT THE ACTION, RELATING TO ALLEGATIONS OR TRANSACTIONS IN A CRIMINAL, CIVIL, OR ADMINISTRATIVE HEARING; IN A LEGISLATIVE, ADMINISTRATIVE, OR FORMAL AUDIT REPORT, HEARING, OR INVESTIGATION; OR FROM THE NEWS MEDIA, THE COURT MAY AWARD TO THE PERSON SUCH SUMS AS IT CONSIDERS APPROPRIATE BUT IN NO CASE MORE THAN TEN PERCENT OF THE PROCEEDS. IN MAKING ITS

DETERMINATION, THE COURT SHALL CONSIDER THE SIGNIFICANCE OF THE INFORMATION PROVIDED BY THE PERSON AND THE ROLE OF THE PERSON IN ADVANCING THE CASE TO LITIGATION.

(III) ANY PAYMENT TO A PERSON MADE PURSUANT TO THIS SUBSECTION (5)(a) MUST BE MADE FROM THE PROCEEDS. IN ADDITION TO AN AWARD MADE PURSUANT TO SUBSECTION (5)(a)(I) OR (5)(a)(II) OF THIS SECTION, THE COURT SHALL AWARD THE PERSON AN AMOUNT FOR REASONABLE EXPENSES THAT THE COURT FINDS TO HAVE BEEN NECESSARILY INCURRED, PLUS REASONABLE ATTORNEY FEES AND COSTS. THE COURT SHALL AWARD ALL OF THE EXPENSES, FEES, AND COSTS AGAINST THE DEFENDANT.

(IV) IF THE PERSON WHO BROUGHT THE ACTION IS A GOVERNMENT EMPLOYEE WHO, IN THE COURSE OF THE PERSON'S WORK FOR THE STATE GAINS KNOWLEDGE OF ANY INFORMATION THAT FORMS, IN WHOLE OR IN PART, THE BASIS OF THE PERSON'S CLAIM, THE COURT SHALL AWARD TO THE STATE THAT EMPLOYS THE PERSON THE AMOUNT THAT WOULD OTHERWISE BE AWARDED TO THE PERSON PURSUANT TO THIS SUBSECTION (5).

(b) IF THE STATE DOES NOT INTERVENE IN AND PROCEED WITH AN ACTION PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION, THE PERSON PREVAILING IN THE ACTION OR SETTLING THE CLAIM MUST RECEIVE AN AMOUNT THAT THE COURT DECIDES IS REASONABLE FOR COLLECTING THE CIVIL PENALTY AND DAMAGES. THE AMOUNT MUST BE AT LEAST TWENTY-FIVE PERCENT BUT NOT MORE THAN THIRTY PERCENT OF THE PROCEEDS RECEIVED FROM THE ACTION OR SETTLEMENT AND MUST BE PAID OUT OF THE PROCEEDS. THE COURT SHALL AWARD THE PERSON AN AMOUNT FOR REASONABLE EXPENSES THAT THE COURT FINDS TO HAVE BEEN NECESSARILY INCURRED, PLUS REASONABLE ATTORNEY FEES AND COSTS. THE COURT SHALL AWARD ALL OF THE EXPENSES, FEES, AND COSTS AGAINST THE DEFENDANT.

(c) REGARDLESS OF WHETHER THE STATE INTERVENES IN AND PROCEEDS WITH AN ACTION PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION, IF THE COURT FINDS THAT THE ACTION WAS BROUGHT BY A PERSON WHO PLANNED AND INITIATED THE VIOLATION OF SECTION 24-31-1203 UPON WHICH THE ACTION WAS BROUGHT, THE COURT MAY, TO THE EXTENT THE COURT CONSIDERS APPROPRIATE, REDUCE THE SHARE OF THE PROCEEDS OF THE ACTION THAT THE PERSON WOULD OTHERWISE RECEIVE PURSUANT TO

THIS SUBSECTION (5), TAKING INTO ACCOUNT THE ROLE OF THE PERSON IN ADVANCING THE CASE TO LITIGATION AND ANY RELEVANT CIRCUMSTANCES PERTAINING TO THE VIOLATION. IF THE PERSON IS CONVICTED OF CRIMINAL CONDUCT ARISING FROM HIS OR HER ROLE IN THE VIOLATION OF SECTION 24-31-1203, THE COURT SHALL DISMISS THE PERSON FROM THE CIVIL ACTION AND THE PERSON MUST NOT RECEIVE ANY SHARE OF THE PROCEEDS OF THE ACTION. SUCH DISMISSAL DOES NOT PREJUDICE THE RIGHT OF THE STATE TO CONTINUE THE ACTION.

(d) IF THE STATE DOES NOT INTERVENE IN AND PROCEED WITH AN ACTION PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION AND THE PERSON WHO BROUGHT THE ACTION PURSUES THE ACTION, THE COURT MAY AWARD TO THE DEFENDANT REASONABLE ATTORNEY FEES AND EXPENSES IF THE DEFENDANT PREVAILS IN THE ACTION AND THE COURT FINDS THAT THE CLAIM OF THE PERSON WAS CLEARLY FRIVOLOUS, CLEARLY VEXATIOUS, OR BROUGHT PRIMARILY FOR PURPOSES OF HARASSMENT.

(6) **Certain actions barred.** (a) A COURT DOES NOT HAVE JURISDICTION OVER AN ACTION BROUGHT PURSUANT TO THIS SECTION:

(I) AGAINST A SERVING MEMBER OF THE GENERAL ASSEMBLY, A MEMBER OF THE STATE JUDICIARY, AN EXECUTIVE DIRECTOR OF A STATE AGENCY, OR AN ELECTED OFFICIAL IN THE EXECUTIVE BRANCH OF THE STATE OF COLORADO ACTING IN THE MEMBER'S, EXECUTIVE DIRECTOR'S, OR OFFICIAL'S OFFICIAL CAPACITY;

(II) AGAINST A SERVING ELECTED OFFICIAL OF A POLITICAL SUBDIVISION, A MEMBER OF A POLITICAL SUBDIVISION'S JUDICIARY, OR AN APPOINTED OFFICIAL OF A POLITICAL SUBDIVISION ACTING IN THE MEMBER'S OR OFFICIAL'S OFFICIAL CAPACITY; OR

(III) IF THE ACTION IS BROUGHT BY A PERSON PURSUANT TO SUBSECTION (3) OF THIS SECTION AND IS BASED ON EVIDENCE OR INFORMATION KNOWN TO THE STATE WHEN THE ACTION WAS BROUGHT.

(b) A PERSON MAY NOT BRING AN ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION THAT IS BASED UPON ALLEGATIONS OR TRANSACTIONS THAT ARE THE SUBJECT OF A CIVIL SUIT IN A COURT OF THIS STATE OR AN ADMINISTRATIVE CIVIL MONEY PENALTY PROCEEDING IN WHICH THE STATE IS ALREADY A PARTY.

