

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1135
Committee Substitute Favorable 6/3/09

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 for money or property made to any
23 employee, officer, or agent of the State, or to any contractor, grantee, or
24 other recipient, whether under contract or not, if any portion of the money or
25 property requested or demanded issued from, or was provided by, the State,
26 or if the State will reimburse that contractor, grantee, or other recipient for
27 any portion of the money or property that is requested or demanded.

28 (3) "Knowing" and "knowingly." – Whenever a person, with respect to
29 information, does any of the following:

30 a. Has actual knowledge of the information.

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

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

33 Proof of specific intent to defraud is not required.

34 "**§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and**
35 **civil penalties; exceptions.**

36 (a) Liability. – Any person who commits any of the following acts shall be liable to the
37 State for three times the amount of damages that the State sustains because of the act of that



1 person. A person who commits any of the following acts shall also be liable to the State for the
2 costs of a civil action brought to recover any of those penalties or damages, interest on the
3 damages, and the costs of the Attorney General's investigation and legal services, and shall be
4 liable to the State for a civil penalty of not less than five thousand five hundred dollars (\$5,500)
5 and not more than eleven thousand dollars (\$11,000) for each violation:

- 6 (1) Knowingly presents or causes to be presented to any employee, officer, or
7 agent of the State, or to any contractor, grantee, or other recipient of State
8 funds, a false or fraudulent claim for payment or approval.
- 9 (2) Knowingly makes, uses, or causes to be made or used, a false record or
10 statement to get a false or fraudulent claim paid or approved.
- 11 (3) Conspires to defraud the State by getting a false claim allowed or paid, or
12 conspires to defraud the State by knowingly making, using, or causing to be
13 made or used, a false record or statement to conceal, avoid, or decrease an
14 obligation to pay or transmit money or property to the State.
- 15 (4) Has possession, custody, or control of public property or money used or to
16 be used by the State and knowingly delivers or causes to be delivered less
17 property than the amount for which the person receives a certificate or
18 receipt.
- 19 (5) Is authorized to make or deliver a document certifying receipt of property
20 used or to be used by the State and knowingly makes or delivers a receipt
21 that falsely represents the property used or to be used.
- 22 (6) Knowingly buys, or receives as a pledge of an obligation or debt, public
23 property from any person who lawfully may not sell or pledge the property.
- 24 (7) Knowingly makes, uses, or causes to be made or used, a false record or
25 statement to conceal, avoid, or decrease an obligation to pay or transmit
26 money or property to the State.

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

- 32 (1) The person committing the violation furnished officials of the State who are
33 responsible for investigating false claims violations with all information
34 known to that person about the violation within 30 days after the date on
35 which the person first obtained the information.
- 36 (2) The person fully cooperated with any investigation of the violation by the
37 State.
- 38 (3) At the time the person furnished the State with information about the
39 violation, no criminal prosecution, civil action, or administrative action has
40 commenced with respect to the violation, and the person did not have actual
41 knowledge of the existence of an investigation into the violation.

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

44 **"§ 1-608. Civil actions for false claims.**

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

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

- 1 (1) The action shall be brought in the name of the State, and the person bringing
2 the action shall be referred to as the qui tam plaintiff. Once filed, the action
3 may be voluntarily dismissed by the person bringing the action only if the
4 court and Attorney General have given written consent to the dismissal.
- 5 (2) A copy of the complaint and written disclosure of substantially all material
6 evidence and information the person possesses shall be served on the
7 Attorney General pursuant to applicable rules of the North Carolina Rules of
8 Civil Procedure. The complaint shall be filed in camera, shall remain under
9 seal for at least 120 days, and shall not be served on the defendant until the
10 court so orders. The State may elect to intervene and proceed with the action
11 within 120 days after it receives both the complaint and the material
12 evidence and information.
- 13 (3) The State may, for good cause shown, move the court for extensions of the
14 time during which the complaint remains under seal under subdivision (2) of
15 this subsection or may move for a partial lifting of the seal. Any such
16 motions may be supported by affidavits or other submissions in camera. The
17 defendant shall not be required to respond to any complaint filed under this
18 section until after the complaint is unsealed and served upon the defendant
19 pursuant to the North Carolina Rules of Civil Procedure.
- 20 (4) Before the expiration of the 120-day period or any extensions obtained under
21 subdivision (3) of this subsection, the State shall:
- 22 a. Proceed with the action, in which case the action shall be conducted
23 by the State; or
- 24 b. Notify the court that it declines to take over the action, in which case
25 the person bringing the action shall have the right to conduct the
26 action.
- 27 (5) When a person brings a valid action under this subsection, no person other
28 than the State may intervene or bring a related action based on the facts
29 underlying the pending action.

