

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 1135
Committee Substitute Favorable 6/3/09
PROPOSED COMMITTEE SUBSTITUTE H1135-PCS80477-RG-40

Short Title: Qui Tam/Liability for False Claims.

(Public)

Sponsors:

Referred to:

April 7, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO DETER AND PUNISH PERSONS WHO MAKE FALSE OR FRAUDULENT
3 CLAIMS FOR PAYMENT BY THE STATE AND TO PROVIDE REMEDIES IN THE
4 FORM OF TREBLE DAMAGES AND CIVIL PENALTIES WHEN MONEY IS
5 OBTAINED FROM THE STATE BY REASON OF SUCH CLAIMS.

6 The General Assembly of North Carolina enacts:

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

9 "Article 52.

10 "False Claims Act.

11 **"§ 1-605. Short title; purpose.**

12 (a) This Article shall be known and may be cited as the False Claims Act.

13 (b) The purpose of this Article is to deter persons from knowingly causing or assisting
14 in causing the State to pay claims that are false or fraudulent, and to provide remedies in the
15 form of treble damages and civil penalties when money is obtained from the State by reason of
16 a false or fraudulent claim.

17 **"§ 1-606. Definitions.**

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

20 (1) "Attorney General." – The Attorney General of North Carolina, or any
21 deputy, assistant, or associate attorney general.

22 (2) "Claim." – Any request or demand, whether under a contract or otherwise,
23 for money or property and whether or not the State has title to the money or
24 property that (i) is presented to an officer, employee or agent of the State or
25 (ii) is made to a contractor, grantee or other recipient, if the money or
26 property is to be spent or used on the State's behalf or to advance a State
27 program or interest, and if the State government:

28 a. Provides or has provided any portion of the money or
29 property that is requested or demanded; or

30 b. Will reimburse such contractor, grantee, or other recipient for
31 any portion of the money or property which is requested or
32 demanded.



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1 A claim does not include requests or demands for money or property that the
2 State has paid to an individual as compensation for State employment or as
3 an income subsidy with no restrictions on that individual's use of the money
4 or property.

5 (3) "Judiciary." – A justice or judge of the General Court of Justice or clerk of
6 court.

7 (4) "Knowing" and "knowingly." – Whenever a person, with respect to
8 information, does any of the following:

9 a. Has actual knowledge of the information.

10 b. Acts in deliberate ignorance of the truth or falsity of the information.

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

12 Proof of specific intent to defraud is not required.

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

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

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

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

24 **§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and**
25 **civil penalties; exceptions.**

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

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

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

36 (3) Conspires to commit a violation of subdivisions (1), (2), (4), (5), (6), or (7).

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

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

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

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

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

- 6 **(1)** The person committing the violation furnished officials of the State who are
7 responsible for investigating false claims violations with all information
8 known to that person about the violation within 30 days after the date on
9 which the person first obtained the information.
10 **(2)** The person fully cooperated with any investigation of the violation by the
11 State.
12 **(3)** At the time the person furnished the State with information about the
13 violation, no criminal prosecution, civil action, or administrative action has
14 commenced with respect to the violation, and the person did not have actual
15 knowledge of the existence of an investigation into the violation.

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

18 **§ 1-608. Civil actions for false claims.**

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

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

- 25 **(1)** The action shall be brought in the name of the State, and the person bringing
26 the action shall be referred to as the qui tam plaintiff. Once filed, the action
27 may be voluntarily dismissed by the person bringing the action only if the
28 court and Attorney General have given written consent to the dismissal.
29 **(2)** A copy of the complaint and written disclosure of substantially all material
30 evidence and information the person possesses shall be served on the
31 Attorney General pursuant to applicable rules of the North Carolina Rules of
32 Civil Procedure. The complaint shall be filed in camera, shall remain under
33 seal for at least 120 days, and shall not be served on the defendant until the
34 court so orders. The State may elect to intervene and proceed with the action
35 within 120 days after it receives both the complaint and the material
36 evidence and information.
37 **(3)** The State may, for good cause shown, move the court for extensions of the
38 time during which the complaint remains under seal under subdivision (2) of
39 this subsection. Any such motions may be supported by affidavits or other
40 submissions in camera. The defendant shall not be required to respond to
41 any complaint filed under this section until 30 days after the complaint is
42 unsealed and served upon the defendant pursuant to the North Carolina
43 Rules of Civil Procedure.
44 **(4)** Before the expiration of the 120-day period or any extensions obtained under
45 subdivision (3) of this subsection, the State shall:
46 **a.** Proceed with the action, in which case the action shall be conducted
47 by the State; or
48 **b.** Notify the court that it declines to take over the action, in which case
49 the person bringing the action shall have the right to conduct the
50 action.