(c) (I) A COURT SHALL DISMISS AN ACTION OR CLAIM BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION IF THE ACTION PURSUED BY THE PERSON IS BASED UPON SUBSTANTIALLY THE SAME ALLEGATIONS OR TRANSACTIONS PUBLICLY DISCLOSED IN A CRIMINAL, CIVIL, OR ADMINISTRATIVE HEARING; IN A LEGISLATIVE, ADMINISTRATIVE, OR FORMAL AUDIT REPORT, HEARING, OR INVESTIGATION; OR FROM THE NEWS MEDIA, UNLESS:

(A) THE STATE INTERVENES AND PROSECUTES THE ACTION PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION;

(B) THE STATE OPPOSES DISMISSAL; OR

(C) THE PERSON WHO BROUGHT THE ACTION IS AN ORIGINAL SOURCE OF THE INFORMATION THAT IS THE BASIS FOR THE ACTION.

(II) AS USED IN THIS SUBSECTION (6)(c), "ORIGINAL SOURCE" MEANS AN INDIVIDUAL WHO:

(A) PRIOR TO PUBLIC DISCLOSURE PURSUANT TO SUBSECTION (6)(c)(I) OF THIS SECTION, HAS VOLUNTARILY DISCLOSED TO THE STATE THE INFORMATION ON WHICH THE ALLEGATIONS OR TRANSACTIONS IN A CLAIM ARE BASED; OR

(B) HAS KNOWLEDGE THAT IS INDEPENDENT OF AND MATERIALLY ADDS TO THE PUBLICLY DISCLOSED ALLEGATIONS OR TRANSACTIONS AND HAS VOLUNTARILY PROVIDED THE INFORMATION TO THE STATE BEFORE FILING AN ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(7) **State not liable for certain expenses.** THE STATE IS NOT LIABLE FOR EXPENSES THAT A PERSON INCURS IN BRINGING AN ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(8) **Private action for retaliation.** (a) AS USED IN THIS SUBSECTION (8), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "CONFIDENTIAL INFORMATION" INCLUDES DOCUMENTS; E-MAILS AND OTHER ELECTRONIC DATA; MEDICAL RECORDS; FINANCIAL RECORDS; TRADE SECRET INFORMATION; INTELLECTUAL PROPERTY; OR INFORMATION THAT IS SUBJECT TO AN EMPLOYMENT AGREEMENT, CONFIDENTIALITY

AGREEMENT, OR NONDISCLOSURE AGREEMENT OR FOR WHICH THE PERSON WHO BROUGHT THE ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION HAS A FIDUCIARY OBLIGATION TO MAINTAIN AS CONFIDENTIAL. CONFIDENTIAL INFORMATION DOES NOT INCLUDE INFORMATION THAT IS PROTECTED BY THE DEFENDANT'S ATTORNEY-CLIENT PRIVILEGE UNLESS THE PRIVILEGE WAS WAIVED, INADVERTENTLY OR OTHERWISE, BY THE PERSON WHO HOLDS THE PRIVILEGE; AN EXCEPTION TO THE PRIVILEGE APPLIES; OR DISCLOSURE OF THE INFORMATION IS PERMITTED BY AN ATTORNEY PURSUANT TO 17 CFR 205.3 (d)(2), THE APPLICABLE COLORADO RULES OF PROFESSIONAL CONDUCT, OR OTHERWISE.

(II) "LAWFUL ACTS" INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(A) CONDUCTING OR ASSISTING WITH AN INVESTIGATION FOR, INITIATION OF, TESTIMONY FOR, OR ASSISTANCE IN AN ACTION FILED OR TO BE FILED PURSUANT TO THIS SECTION, OR CONDUCTING OR ASSISTING WITH AN INVESTIGATION WHEN THERE IS A REASONABLE BELIEF OF A POTENTIAL VIOLATION OF THIS SECTION;

(B) MEETING WITH POTENTIAL OR RETAINED COUNSEL OR AGENTS OR REPRESENTATIVES OF THE STATE ABOUT THE MATTER THAT IS THE SUBJECT OF AN ACTION FILED OR TO BE FILED PURSUANT TO THIS SECTION;

(C) PROVIDING THE INDIVIDUAL'S COUNSEL OR AGENTS OR REPRESENTATIVES OF THE STATE WITH CONFIDENTIAL INFORMATION; OR

(D) FILING AN ACTION PURSUANT TO THIS SECTION.

(b) AN EMPLOYEE, CONTRACTOR, OR AGENT IS ENTITLED TO ALL RELIEF NECESSARY TO MAKE THAT INDIVIDUAL WHOLE IF THE INDIVIDUAL IS DISCHARGED, DEMOTED, SUSPENDED, THREATENED, HARASSED, INTIMIDATED, SUED, DEFAMED, BLACKLISTED, OR IN ANY OTHER MANNER RETALIATED AGAINST OR DISCRIMINATED AGAINST IN THE TERMS AND CONDITIONS OF THE INDIVIDUAL'S EMPLOYMENT, CONTRACT, BUSINESS, OR PROFESSION BY THE DEFENDANT OR BY ANY OTHER PERSON BECAUSE OF LAWFUL ACTS DONE BY THE INDIVIDUAL OR ASSOCIATED OTHERS IN FURTHERANCE OF AN ACTION BROUGHT PURSUANT TO THIS SECTION OR IN FURTHERANCE OF AN EFFORT TO STOP ANY VIOLATION, OR WHAT THE INDIVIDUAL REASONABLY BELIEVES TO BE A VIOLATION, OF SECTION

24-31-1203.

(c) (I) IF THE DISCLOSURE OF CONFIDENTIAL INFORMATION IS IN FURTHERANCE OF AN ACTION BROUGHT PURSUANT TO THIS SECTION OR IN FURTHERANCE OF AN EFFORT TO STOP ANY VIOLATION, OR WHAT THE INDIVIDUAL REASONABLY BELIEVES TO BE A VIOLATION, OF SECTION 24-31-1203, AN INDIVIDUAL HAS A PRIVILEGE TO DISCLOSE THE CONFIDENTIAL INFORMATION TO:

(A) THE INDIVIDUAL'S COUNSEL;

(B) A PERSON WITH WHOM THE INDIVIDUAL HAS A STATUTORY OR COMMON LAW PRIVILEGE; OR

(C) AN AGENT OR AUTHORIZED REPRESENTATIVE OF THE STATE.

(II) THE INDIVIDUAL'S DISCLOSURE OF CONFIDENTIAL INFORMATION TO THE INDIVIDUAL'S COUNSEL OR TO AN AGENT OR AUTHORIZED REPRESENTATIVE OF THE STATE DOES NOT CONSTITUTE A WAIVER BY A DEFENDANT OF ANY RIGHT OR PRIVILEGE THAT THE DEFENDANT MAY BE ENTITLED TO INVOKE.

(d) (I) AN INDIVIDUAL SEEKING RELIEF PURSUANT TO THIS SUBSECTION (8) MAY SEEK RELIEF BY:

(A) FILING A MOTION IN THE ACTION BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION; OR

(B) BRINGING A SEPARATE ACTION IN AN APPROPRIATE COURT OF THE STATE FOR THE RELIEF PROVIDED PURSUANT TO THIS SUBSECTION (8).