30 **§ 1-609. Rights of the parties to qui tam actions.**

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

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

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

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

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

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

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

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

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

29 **"§ 1-610. Award to qui tam plaintiff.**

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

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

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

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

49 (e) If the State does not proceed with an action under this Article, the qui tam plaintiff
50 shall receive an amount which the court decides is reasonable for collecting the civil penalty
51 and damages. The amount shall not be less than twenty-five percent (25%) and not more than

1 thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the
2 proceeds. The qui tam plaintiff shall also receive an amount for reasonable expenses that the
3 court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such
4 expenses, fees, and costs shall be awarded against the defendant.

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

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

19 **"§ 1-611. Certain actions barred.**

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

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

27 (c) No court shall have jurisdiction over an action brought under this Article based on
28 information discovered by a present or former employee of the State based on information
29 discovered during the course of the present or former employee's employment unless that
30 employee first, in good faith, exhausted existing internal procedures for reporting and seeking
31 recovery of the falsely claimed sums through official channels, and unless the State failed to act
32 on the information provided within a reasonable period of time.

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

42 **"§ 1-612. State not liable for certain expenses.**

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

45 **"§ 1-613. Private action for retaliation action.**

46 Any employee who is discharged, demoted, suspended, threatened, harassed, or in any
47 other manner discriminated against in the terms and conditions of employment by his or her
48 employer because of lawful acts done by the employee on behalf of the employee or others in
49 furtherance of an action under this Article, including investigation for, initiation of, testimony
50 for, or assistance in an action filed or to be filed under this Article, shall be entitled to all relief
51 necessary to make the employee whole. Such relief shall include reinstatement with the same

1 seniority status the employee would have had but for the discrimination, two times the amount
2 of back pay, interest on the back pay, and compensation for any special damages sustained as a
3 result of the discrimination, including litigation costs and reasonable attorneys' fees. An
4 employee may bring an action in superior court for the relief provided in this section.

5 **"§ 1-614. Civil investigative demand.**

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

15 (b) The civil investigative demand shall:

- 16 (1) Be served upon the person in the manner required for service of process in
17 civil actions and may be served by the Attorney General or investigator
18 assigned to the North Carolina Department of Justice;
- 19 (2) Describe the nature of the conduct constituting the violation under
20 investigation;
- 21 (3) Describe the class or classes of any documents or objects to be produced
22 with sufficient definiteness to permit them to be fairly identified;
- 23 (4) Contain a copy of any written interrogatories to be answered;
- 24 (5) Prescribe a reasonable date and time at which the person shall appear to
25 testify, answer any written interrogatories, or produce any document or
26 object;
- 27 (6) Advise the person that objections to or reasons for not complying with the
28 demand may be filed with the Attorney General on or before that date and
29 time;
- 30 (7) Specify a place for the taking of testimony;
- 31 (8) Designate a person to whom answers to written interrogatories shall be
32 submitted and to whom any document or object shall be produced; and
- 33 (9) Contain a copy of subsections (b) and (c) of this section.

34 (c) The date within which to answer any written interrogatories and within which any
35 document or object must be produced shall be more than 30 days after the civil investigative
36 demand has been served upon the person. The date within which a person must appear to testify
37 shall be more than 15 days after the demand has been served upon a person who resides
38 out-of-state or more than 10 days after the demand has been served upon a person who resides
39 in-State.

