

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1135

Short Title: Qui Tam/Liability for False Claims. (Public)

Sponsors: Representatives Ross, Hall, Glazier, Martin (Primary Sponsors); Faison, Farmer-Butterfield, Harrison, Holliman, and Lucas.

Referred to: State Government/State Personnel, if favorable, Judiciary I.

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, or any deputy, assistant, or
21 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.**



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

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

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

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

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

46 **"§ 1-608. Civil actions for false claims.**

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

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

3 **(1)** The action shall be brought in the name of the State, and the person bringing
4 the action shall be referred to as the qui tam plaintiff. Once filed, the action
5 may be voluntarily dismissed by the person bringing the action only if the
6 court and Attorney General have given written consent to the dismissal.

7 **(2)** A copy of the complaint and written disclosure of substantially all material
8 evidence and information the person possesses shall be served on the
9 Attorney General pursuant to applicable rules of the North Carolina Rules of
10 Civil Procedure. The complaint shall be filed in camera, shall remain under
11 seal for at least 120 days, and shall not be served on the defendant until the
12 court so orders. The State may elect to intervene and proceed with the action
13 within 120 days after it receives both the complaint and the material
14 evidence and information.

15 **(3)** The State may, for good cause shown, move the court for extensions of the
16 time during which the complaint remains under seal under subdivision (2) of
17 this subsection or may move for a partial lifting of the seal. Any such
18 motions may be supported by affidavits or other submissions in camera. The
19 defendant shall not be required to respond to any complaint filed under this
20 section until after the complaint is unsealed and served upon the defendant
21 pursuant to the North Carolina Rules of Civil Procedure.

22 **(4)** Before the expiration of the 120-day period or any extensions obtained under
23 subdivision (3) of this subsection, the State shall:

24 a. Proceed with the action, in which case the action shall be conducted
25 by the State; or

26 b. Notify the court that it declines to take over the action, in which case
27 the person bringing the action shall have the right to conduct the
28 action.

29 **(5)** When a person brings a valid action under this subsection, no person other
30 than the State may intervene or bring a related action based on the facts
31 underlying the pending action.

32 **§ 1-609. Rights of the parties to qui tam actions.**

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

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

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

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

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

50 **(2)** Limiting the length of the testimony of those witnesses;

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

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

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

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

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

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

30 **"§ 1-610. Award to qui tam plaintiff.**

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

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

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

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

50 (e) If the State does not proceed with an action under this Article, the qui tam plaintiff
51 shall receive an amount which the court decides is reasonable for collecting the civil penalty

1 and damages. The amount shall not be less than twenty-five percent (25%) and not more than
2 thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the
3 proceeds. The qui tam plaintiff shall also receive an amount for reasonable expenses that the
4 court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such
5 expenses, fees, and costs shall be awarded against the defendant.

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

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

20 **"§ 1-611. Certain actions barred.**

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

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

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

34 (d) No court shall have jurisdiction over an action under G.S. 108A-70.17 based upon
35 the public disclosure of allegations or transactions (i) in a criminal, civil, or administrative
36 hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General
37 Accounting Office, or State Auditor's report, hearing, audit, or investigation, (iii) or from the
38 news media, unless the action is brought by the Attorney General, or the person bringing the
39 action is an original source of the information. For purposes of this section, "original source"
40 means an individual who has direct and independent knowledge of the information on which
41 the allegations are based and has voluntarily provided the information to the State before filing
42 an action under G.S. 108A-70.17 that is based on the information.

43 **"§ 1-612. State not liable for certain expenses.**

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

46 **"§ 1-613. Private action for retaliation action.**

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

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

6 **"§ 1-614. Civil investigative demand.**

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

16 (b) The civil investigative demand shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (p) Except as otherwise provided in this section, no documents, objects, answers to
49 interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the
50 custodian, shall be available for examination by any individual other than an employee of the
51 North Carolina Department of Justice authorized under this section. The prohibition in the

1 preceding sentence on the availability of documents, objects, answers, or transcripts shall not
2 apply if consent is given by the person who produced the documents, objects, answers, or
3 transcripts, or, in the case of any product of discovery produced pursuant to an express demand,
4 consent is given by the person from whom the discovery was obtained, or prevent disclosure to
5 any other federal or State agency for use by that agency in furtherance of its statutory
6 responsibilities upon application made by the Attorney General to the Superior Court showing
7 substantial need for the use of the information by any agency in furtherance of its statutory
8 responsibilities.