(II) AN INDIVIDUAL WHO SEEKS RELIEF PURSUANT TO THIS SUBSECTION (8) IS ENTITLED TO ALL RELIEF NECESSARY TO MAKE THE INDIVIDUAL WHOLE. THE RELIEF MUST INCLUDE, BUT IS NOT LIMITED TO:

(A) IF THE INDIVIDUAL IS AN EMPLOYEE, REINSTATEMENT WITH THE SAME SENIORITY STATUS THE INDIVIDUAL WOULD HAVE HAD BUT FOR THE DISCRIMINATION, TWICE THE AMOUNT OF BACK PAY, AND INTEREST ON THE BACK PAY;

(B) IF THE INDIVIDUAL IS A CONTRACTOR, SUBCONTRACTOR, OR INDEPENDENT CONTRACTOR, REINSTATEMENT OF A CONTRACT OR SUBCONTRACT THAT WAS CANCELED, NONRENEWED, OR MODIFIED BECAUSE OF RETALIATION, WITH ALL COMPENSATION OR CONTRACTUAL CONSIDERATION THAT THE INDIVIDUAL WOULD HAVE RECEIVED HAD THE CONTRACT OR SUBCONTRACT NOT BEEN CANCELED, NONRENEWED, OR MODIFIED; AND

(C) COMPENSATION FOR ANY SPECIAL DAMAGES SUSTAINED AS A RESULT OF THE DISCRIMINATION OR RETALIATION, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEY FEES.

(e) (I) THE COURT SHALL AWARD THE INDIVIDUAL NOT LESS THAN THE DAMAGES DESCRIBED IN SUBSECTION (8)(d)(II) OF THIS SECTION IF A DEFENDANT, EMPLOYER, OR OTHER PERSON RETALIATES AGAINST AN INDIVIDUAL BY BRINGING ANOTHER ACTION AGAINST THE INDIVIDUAL FOR:

(A) ACTS LATER DETERMINED TO BE LAWFUL ACTS;

(B) DISCLOSURE OF CONFIDENTIAL INFORMATION TO COUNSEL OR AN AGENT OR REPRESENTATIVE OF THE STATE PURSUANT TO THIS SUBSECTION (8);

(C) VIOLATING AN EMPLOYMENT CONTRACT, CONFIDENTIALITY AGREEMENT, NONDISCLOSURE AGREEMENT, OR OTHER AGREEMENT; OR

(D) COMMITTING ANY OTHER TORT OR BREACH OF DUTY AND THE COURT HEARING THE ACTION DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT, EMPLOYER, OR OTHER PERSON BROUGHT THE LAWSUIT AGAINST THE INDIVIDUAL FOR THE PURPOSE OF RETALIATING AGAINST THE INDIVIDUAL.

(II) IN ADDITION TO ANY OTHER REMEDY OR SHARE OF THE PROCEEDS OF THE ACTION TO WHICH THE INDIVIDUAL IS ENTITLED PURSUANT TO THIS SUBSECTION (8) AND REGARDLESS OF WHETHER THE INDIVIDUAL IS DETERMINED TO BE ENTITLED TO SHARE IN THE PROCEEDS OF THE ACTION OR CLAIM FILED PURSUANT TO SUBSECTION (3) OF THIS SECTION, IN ADDITION TO ANY OTHER CONSEQUENTIAL DAMAGES PERMITTED BY LAW, THE DAMAGES FOR A VIOLATION OF THIS SUBSECTION (8)(e) MUST BE NOT LESS THAN:

(A) TWICE THE INDIVIDUAL'S ACTUAL ATTORNEY FEES AND COSTS IF THE DEFENDANT, EMPLOYER, OR OTHER PERSON BROUGHT THE LAWSUIT AGAINST THE INDIVIDUAL IN A COURT IN THE STATE OF COLORADO; OR

(B) THREE TIMES THE INDIVIDUAL'S ACTUAL ATTORNEY FEES AND COSTS IF THE DEFENDANT, EMPLOYER, OR OTHER PERSON BROUGHT THE LAWSUIT IN A JURISDICTION OUTSIDE OF COLORADO.

(f) (I) THE COURT HEARING THE ACTION BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION HAS JURISDICTION TO HEAR A PRIVATE ACTION OR MOTION FOR RETALIATION BROUGHT PURSUANT TO THIS SUBSECTION (8).

(II) UPON MOTION BY THE INDIVIDUAL, THE VENUE OF AN ACTION FILED IN ANOTHER COURT OF THE STATE OF COLORADO AGAINST THE INDIVIDUAL BY THE DEFENDANT, THE EMPLOYER OF THE PERSON WHO BROUGHT THE ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION, OR OTHER PERSON ARISING OUT OF THE SUBJECT MATTER OF THE ACTION BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION MUST BE CHANGED TO THE COURT HEARING THE ACTION BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(9) Discovery in other actions. (a) IF A PERSON WHO BRINGS AN ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION IS A PARTY TO OR WITNESS IN AN ACTION OTHER THAN AN ACTION BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION, REFERRED TO IN THIS SUBSECTION (9) AS AN "OTHER ACTION", AND A PARTY IN THE OTHER ACTION SEEKS DISCOVERY FROM THE PERSON OF INFORMATION ABOUT OTHER LAWSUITS, WHICH DISCOVERY WOULD REQUIRE THE PERSON TO DISCLOSE INFORMATION ABOUT AN ACTION FILED PURSUANT TO SUBSECTION (3) OF THIS SECTION WHILE THAT ACTION IS STILL UNDER SEAL, THE PERSON SHALL:

(I) WITHIN A REASONABLE TIME, NOTIFY THE STATE INVESTIGATING THE ACTION BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION OF THE PENDING DISCOVERY REQUEST; AND

(II) RESPOND TO THE DISCOVERY REQUEST BY STATING ONLY THAT THE MATTER IS CONFIDENTIAL, WITHOUT FURTHER ELABORATION, AND SHALL MAINTAIN THAT RESPONSE UNTIL THE STATE ELECTS TO PROCEED OR NOT PROCEED WITH THE ACTION BROUGHT PURSUANT TO SUBSECTION (3) OF

THIS SECTION OR UNTIL THE COURT LIFTS THE SEAL.

(b) IF NECESSARY, IN ANY OTHER ACTION, A PERSON WHO BROUGHT THE ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION OR THE ATTORNEY GENERAL MAY FILE AN EX PARTE MOTION, IN CAMERA AND UNDER SEAL, SEEKING A PROTECTIVE ORDER OR AN EXTENSION OF TIME FOR THE PERSON TO RESPOND TO A DISCOVERY REQUEST. IF A PARTY IN THE OTHER ACTION MOVES TO COMPEL AN ANSWER TO THE DISCOVERY, THE PERSON WHO BROUGHT THE ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL FILE, EX PARTE AND IN CAMERA, A RESPONSE TO THE MOTION TO COMPEL, IN WHICH THE ATTORNEY GENERAL MAY JOIN. THE RESPONSE TO THE MOTION TO COMPEL MUST REMAIN UNDER SEAL UNTIL SUCH TIME AS THE STATE ELECTS TO PROCEED OR NOT PROCEED WITH THE ACTION OR UNTIL SUCH TIME AS THE COURT LIFTS THE SEAL.