40 (d) A civil investigative demand may include an express demand for any product of
41 discovery. A product of discovery includes the original or duplicate of any deposition,
42 interrogatory, document, thing, examination, or admission, that is obtained by any method of
43 discovery in any judicial or administrative proceeding of an adversarial nature, and any digest,
44 compilation, and index of any product of discovery. Whenever a civil investigative demand is
45 an express demand for any product of discovery, a copy of the demand shall be served on the
46 person from whom the discovery was obtained and shall notify the person to whom the demand
47 is issued of the date on which the copy was served. A demand for a product of discovery shall
48 not be returned or returnable until 30 days after a copy of the demand has been served on the
49 person from whom the discovery was obtained. Any demand that is an express demand for any
50 product of discovery supersedes any inconsistent order, rule, or provision of law, other than this
51 section, preventing or restraining disclosure of the product of discovery to any person.

1 Disclosure of any product of discovery pursuant to any express demand does not constitute a
2 waiver of any right or privilege that the person making the disclosure may be entitled to invoke
3 to resist discovery of trial preparation materials.

4 (e) The person before whom the oral examination is to be taken shall put the person to
5 be examined under oath and shall personally, or by someone acting under the person's direction
6 and in the person's presence, record the testimony of the person to be examined. The Attorney
7 General may exclude from the place where the examination is held all persons except the
8 person giving the testimony, the attorney or other representative of the person giving the
9 testimony, the Attorney General conducting the examination, the investigator assisting the
10 Attorney General, the stenographer, and any other person agreed upon by the Attorney General
11 and the person giving the testimony. The oral examination may be taken in the county where
12 the person resides, is found, or transacts business, or in Wake County, or in any other place as
13 may be agreed upon by the Attorney General and person to be examined. When the testimony
14 is transcribed, the person shall have a reasonable opportunity to examine and read the
15 transcript, unless an examination and reading are waived by the person. Any changes in form or
16 substance which the person desires to make shall be entered and identified upon the transcript
17 by the person. The transcript shall then be signed by the person, unless the person in writing
18 waives the signing, is ill, cannot be found, or refuses to sign.

19 (f) Each interrogatory in a civil investigative demand served under this section shall be
20 answered separately and fully in writing under oath and shall be submitted under sworn
21 certificate by the person to whom the demand is directed, or in the case of a person other than a
22 natural person, a person having knowledge of the facts and circumstances relating to the
23 production and authorized to act on behalf of the person. If a person objects to any
24 interrogatory, the reasons for the objection shall be stated in the certificate instead of an
25 answer. The certificate shall state that all information required by the demand and in the
26 possession, custody, control, or knowledge of the person to whom the demand is directed has
27 been submitted. To the extent that any information is not furnished, the information shall be
28 identified and reasons set forth with particularity regarding the reasons why the information
29 was not furnished.

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

39 (h) If the person being examined refuses to answer any question on the grounds of the
40 privilege against self-incrimination, the testimony of the person may be compelled in
41 accordance with the provisions of Article 61 of Chapter 15A, Criminal Procedure Act.

42 (i) Any person appearing for oral testimony under a civil investigative demand issued
43 pursuant to this section shall be entitled to the same fees and allowances paid to witnesses in
44 the General Court of Justice.

45 (j) If a person objects to or otherwise fails to comply with a civil investigative demand
46 served upon the person under subsection (a) of this section, the Attorney General may file an
47 action in superior court for an order to enforce the demand. Venue for the action to enforce the
48 demand shall be in either Wake County or the county in which the person resides, is found, or
49 transacts business. Notice of a hearing on the action to enforce the demand and a copy of the
50 action shall be served upon the person in the same manner as prescribed in the Rules of Civil
51 Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe

1 that there may have been a violation of G.S. 1-607, and that the information sought or
2 document or object demanded is relevant to the violation, the court shall order the person to
3 comply with the demand, subject to modifications the court may prescribe.

4 (k) If the person fails to comply with an order entered pursuant to subsection (i) of this
5 section, the court may:

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

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

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

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

27 (m) Any transcript of oral testimony, answers to written interrogatories, and documents
28 and objects produced pursuant to this section may be used in connection with any civil action
29 brought under G.S. 1-608.