1 (5) When a person brings an action under this subsection, the federal False
2 Claims Act (31 U.S.C. § 3729 et seq.), or any similar provision of law in
3 any other state, no person other than the State may intervene or bring a
4 related action based on the facts underlying the pending action; provided
5 however that nothing in this subdivision prohibits a person from amending a
6 pending action in another jurisdiction to allege a claim under this subsection.

7 (c) The Attorney General may retain a portion of the damages recovered for a State
8 agency out of the proceeds of the action or settlement under this Article as reimbursement for
9 costs incurred by the Attorney General in investigating and bringing a civil action under this
10 Article, including reasonable attorneys fees and investigative costs. Retained funds shall be
11 used by the Attorney General to carry out the provisions of this Article.

12 **"§ 1-609. Rights of the parties to qui tam actions.**

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

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

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

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

29 (1) Limiting the number of witnesses the qui tam plaintiff may call;

30 (2) Limiting the length of the testimony of those witnesses;

31 (3) Limiting the qui tam plaintiff's cross-examination of witnesses; or

32 (4) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

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

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

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

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

11 **"§ 1-610. Award to qui tam plaintiff.**

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

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

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

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

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

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

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

"§ 1-611. Certain actions barred.

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

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

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

(1) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office.

(2) Information or records to which the person had access as a result of his or her public employment or office.

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

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

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

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

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

"§ 1-614. Civil investigative demand.

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

(b) The civil investigative demand shall:

- 1 (1) Be served upon the person in the manner required for service of process in
2 civil actions and may be served by the Attorney General or investigator
3 assigned to the North Carolina Department of Justice;
- 4 (2) Describe the nature of the conduct constituting the violation under
5 investigation;
- 6 (3) Describe the class or classes of any documents or objects to be produced
7 with sufficient definiteness to permit them to be fairly identified;
- 8 (4) Prescribe a reasonable date and time at which the person shall produce any
9 document or object;
- 10 (5) Advise the person that objections to or reasons for not complying with the
11 demand may be filed with the Attorney General on or before that date and
12 time;
- 13 (6) Designate a person to whom any document or object shall be produced; and
- 14 (7) Contain a copy of subsections (b) and (c) of this section.
- 15 (c) The date within which any document or object must be produced shall be more than
16 30 days after the civil investigative demand has been served upon the person.
- 17 (d) A civil investigative demand may include an express demand for any product of
18 discovery. A product of discovery includes the original or duplicate of any deposition,
19 interrogatory, document, thing, examination, or admission, that is obtained by any method of
20 discovery in any judicial or administrative proceeding of an adversarial nature, and any digest,
21 compilation, and index of any product of discovery. Whenever a civil investigative demand is
22 an express demand for any product of discovery, a copy of the demand shall be served on the
23 person from whom the discovery was obtained and shall notify the person to whom the demand
24 is issued of the date on which the copy was served. A demand for a product of discovery shall
25 not be returned or returnable until 30 days after a copy of the demand has been served on the
26 person from whom the discovery was obtained. Any demand that is an express demand for any
27 product of discovery supersedes any inconsistent order, rule, or provision of law, other than this
28 section, preventing or restraining disclosure of the product of discovery to any person.
29 Disclosure of any product of discovery pursuant to any express demand does not constitute a
30 waiver of any right or privilege that the person making the disclosure may be entitled to invoke
31 to resist discovery of trial preparation materials.
- 32 (e) The production of documents and objects in response to a civil investigative demand
33 served under this section shall be made under a sworn certificate by the person to whom the
34 demand is directed, or in the case of a person other than a natural person, a person having
35 knowledge of the facts and circumstances relating to the production and authorized to act on
36 behalf of the person. The certificate shall state that all of the documentary material required by
37 the demand and in the possession, custody, or control of the person to whom the demand is
38 directed has been produced and made available. Upon written agreement between the person
39 served with the civil investigative demand and the Attorney General, the person may substitute
40 copies for originals of all or any part of the documents requested.
- 41 (f) If a person objects to or otherwise fails to comply with a civil investigative demand
42 served upon the person under subsection (a) of this section, the Attorney General may file an
43 action in superior court for an order to enforce the demand. Venue for the action to enforce the
44 demand shall be in either Wake County or the county in which the person resides, is found, or
45 transacts business. Notice of a hearing on the action to enforce the demand and a copy of the
46 action shall be served upon the person in the same manner as prescribed in the Rules of Civil
47 Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe
48 that there may have been a violation of G.S. 1-607, and that the information sought or
49 document or object demanded is relevant to the violation, the court shall order the person to
50 comply with the demand, subject to modifications the court may prescribe.

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

3 (1) Adjudge the person to be in contempt of court;

4 (2) Grant injunctive relief against the person to whom the demand is issued to
5 restrain the conduct which is the subject of the investigation; or

6 (3) Grant any other relief as the court may deem proper.