(c) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (9) TO THE CONTRARY, INFORMATION ABOUT AN ACTION FILED PURSUANT TO SUBSECTION (3) OF THIS SECTION THAT IS PROTECTED BY THE DEFENDANT'S ATTORNEY-CLIENT PRIVILEGE IS NOT DISCOVERABLE IN ANY OTHER ACTION UNLESS THE PRIVILEGE WAS WAIVED, INADVERTENTLY OR OTHERWISE, BY THE PERSON WHO HOLDS THE PRIVILEGE; AN EXCEPTION TO THE PRIVILEGE APPLIES; OR DISCLOSURE OF THE INFORMATION IS PERMITTED BY AN ATTORNEY PURSUANT TO 17 CFR 205.3 (d)(2), THE APPLICABLE COLORADO RULES OF PROFESSIONAL CONDUCT, OR OTHERWISE.

24-31-1205. False claims action procedures - limitation on action - standard of proof. (1) A CIVIL ACTION PURSUANT TO SECTION 24-31-1204 MAY NOT BE BROUGHT AFTER THE LATER OF:

(a) MORE THAN SIX YEARS AFTER THE DATE ON WHICH THE VIOLATION OF SECTION 24-31-1203 IS COMMITTED OR THE DATE ON WHICH THE LAST IN A SERIES OF SUCH ACTS OR PRACTICES OCCURRED, WHICHEVER IS LATER; OR

(b) MORE THAN THREE YEARS AFTER THE DATE ON WHICH FACTS MATERIAL TO THE RIGHT OF ACTION ARE KNOWN OR REASONABLY SHOULD HAVE BEEN KNOWN BY THE OFFICIAL OF THE STATE CHARGED WITH RESPONSIBILITY TO ACT IN THE CIRCUMSTANCES, BUT IN NO EVENT MORE THAN TEN YEARS AFTER THE DATE ON WHICH THE VIOLATION OF SECTION 24-31-1203 WAS COMMITTED.

(2) (a) IF THE STATE ELECTS TO INTERVENE AND PROCEED WITH AN ACTION BROUGHT PURSUANT TO SECTION 24-31-1204, THE STATE MAY FILE ITS OWN COMPLAINT OR AMEND THE ORIGINAL COMPLAINT TO:

(I) CLARIFY AND ADD DETAIL, AND ADD ADDITIONAL DEFENDANTS, TO THE CLAIMS IN WHICH THE STATE IS INTERVENING; AND

(II) ADD ANY ADDITIONAL CLAIMS AND DEFENDANTS WITH RESPECT TO WHICH THE STATE CONTENDS IT IS ENTITLED TO RELIEF.

(b) FOR STATUTE OF LIMITATIONS PURPOSES, ANY PLEADINGS BY THE STATE RELATE BACK TO THE FILING DATE OF THE ORIGINAL COMPLAINT FILED BY A PERSON PURSUANT TO SECTION 24-31-1204 (3), TO THE EXTENT THAT THE STATE'S CLAIM ARISES OUT OF THE CONDUCT, TRANSACTIONS, OR OCCURRENCES SET FORTH, OR ATTEMPTED TO BE SET FORTH, IN THE ORIGINAL COMPLAINT.

(3) IN AN ACTION BROUGHT PURSUANT TO SECTION 24-31-1204, THE STATE OR PERSON WHO BROUGHT THE ACTION PURSUANT TO SECTION 24-31-1204 (3) MUST PROVE ALL ESSENTIAL ELEMENTS OF THE CAUSE OF ACTION, INCLUDING DAMAGES, BY A PREPONDERANCE OF THE EVIDENCE.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COLORADO RULES OF CRIMINAL PROCEDURE, OR THE COLORADO RULES OF EVIDENCE, A FINAL JUDGMENT RENDERED IN FAVOR OF THE STATE IN A CRIMINAL PROCEEDING CHARGING FRAUD OR FALSE STATEMENTS, 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 THAT IS BROUGHT PURSUANT TO SECTION 24-31-1204.

24-31-1206. Jurisdiction. AN ACTION DESCRIBED IN THIS PART 12 MAY BE BROUGHT IN ANY JUDICIAL DISTRICT IN WHICH THE DEFENDANT OR, IN THE CASE OF MULTIPLE DEFENDANTS, ANY ONE DEFENDANT CAN BE FOUND, RESIDES, OR TRANSACTS BUSINESS, OR IN WHICH AN ACT PROSCRIBED BY SECTION 24-31-1203 OCCURRED. A PERSON BRINGING AN ACTION PURSUANT TO THIS PART 12 SHALL FILE THE COMPLAINT IN A DISTRICT COURT OR A FEDERAL COURT WITH JURISDICTION OVER THE ACTION AND SHALL NOT FILE THE COMPLAINT IN ANY OTHER COURT. THE APPROPRIATE DISTRICT

COURT SHALL ISSUE A SUMMONS AS REQUIRED BY THE COLORADO RULES OF CIVIL PROCEDURE AND SERVE THE SUMMONS AT ANY PLACE.

24-31-1207. False claims civil investigation demands. (1) WHEN THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT ANY PERSON, WHETHER IN THIS STATE OR ELSEWHERE, HAS ENGAGED IN OR IS ENGAGING IN ANY VIOLATION OF SECTION 24-31-1203, THE ATTORNEY GENERAL MAY:

(a) REQUEST THE PERSON FILE A STATEMENT OR REPORT IN WRITING UNDER OATH OR OTHERWISE, ON FORMS PRESCRIBED BY THE ATTORNEY GENERAL, AS TO ALL FACTS AND CIRCUMSTANCES CONCERNING THE ALLEGED VIOLATIONS BY THE PERSON AND ANY OTHER DATA AND INFORMATION THE ATTORNEY GENERAL DEEMS NECESSARY; EXCEPT THAT THE PERSON IS NOT REQUIRED TO DISCLOSE ANY INFORMATION THAT IS PROTECTED BY THE PERSON'S ATTORNEY-CLIENT PRIVILEGE UNLESS THE PRIVILEGE WAS WAIVED, INADVERTENTLY OR OTHERWISE, BY THE PERSON WHO HOLDS THE PRIVILEGE; AN EXCEPTION TO THE PRIVILEGE APPLIES; OR DISCLOSURE OF THE INFORMATION IS PERMITTED BY AN ATTORNEY PURSUANT TO 17 CFR 205.3 (d)(2), THE APPLICABLE COLORADO RULES OF PROFESSIONAL CONDUCT, OR OTHERWISE.