30 (n) The Attorney General shall designate an investigator assigned to the North Carolina
31 Department of Justice to serve as a custodian of documents and objects, answers to
32 interrogatories, and transcripts of oral testimony received under this section, and shall designate
33 any additional investigators as the Attorney General determines from time to time to be
34 necessary to serve as deputies or successors to the custodian. An investigator who receives any
35 documents or objects, answers to interrogatories, or transcripts of oral testimony under this
36 section may serve as the custodian or may transmit them to another investigator designated as
37 the custodian. The custodian shall take physical possession of any documents, objects, answers,
38 or transcripts and shall be responsible for the use made of them and for the return of documents
39 and objects.

40 (o) The custodian may cause the preparation of copies of documents, answers to
41 interrogatories, or transcripts of oral testimony as may be required for official use by any
42 investigator or other officer or employee of the North Carolina Department of Justice. The
43 custodian shall make documents, objects, answers, transcripts, and copies thereof available for
44 examination and use by the Attorney General and any investigator or other officer or employee
45 of the North Carolina Department of Justice in connection with the taking of oral testimony
46 under this section and any investigation or action brought pursuant to G.S. 1-608.

47 (p) Except as otherwise provided in this section, no documents, objects, answers to
48 interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the
49 custodian, shall be available for examination by any individual other than an employee of the
50 North Carolina Department of Justice authorized under this section. The prohibition in the
51 preceding sentence on the availability of documents, objects, answers, or transcripts shall not

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

8 (q) While in the possession of the custodian and under reasonable terms and conditions
9 as the Attorney General shall prescribe, documents, objects, and answers to interrogatories
10 shall be available for examination by the person who produced the documents, objects, or
11 answers, or by a representative of that person authorized by that person to examine the
12 documents, objects, and answers; and transcripts of oral testimony shall be available for
13 examination by the person who produced the testimony, or by a representative of that person
14 authorized by that person to examine the transcripts.

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

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

25 **"§ 1-615. False claims procedure.**

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

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

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

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

44 **"§ 1-616. Remedies under other laws; severability of provisions; liberality of legislative**
45 **construction; adoption of legislative history.**

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

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

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

6 **"§ 1-617. Rules.**

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

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

11 **"§ 108A-63.1. Health care fraud subpoena to produce documents.**

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

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

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

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

28 **(1)** By hand delivery;

29 **(2)** By mailing the documents by certified mail;

30 **(3)** By making the documents reasonably available for transfer to an agent of the
31 Medicaid Investigations Unit at a place of business of the corporation or
32 governmental entity; or

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

35 **(e)** A corporation or governmental entity may move to quash or modify a subpoena
36 issued under this section if it is oppressive or unreasonable. The motion must be made before
37 the time specified in the subpoena for production and may be made before a judge of the
38 superior court.

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

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

45 **"§ 108A-63. Medical assistance provider fraud.**

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

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

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

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

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

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

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

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

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

15 (1) Defraud the Medical Assistance Program.

16 (2) Obtain, by means of false or fraudulent pretenses, representations, or
17 promises, any of the money or property owned by, or under the custody or
18 control of, the Medical Assistance Program.

19 If the value of the benefits, items, or services is one hundred thousand dollars (\$100,000) or
20 more, a violation of this subsection is a Class C felony. If the value of the benefits, items, or
21 services is less than one hundred thousand dollars (\$100,000), a violation of this subsection is a
22 Class H felony.

23 (f) It shall be unlawful for any provider to knowingly and willfully obstruct, delay, or
24 mislead or attempt to obstruct, delay, or mislead an investigation of a violation of this section
25 by the Attorney General's office.

26 (g) It shall be unlawful for any provider to knowingly and willfully make or cause to be
27 made a false entry in, alter, destroy, or conceal a financial, medical, or other record related to
28 the provision of a benefit, item, or service under this Part with the intent to defraud."

29 **SECTION 4.** Section 1 of this act becomes effective January 1, 2010, and applies
30 to acts committed on or after that date, except that a civil action may be based on activity
31 occurring prior to the effective date if the activity would otherwise be covered under
32 G.S. 108A-70.12 and the limitations period set in G.S. 108A-70.13 has not lapsed. Section 3 of
33 this act becomes effective December 1, 2009. The remainder of this act becomes effective July
34 1, 2009.