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

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

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

26 **"§ 1-615. False claims procedure.**

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

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

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

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

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

47 (a) Remedies Under Other Laws. – The provisions of this Article are not exclusive, and
48 the remedies provided for in this Article shall be in addition to any other remedies provided for
49 in any other law or available under common law. No criminal or administrative action need be
50 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 and abuse subpoena duces tecum.**

12 **(a)** The Attorney General may issue in writing and cause to be served a subpoena duces
13 tecum upon any corporation or governmental entity requiring the production of any records,
14 books, papers, documents, electronic media, or other objects, which may be relevant to any
15 criminal investigation of any act or activity of a provider involving a violation of G.S. 14-32.1,
16 14-32.2, 14-90, 14-100, 14-112.2, 108A-60, or 108A-63 that a corporation or governmental
17 entity may possess or have care, custody, or control.

18 **(b)** Requiring a custodian of records to give testimony concerning the production and
19 authentication of the records, books, papers, documents, electronic media, or other objects.

20 **(c)** A subpoena under this section shall describe the records, books, papers, documents,
21 electronic media, or other objects required to be produced and prescribe a return date within a
22 reasonable period of time within which they can be assembled and made available.

23 **(d)** The corporation or governmental entity may be required to produce the records,
24 books, papers, documents, electronic media, or other objects in the county in which the
25 corporation or governmental entity has its principal office or in Wake County.

26 **(e)** A custodian of records summoned under this section shall be paid the same fees and
27 mileage that are paid witnesses in the courts of the State.

28 **(f)** A corporation or governmental entity may move to quash or modify the subpoena if
29 it is oppressive or unreasonable. The motion must be made before the time specified in the
30 subpoena for production and may be made before a judge of the superior court in the county in
31 which the corporation or governmental entity is required to produce the objects or in which it
32 has its principal office.

33 **(g)** In the case of failure by any corporation or governmental entity without adequate
34 excuse to obey a subpoena, the Attorney General may invoke the aid of a judge of the superior
35 court. The court may issue an order requiring the subpoenaed corporation or governmental
36 entity to appear before the Attorney General to produce the records, books, papers, documents,
37 electronic media, or other objects, if so ordered, or to give testimony concerning their
38 production and authentication. Failure to obey the order of the court may be punished as
39 contempt of court.

40 **(h)** Notwithstanding any other privacy law to the contrary, any corporation or
41 governmental entity, including officers, agents, and employees, who comply in good faith with
42 the subpoena and produce the materials sought, shall not be liable in any court of this State to
43 any person for the production of the records, books, papers, documents, electronic media, or
44 other objects, or for the nondisclosure of the production to any person.

45 **(i)** Health information about an individual that is disclosed under this section may not
46 be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or
47 investigation directed against the individual who is the subject of the information unless the
48 action or investigation arises out of and is directly related to receipt of health care or payment
49 for health care or action involving a fraudulent claim related to health; or if authorized by an
50 appropriate order of a court of competent jurisdiction, granted after application showing good
51 cause therefore.

1 (1) In assessing good cause under this subsection, the court shall weigh the
2 public interest and the need for disclosure against the injury to the patient, to
3 the physician patient relationship, and to the treatment services.

4 (2) Upon the granting of an order to disclose, the court, in determining the
5 extent to which any disclosure of all or any part of any record is necessary,
6 shall impose appropriate safeguards against unauthorized disclosure."

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

8 "**§ 108A-63. Medical assistance provider fraud.**

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

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

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

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

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

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

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

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

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

28 (1) Defraud the Medical Assistance Program.

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

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

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

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

42 **SECTION 4.** Section 1 of this act becomes effective January 1, 2010, and applies
43 to acts committed on or after that date, except that a civil action may be based on activity
44 occurring prior to the effective date if the activity would otherwise be covered under
45 G.S. 108A-70.12 and the limitations period set in G.S. 108A-70.13 has not lapsed. Sections 2
46 and 3 of this act become effective July 1, 2009.