(b) EXAMINE UNDER OATH ANY PERSON IN CONNECTION WITH THE ALLEGED VIOLATIONS;

(c) EXAMINE ANY PROPERTY OR SAMPLE THEREOF, OR ANY NONPRIVILEGED RECORD, BOOK, DOCUMENT, ACCOUNT, OR PAPER THE ATTORNEY GENERAL DEEMS NECESSARY;

(d) MAKE TRUE COPIES, AT THE EXPENSE OF THE ATTORNEY GENERAL, OF ANY NONPRIVILEGED RECORD, BOOK, DOCUMENT, ACCOUNT, OR PAPER EXAMINED PURSUANT TO SUBSECTION (1)(c) OF THIS SECTION, WHICH COPIES MAY BE OFFERED INTO EVIDENCE IN LIEU OF THE ORIGINALS THEREOF IN AN ACTION BROUGHT PURSUANT TO THIS PART 12; AND

(e) PURSUANT TO ANY ORDER OF ANY DISTRICT COURT, IMPOUND ANY SAMPLE OF PROPERTY THAT IS MATERIAL TO ANY ALLEGED VIOLATION OF THIS PART 12 AND RETAIN THE SAME IN THE ATTORNEY GENERAL'S POSSESSION UNTIL COMPLETION OF ALL PROCEEDINGS UNDERTAKEN PURSUANT TO THIS PART 12. A DISTRICT COURT SHALL NOT ISSUE AN ORDER

DESCRIBED IN THIS SUBSECTION (1)(e) WITHOUT GIVING FULL OPPORTUNITY TO THE ACCUSED TO BE HEARD AND UNLESS THE ATTORNEY GENERAL HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE ORDER WILL NOT IMPAIR THE BUSINESS ACTIVITIES OF THE PERSON TO WHOM THE ORDER IS DIRECTED.

(2) WHEN THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON, WHETHER IN THIS STATE OR ELSEWHERE, HAS ENGAGED IN OR IS ENGAGING IN A VIOLATION OF SECTION 24-31-1203, THE ATTORNEY GENERAL MAY ISSUE SUBPOENAS TO REQUIRE THE ATTENDANCE OF WITNESSES OR THE PRODUCTION OF DOCUMENTS, ADMINISTER OATHS, CONDUCT HEARINGS IN AID OF ANY INVESTIGATION OR INQUIRY, AND PRESCRIBE SUCH FORMS AS MAY BE NECESSARY TO ADMINISTER THIS PART 12.

(3) THE ATTORNEY GENERAL MAY ISSUE SUBPOENAS TO ANY PUBLIC OR PRIVATE CORPORATION OR PARTNERSHIP OR ASSOCIATION OR GOVERNMENTAL ENTITY TO PRODUCE WITNESSES TO APPEAR AND GIVE ORAL TESTIMONY AT INVESTIGATIVE HEARINGS. THE SUBPOENAS MAY DESIGNATE WITH REASONABLE PARTICULARITY THE MATTERS ON WHICH EXAMINATION IS REQUESTED. IN RESPONSE TO THE SUBPOENA, THE ENTITY SHALL DESIGNATE ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR DESIGNATE OTHER PERSONS, TO TESTIFY ON ITS BEHALF.

(4) A NOTICE OR SUBPOENA MAY BE SERVED IN THE MANNER PRESCRIBED BY LAW OR AS PROVIDED IN RULE 4 OF THE COLORADO RULES OF CIVIL PROCEDURE.

(5) (a) IF THE RECORDS OF A PERSON WHO HAS BEEN ISSUED A SUBPOENA ARE LOCATED OUTSIDE THIS STATE, THE PERSON SHALL EITHER:

(I) MAKE THEM AVAILABLE TO THE ATTORNEY GENERAL EITHER ELECTRONICALLY OR AT A CONVENIENT LOCATION WITHIN THIS STATE; OR

(II) PAY THE REASONABLE AND NECESSARY EXPENSES FOR THE ATTORNEY GENERAL, OR THE ATTORNEY GENERAL'S DESIGNEE, TO EXAMINE THE RECORDS AT THE PLACE WHERE THEY ARE MAINTAINED.

(b) THE ATTORNEY GENERAL MAY DESIGNATE REPRESENTATIVES, INCLUDING COMPARABLE OFFICIALS OF THE STATE IN WHICH THE RECORDS

ARE LOCATED, TO INSPECT THE RECORDS ON BEHALF OF THE ATTORNEY GENERAL.

(6) IF ANY PERSON FAILS TO COOPERATE WITH ANY INVESTIGATION PURSUANT TO THIS SECTION OR FAILS TO OBEY ANY SUBPOENA ISSUED PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL MAY APPLY TO THE APPROPRIATE DISTRICT COURT FOR AN APPROPRIATE ORDER TO EFFECTUATE THE PURPOSES OF THIS PART 12. AT THE REQUEST OF THE ATTORNEY GENERAL, THE APPLICATION MAY BE FILED IN CAMERA AND KEPT CONFIDENTIAL TO MAINTAIN THE CONFIDENTIALITY OF THE ATTORNEY GENERAL'S INVESTIGATION. THE APPLICATION MUST STATE THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE ORDER APPLIED FOR IS NECESSARY TO INVESTIGATE A VIOLATION OF THIS PART 12. IF THE COURT IS SATISFIED THAT REASONABLE GROUNDS EXIST, THE COURT IN ITS ORDER MAY:

(a) GRANT APPROPRIATE INJUNCTIVE RELIEF;

(b) REQUIRE ATTENDANCE OF OR THE PRODUCTION OF DOCUMENTS BY THE PERSON, OR BOTH;

(c) GRANT OTHER OR FURTHER RELIEF AS MAY BE NECESSARY TO OBTAIN COMPLIANCE BY THE PERSON.

24-31-1208. Rule-making. THE ATTORNEY GENERAL MAY PROMULGATE RULES NECESSARY TO IMPLEMENT THIS PART 12.

24-31-1209. Use of recoveries - false claims recovery cash fund - creation. (1) THE STATE TREASURER SHALL TRANSFER ALL PROCEEDS RETAINED BY THE STATE FROM A FALSE CLAIMS ACTION BROUGHT PURSUANT TO THIS PART 12 TO THE FALSE CLAIMS RECOVERY CASH FUND, WHICH IS HEREBY CREATED.

(2) ANY MONEY IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM INVESTMENT AND DEPOSIT OF MONEY IN THE FUND SHALL BE CREDITED TO THE FUND.

(3) (a) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, THE DEPARTMENT MAY EXPEND MONEY FROM THE FUND FOR

NECESSARY ACTUAL COSTS OF CARRYING OUT ITS DUTIES PURSUANT TO THIS PART 12.

(b) (I) WHEN PROCEEDS RETAINED BY THE STATE FROM A FALSE CLAIMS ACTION ARE DEPOSITED INTO THE FUND, THE ATTORNEY GENERAL SHALL DETERMINE THE AMOUNT OF THE PROCEEDS THAT SHOULD REMAIN IN THE FUND FOR USE BY THE DEPARTMENT FOR THE COSTS OF CARRYING OUT ITS DUTIES PURSUANT TO THIS PART 12 AND THE AMOUNT OF ANY PROCEEDS DEPOSITED INTO THE FUND THAT ARE ATTRIBUTABLE TO A POLITICAL SUBDIVISION.