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

24 (i) Any documents and objects produced pursuant to this section may be used in
25 connection with any civil action brought under G.S. 1-608 and for any use that is consistent
26 with the law, and the regulations and policies of the Attorney General, including use in
27 connection with internal Attorney General memoranda and reports; communications between
28 the Attorney General and a Federal, State, or local governmental agency, or a contractor of a
29 Federal, State, or local governmental agency, undertaken in furtherance of an Attorney General
30 investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral
31 examinations; depositions; preparation for and response to civil discovery requests;
32 introduction into the record of a case or proceeding applications, motions, memoranda and
33 briefs submitted to a court or other tribunal; and communications with government
34 investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and
35 mediators, concerning an investigation, case or proceeding. Any documents and objects
36 obtained by the Attorney General under this section may be shared with any qui tam relator if
37 the Attorney General determines it is necessary as part of any false claims act investigation.
38 Before using or sharing documents and objects obtained by the Attorney General under this
39 section with any person, the Attorney General may require that the person agree to an order of
40 the court protecting the documents or objects, or any information contained in the documents or
41 objects, from disclosure by that person. In the case of documents or objects the court has
42 designated as confidential business, trade secrets or personal information, the Attorney General
43 shall require that the person with whom documents or objects are shared be prohibited from
44 disclosing the documents or objects, or any information contained in the documents or objects.

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

47 (k) Except as otherwise provided in this section, no documents or objects, or copies
48 thereof, while in the possession of the North Carolina Department of Justice, shall be available
49 for examination by any person other than an employee of the North Carolina Department of
50 Justice. The prohibition in the preceding sentence on the availability of documents or objects,
51 shall not apply if consent is given by the person who produced the documents or objects, or, in

1 the case of any product of discovery produced pursuant to an express demand, consent is given
2 by the person from whom the discovery was obtained, or prevent disclosure to any other federal
3 or State agency for use by that agency in furtherance of its statutory responsibilities upon
4 application made by the Attorney General to the superior court showing substantial need for the
5 use of the documents or objects by any agency in furtherance of its statutory responsibilities.

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

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

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

20 **"§ 1-615. False claims procedure.**

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

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

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

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

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

47 (f) Service on Federal, State, or local authorities. – With respect to the United States or
48 any State or local government that is named as a co-plaintiff in an action brought under
49 G.S. 1-608, a seal on the action ordered by the court under G.S. 1-608(b) shall not preclude the
50 State or the person bringing the action from serving the complaint, any other pleadings, or the
51 written disclosure of substantially all material evidence and information possessed by the

1 person bringing the action on the law enforcement authorities that are authorized under the law
2 of the United States, that State or local government to investigate and prosecute such actions on
3 behalf of such governments, except that such seal applies to the law enforcement authorities so
4 served to the same extent as the seal applies to other parties in the action.

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

7 **"§ 1-616. Remedies under other laws; severability of provisions; liberality of legislative**
8 **construction; adoption of legislative history.**

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

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

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

18 **"§ 1-617. Annual reporting.**

19 In reporting on the terms and disbursements set forth in any settlement agreement or final
20 order or judgment in a case filed under this Article as required by G.S. 114-2.5, the report shall
21 include the number of qui tam cases in the State, the number of qui tam cases pending in other
22 jurisdictions involving the State, and the percentage of the proceeds and the amount paid to any
23 qui tam plaintiff under G.S.1-610.

24 **"§ 1-618. Rules.**

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

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

29 **"§ 108A-63.1. Health care fraud subpoena to produce documents.**

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

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

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

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

46 (1) By hand delivery;

47 (2) By mailing the documents by certified mail;

48 (3) By making the documents reasonably available for transfer to an agent of the
49 Medicaid Investigations Unit at a place of business of the corporation or
50 governmental entity; or

1 (4) If agreed to by the Medicaid Investigations Unit and the corporation or
2 governmental entity, by any other means.

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

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

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

13 "**§ 108A-63. Medical assistance provider fraud.**

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

17 (1) In any application for payment under this Part, or for use in determining
18 entitlement to such payment; or

19 (2) With respect to the conditions or operation of a provider or facility in order
20 that such provider or facility may qualify or remain qualified to provide
21 assistance under this Part.

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

24 (1) His initial or continued entitlement to payment under this Part; or

25 (2) The amount of payment to which such person is or may be entitled.

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

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

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

33 (1) Defraud the Medical Assistance Program.

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

37 A violation of this subsection is a Class H felony. For the purposes of this subsection, "scheme"
38 includes a plan or course of action.

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

44 **SECTION 4.** Sections 1 of this act becomes effective January 1, 2010 and applies
45 to acts committed and actions filed on or after that date. A civil action may be filed after
46 January 1, 2010 under Section 1 of this act based on acts committed prior to that date if the
47 activity would also be covered under Part 7 of Article 2 of Chapter 108A of the General
48 Statutes and if the limitation period set forth in G.S. 1-615(a) and 108A-70.13 has not lapsed.
49 The remainder of this act becomes effective July 1, 2009.