(II) IF THE AMOUNT OF THE PROCEEDS IS EQUAL TO OR EXCEEDS THE AMOUNT OF THE FALSE CLAIM PLUS THE DEPARTMENT'S COSTS, THE ATTORNEY GENERAL SHALL DIRECT THE STATE TREASURER TO TRANSFER TO THE ORIGINAL FUND FROM WHICH THE FALSE CLAIM WAS PAID AN AMOUNT EQUAL TO THE FALSE CLAIM. IF ALL OR PART OF THE PROCEEDS ARE ATTRIBUTABLE TO A POLITICAL SUBDIVISION, THE ATTORNEY GENERAL SHALL DIRECT THE TREASURER TO PAY TO THE POLITICAL SUBDIVISION, AS DESCRIBED IN SUBSECTION (3)(c) OF THIS SECTION, AN AMOUNT EQUAL TO THE FALSE CLAIM.

(III) IF THE AMOUNT OF THE PROCEEDS IS LESS THAN THE AMOUNT OF THE FALSE CLAIM PLUS THE DEPARTMENT'S COSTS, THE ATTORNEY GENERAL SHALL DIRECT THE STATE TREASURER TO TRANSFER TO THE ORIGINAL FUND FROM WHICH THE FALSE CLAIM WAS PAID A PRO-RATED AMOUNT BASED ON THE ACTUAL RECOVERY. IF ALL OR PART OF THE PROCEEDS ARE ATTRIBUTABLE TO A POLITICAL SUBDIVISION, THE ATTORNEY GENERAL SHALL DIRECT THE TREASURER TO PAY TO THE POLITICAL SUBDIVISION, AS DESCRIBED IN SUBSECTION (3)(c) OF THIS SECTION, A PRO-RATED AMOUNT BASED ON THE ACTUAL RECOVERY.

(IV) FOR THE PURPOSES OF A FALSE CLAIMS ACTION INVOLVING A VIOLATION OF SECTION 24-31-1203(1)(g), THE RELEVANT FUND IS THE UNEMPLOYMENT COMPENSATION FUND ESTABLISHED IN SECTION 8-77-101.

(c) NO LATER THAN SEVEN DAYS AFTER THE ATTORNEY GENERAL DIRECTS THE STATE TREASURER TO MAKE A PAYMENT TO A POLITICAL SUBDIVISION PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION, THE STATE TREASURER SHALL ISSUE A WARRANT TO BE PAID UPON DEMAND FROM THE FUND TO THE POLITICAL SUBDIVISION IN THE AMOUNT SPECIFIED BY THE

ATTORNEY GENERAL.

(4) ANY UNEXPENDED AND UNENCUMBERED MONEY REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO ANOTHER FUND.

24-31-1210. No limitations on common law authority - medicaid fraud control. NOTHING IN THIS PART 12 AFFECTS, LIMITS, OR SUPPLANTS THE COMMON LAW AUTHORITY OF THE ATTORNEY GENERAL OR THE DEPARTMENT TO INVESTIGATE AND PROSECUTE MEDICAID FRAUD PURSUANT TO PART 8 OF THIS ARTICLE 31.

24-31-1211. False claims act report. (1) ON OR BEFORE JANUARY 15, 2024, AND ON OR BEFORE EACH JANUARY 15 THEREAFTER, THE ATTORNEY GENERAL SHALL SUBMIT A WRITTEN REPORT TO THE HOUSE OF REPRESENTATIVES BUSINESS AFFAIRS AND LABOR COMMITTEE, THE HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE, THE SENATE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE, AND THE SENATE JUDICIARY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, CONCERNING CLAIMS BROUGHT PURSUANT TO THIS PART 12 DURING THE PREVIOUS FISCAL YEAR. THE REPORT MUST INCLUDE, BUT IS NOT LIMITED TO:

(a) THE NUMBER OF ACTIONS BROUGHT BY THE ATTORNEY GENERAL AND THE DISPOSITION OF THE ACTIONS;

(b) THE AMOUNT OF PROCEEDS RECOVERED BY THE STATE THROUGH SETTLEMENT OR JUDGMENT IN AN ACTION BROUGHT PURSUANT TO THIS PART 12, INCLUDING:

(I) THE CASE NUMBER AND PARTIES FOR EACH ACTION IN WHICH PROCEEDS WERE RECOVERED;

(II) THE AMOUNT OF PROCEEDS RECOVERED IN EACH CASE, CATEGORIZED BY THE AMOUNT RECOVERED AS DAMAGES, PENALTIES, AND LITIGATION COSTS; AND

(III) IF APPLICABLE, THE PERCENTAGE OF THE PROCEEDS RECOVERED AND THE TOTAL AMOUNT AWARDED TO A PRIVATE PERSON WHO BROUGHT THE ACTION.

(c) THE NUMBER OF ACTIONS BROUGHT BY A PERSON OTHER THAN THE ATTORNEY GENERAL IN WHICH THE ATTORNEY GENERAL DID NOT INTERVENE, WHETHER THE ACTIONS WERE CONTINUED BY THE OTHER PERSON, AND THE DISPOSITION OF THE ACTIONS;

(d) THE AMOUNT OF PROCEEDS, INCLUDING ANY LITIGATION COSTS AND ATTORNEY FEES, RECOVERED THROUGH SETTLEMENT OR JUDGMENT IN ACTIONS BROUGHT BY A PERSON OTHER THAN THE ATTORNEY GENERAL; AND

(e) THE AMOUNT EXPENDED BY THE STATE FOR INVESTIGATION AND LITIGATION OF FALSE CLAIMS PURSUANT TO THIS PART 12 AND ALL OTHER COSTS RELATED TO THIS PART 12.

(2) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE REPORTING REQUIREMENT DESCRIBED IN THIS SECTION CONTINUES INDEFINITELY.

SECTION 3. In Colorado Revised Statutes, 2-3-109, **add** (3) as follows:

2-3-109. Emergency reports. (3) IF THE STATE AUDITOR IN THE COURSE OF AN AUDIT FINDS EVIDENCE OF APPARENTLY FALSE CLAIMS RELATED TO PUBLIC FUNDS OR PROPERTY, THE STATE AUDITOR SHALL IMMEDIATELY REPORT SUCH TRANSACTIONS TO THE COMMITTEE AND SHALL FILE A WRITTEN COPY OF THE REPORT WITH THE ATTORNEY GENERAL.

SECTION 4. In Colorado Revised Statutes, 2-3-110.5, **amend** (3)(a)(II) as follows:

2-3-110.5. Fraud hotline - investigations - confidentiality - access to records - definitions. (3) (a) (II) The state auditor shall forward all hotline calls alleging fraud by a medicaid recipient to the department of health care policy and financing, ~~and~~ all calls alleging fraud by a medicaid provider or contractor to the medicaid fraud control unit of the office of the attorney general, AND ALL CALLS ALLEGING FRAUD IN VIOLATION OF THE "COLORADO FALSE CLAIMS ACT", PART 12 OF ARTICLE 31 OF TITLE 24, TO THE ATTORNEY GENERAL UNLESS THE ALLEGATION RELATES TO A STATE EMPLOYEE IN THE PERFORMANCE OF THE EMPLOYEE'S DUTIES.

SECTION 5. Appropriation. For the 2022-23 state fiscal year, \$13,568 is appropriated to the legislative department for use by the office

of the state auditor. This appropriation is from the general fund. The office may use this appropriation to implement this act.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

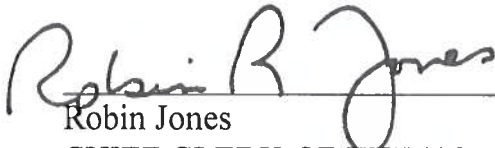
November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.




Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Steve Fenberg
PRESIDENT OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED June 7th at 3:44 p.m.
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

The False Claims Act: A Primer

The False Claims Act (FCA), 31 U.S.C. §§ 3729 - 3733 was enacted in 1863 by a Congress concerned that suppliers of goods to the Union Army during the Civil War were defrauding the Army. The FCA provided that any person who knowingly submitted false claims to the government was liable for double the government's damages plus a penalty of \$2,000 for each false claim. Since then, the FCA has been amended several times. In 1986, there were significant changes to the FCA, including increasing damages from double damages to treble damages and raising the penalties from \$2,000 to a range of \$5,000 to \$10,000. The FCA has been amended three times since 1986. Over the life of the statute it has been interpreted on hundreds of occasions by federal courts (which sometimes issue conflicting interpretations of the statute). The purpose of this primer is not to explain how the FCA evolved over the decades or to discuss judicial interpretations of its provisions. Rather, in this primer we simply explain the most significant elements of the FCA to give one new to the statute an introductory understanding of the FCA and how it works. The complete text of the False Claims Act is provided at the end of this primer.

Liability

The statute begins, in § 3729(a), by explaining the conduct that creates FCA liability. In very general terms, §§ 3729(a)(1)(A) and (B) set forth FCA liability for any person who knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. Section 3729(a)(1)(G) is known as the reverse false claims section; it provides liability where one acts improperly – not to get money from the government, but to avoid having to pay money to the government. Section 3729(a)(1)(C) creates liability for those who conspire to violate the FCA. Sections 3729(a)(1)(D), (E), and (F) are rarely invoked.

Damages and penalties

After listing the seven types of conduct that result in FCA liability, the statute provides that one who is liable must pay a civil penalty of between \$5,000 and \$10,000 for each false claim (those amounts are adjusted from time to time; the current amounts are \$5,500 to \$11,000) and treble the amount of the government's damages. Where a person who has violated the FCA reports the violation to the government under certain conditions, the FCA provides that the person shall be liable for not less than double damages.

The knowledge requirement

A person does not violate the False Claims Act by submitting a false claim to the government; to violate the FCA a person must have submitted, or caused the submission of, the false claim (or made a false statement or record) with knowledge of the falsity. In § 3729(b)(1), knowledge of false information is defined as being (1) actual knowledge, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information.

Definition of a claim

The FCA also defines what a claim is and says that it is a demand for money or property made directly to the Federal Government or to a contractor, grantee, or other recipient if the money is to spent on the government's behalf and if the Federal Government provides any of the money demanded or if the Federal Government will reimburse the contractor or grantee.

Tax claims exclusion

In § 3729(d), the FCA states that the statute does not apply to tax claims under the Internal Revenue Code.

The *qui tam* provisions

The FCA allows private persons to file suit for violations of the FCA on behalf of the government. A suit filed by an individual on behalf of the government is known as a "*qui tam*" action, and the person bringing the action is referred to as a "relator."

a. Filing a *qui tam* complaint

The *qui tam* provisions begin at § 3730(b) of the FCA; § 3730(b)(1) states that a person may file a *qui tam* action. Section 3730(b)(2) provides that a *qui tam* complaint must be filed with the court under seal. The complaint and a written disclosure of all the relevant information known to the relator must be served on the U.S. Attorney for the judicial district where the *qui tam* was filed and on the Attorney General of the United States.

b. Government investigation

The *qui tam* complaint is initially sealed for 60 days. The government is required to investigate the allegations in the complaint; if the government cannot complete its investigation in 60 days, it can seek extensions of the seal period while it continues its investigation. The government must then notify the court that it is proceeding with the action (generally referred to as "intervening" in the action) or declining to take over the action, in which case the relator can proceed with the action.

c. Rights of the parties in a *qui tam* action

If the government intervenes in the *qui tam* action it has the primary responsibility for prosecuting the action. § 3730(c)(1). It can dismiss the action, even over the objection of the relator, so long as the court gives the relator an opportunity for a hearing (§ 3730(c)(2)(A)) and it can settle the action even if the relator objects so long as the relator is given a hearing and the court determines that the settlement is fair. § 3730(c)(2)(B). If a relator seeks to settle or dismiss a *qui tam* action, it must obtain the consent of the government. § 3730(b)(1). When the case is proceeding, the government (§ 3730(c)(2)(C)) and the defendant (§ 3730(c)(2)(D)) can ask the court to limit the relator's participation in the litigation.

d. Award to the relator

If the government intervenes in the *qui tam* action, the relator is entitled to receive between 15 and 25 percent of the amount recovered by the government through the *qui tam* action. If the government declines to intervene in the action, the relator's share is increased to 25 to 30 percent. Under certain circumstances, the relator's share may be reduced to no more than ten percent. If the relator planned and initiated the fraud, the court may reduce the award without limitation. The relator's share is paid to the relator by the government out of the payment received by the government from the defendant. If a *qui tam* action is successful, the relator also is entitled to legal fees and other expenses of the action by the defendant. All of these provisions are in § 3730(d) of the FCA. The FCA also provides that if the government chooses to obtain a recovery from the defendant in certain types of proceedings other than the relator's FCA suit, this is known as an alternate remedy and the relator is entitled to the same share of the recovery as if the recovery was obtained through the relator's FCA suit. §3730(c)(5).

e. Statutory bars to *qui tam* actions

The FCA provides several circumstances in which a relator cannot file or pursue a *qui tam* action:

1. The relator was convicted of criminal conduct arising from his or her role in the FCA violation. § 3730(d)(3).

2. Another *qui tam* concerning the same conduct already has been filed (this is known as the "first to file bar"). §3730(b)(5).

3. The government already is a party to a civil or administrative money proceeding concerning the same conduct. §3730(e)(3).

4. The *qui tam* action is based upon information that has been disclosed to the public through any of several means: criminal, civil, or administrative hearings in which the government is a party, government hearings, audits, reports, or investigations, or through the news media (this is known as the "public disclosure bar.") §3730(e)(4)(A). There is an exception to the public disclosure bar where the relator was the original source of the information.

We repeat that this primer does not discuss every section of the False Claims Act and is not intended to provide legal advice or take formal positions. It is intended only to provide a general introduction to the False Claims Act to those new to the area.

Below is the complete text of the False Claims Act:

§ 3729. False claims

(a) LIABILITY FOR CERTAIN ACTS.—

- (1) IN GENERAL.—Subject to paragraph (2), any person who—
 - (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
 - (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent;
 - (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
 - (D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
 - (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
 - (G) 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 Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

- (2) REDUCED DAMAGES.—If the court finds that—
- (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
 - (B) such person fully cooperated with any Government investigation of such violation; and
 - (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

- (3) COSTS OF CIVIL ACTIONS.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

- (b) DEFINITIONS.—For purposes of this section—

- (1) the terms “knowing” and “knowingly”—
 - (A) mean that a person, with respect to information—
 - (i) has actual knowledge of the information;
 - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
 - (iii) acts in reckless disregard of the truth or falsity of the information;; and
 - (B) require no proof of specific intent to defraud;
- (2) the term “claim”—

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

- (i) is presented to an officer, employee, or agent of the United States; or
- (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government —
 - (I) provides or has provided any portion of the money or property requested or demanded; or
 - (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "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; and

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

(c) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

§ 3730. Civil actions for false claims

- (a) **RESPONSIBILITIES OF THE ATTORNEY GENERAL.**—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.
- (b) **ACTIONS BY PRIVATE PERSONS.**—
- (1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.
 - (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.
 - (3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). 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 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.
 - (4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—
 - (A) proceed with the action, in which case the action shall be conducted by the Government; 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, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—

- (1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).
- (2)
 - (A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
 - (B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action 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, such hearing may be held in camera.
 - (C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government'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—
 - (i) limiting the number of witnesses the person may call;
 - (ii) limiting the length of the testimony of such witnesses;
 - (iii) limiting the person's cross-examination of witnesses; or
 - (iv) otherwise limiting the participation by the person in the litigation.

- (D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.
- (3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government 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 Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.
- (4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government'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 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government 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 investigation or proceedings.
- (5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, 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.

(d) AWARD TO QUI TAM PLAINTIFF.—

- (1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which 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.
- (2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which 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.
- (3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 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 person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the

violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

- (4) If the Government does not proceed with the action and the person bringing the action 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 person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) CERTAIN ACTIONS BARRED.—

- (1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.
- (2) (A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).
- (3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.
- (4) (A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed--
 - (i) in a Federal criminal, civil, or administrative hearing; in which the Government or its agent is a party;
 - (ii) in a congressional, Government Accountability Office, or other Federal 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.

(B) For purposes of this paragraph, “original source” means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

- (f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.
- (g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.
- (h) RELIEF FROM RETALIATORY ACTIONS.—
- (1) IN GENERAL.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent 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 other efforts to stop 1 or more violations of this subchapter.
 - (2) RELIEF.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 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 action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

§ 3731. False claims procedure

(a) A subpoena [subpoena] requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought—

(1) more than 6 years after the date on which the violation of section 3729 is committed, or

(2) more than 3 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 United States 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.

(c) If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government 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 Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, 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 which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

§ 3732. False claims jurisdiction

(a) **ACTIONS UNDER SECTION 3730.**—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) **CLAIMS UNDER STATE LAW.**—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local

government if the action arises from the same transaction or occurrence as an action brought under section 3730.

(c) SERVICE ON STATE OF LOCAL AUTHORITIES.—With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government 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 that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

§ 3733. Civil investigative demands

(a) IN GENERAL.—

- (1) ISSUANCE AND SERVICE.—Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—
 - (A) to produce such documentary material for inspection and copying,
 - (B) to answer in writing written interrogatories with respect to such documentary material or information,
 - (C) to give oral testimony concerning such documentary material or information, or
 - (D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney

General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.

(2) CONTENTS AND DEADLINES.—

- (A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.
- (B) If such demand is for the production of documentary material, the demand shall—
 - (i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;
 - (ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and
 - (iii) identify the false claims law investigator to whom such material shall be made available.
- (C) If such demand is for answers to written interrogatories, the demand shall—
 - (i) set forth with specificity the written interrogatories to be answered;
 - (ii) prescribe dates at which time answers to written interrogatories shall be submitted; and
 - (iii) identify the false claims law investigator to whom such answers shall be submitted.
- (D) If such demand is for the giving of oral testimony, the demand shall—
 - (i) prescribe a date, time, and place at which oral testimony shall be commenced;
 - (ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom

the transcript of such examination shall be submitted;

- (iii) specify that such attendance and testimony are necessary to the conduct of the investigation;
 - (iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and
 - (v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.
- (E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.
- (F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.
- (G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) PROTECTED MATERIAL OR INFORMATION.—

- (1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

- (A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or
 - (B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.
 - (2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.
- (c) SERVICE; JURISDICTION.—
- (1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.
 - (2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.
- (d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—
- (1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—
 - (A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general

agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

- (B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or
- (C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

- (A) delivering an executed copy of such demand or petition to the person; or
- (B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) DOCUMENTARY MATERIAL.—

(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

- (A) in the case of a natural person, the person to whom the demand is directed, or
- (B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such 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 to the false claims law investigator identified in the demand.

- (2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

- (1) in the case of a natural person, the person to whom the demand is directed, or
- (2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) ORAL EXAMINATIONS.—

- (1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer

and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

- (2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.
- (3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.
- (4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.
- (5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true

record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

- (6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.
- (7) CONDUCT OF ORAL TESTIMONY.—
 - (A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.
 - (B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18 [18 USCS §§ 6001 et seq.].
- (8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

- (1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.
- (2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—
 - (A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).
 - (B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.
 - (C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any

other agency of the United States for use by such agency in furtherance of its statutory responsibilities.

- (D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—
 - (i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and
 - (ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.
- (3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.
- (4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—
 - (A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or
 - (B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all

documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

- (5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—
- (A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and
 - (B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) JUDICIAL PROCEEDINGS.—

- (1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.
- (2) PETITION TO MODIFY OR SET ASIDE DEMAND.—

(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such 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.

(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—

(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside

those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

- (i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or
- (ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

- (4) **PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—**At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.
- (5) **JURISDICTION.—**Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.
- (6) **APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—**The Federal Rules of Civil Procedure shall apply to any petition under

this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

(l) DEFINITIONS.—For purposes of this section—

- (1) the term “false claims law” means—
 - (A) this section and sections 3729 through 3732; and
 - (B) any Act of Congress enacted after the date of the enactment of this section [enacted Oct. 27, 1986] which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;
- (2) the term “false claims law investigation” means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;
- (3) the term “false claims law investigator” means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;
- (4) the term “person” means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;
- (5) the term “documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;
- (6) the term “custodian” means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);
- (7) the term “product of discovery” includes—

- (A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;
 - (B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and
 - (C) any index or other manner of access to any item listed in subparagraph (A); and
- (8) the term “official use” means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice 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.