

Current through changes made by ch. 2009-193.

FLORIDA FALSE CLAIMS ACT

68.081 Short title; purpose.--

(1) Sections 68.081-68.09 may be cited as the "Florida False Claims Act."

(2) The purpose of the Florida False Claims Act is to deter persons from knowingly causing or assisting in causing state government to pay claims that are false or fraudulent, and to provide remedies for obtaining treble damages and civil penalties for state government when money is obtained from state government by reason of a false or fraudulent claim.

History.--s. 1, ch. 94-316; amended s. 1, ch. 2007-236.

68.082 False claims against the state; definitions; liability.--

(1) As used in this section, the term:

(a) "Agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(b) "Claim" includes any written or electronically submitted request or demand, under a contract or otherwise, for money, property, or services, which is made to any employee, officer, or agent of an agency, or to any contractor, grantee, or other recipient if the agency provides any portion of the money or property requested or demanded, or if the agency will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded.

(c) "Knowing" or "knowingly" means, with respect to information, that a person:

1. Has actual knowledge of the information;
2. Acts in deliberate ignorance of the truth or falsity of the information; or
3. Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required. Innocent mistake shall be a defense to an action under this act.

(d) "State government" means the government of the state or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of the state.

(e) "Department" means the Department of Legal Affairs, except as specifically provided in ss. 68.083 and 68.084.

(2) Any person who:

(a) Knowingly presents or causes to be presented to an officer or employee of an agency a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by an agency;

(c) Conspires to submit a false or fraudulent claim to an agency or to deceive an agency for the purpose of getting a false or fraudulent claim allowed or paid;

(d) Has possession, custody, or control of property or money used or to be used by an agency and, intending to deceive the agency or knowingly conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(e) Is authorized to make or deliver a document certifying receipt of property used or to be used by an agency and, intending to deceive the agency, makes or delivers the receipt without knowing that the information on the receipt is true;

(f) Knowingly buys or receives, as a pledge of an obligation or a debt, public property from an officer or employee of an agency who may not sell or pledge the property lawfully; or

(g) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to an agency,

is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 and for treble the amount of damages the agency sustains because of the act or omission of that person.

(3) The court may reduce the treble damages authorized under subsection (2) if the court finds one or more of the following specific extenuating circumstances:

(a) The person committing the violation furnished officials of the agency responsible for investigating false claims violations with all information known to the person about the violation within 30 days after the date on which the person first obtained the information;

(b) The person fully cooperated with any official investigation of the violation;

(c) At the time the person furnished the agency with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this section with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation;

in which case the court shall award no less than 2 times the amount of damages sustained by the agency because of the act of the person. The court shall set forth in a written order its findings and basis for reducing the treble damages award.

History.--s. 2, ch. 94-316; amended s. 2, ch. 2007-236.

68.083 Civil actions for false claims.--

(1) The department may diligently investigate a violation under s. 68.082. If the department finds that a person has violated or is violating s. 68.082, the department may bring a civil action under the Florida False Claims Act against the person. The Department of Banking and Finance may bring a civil action under this section if the action arises from an investigation by that department and the Department of Legal Affairs has not filed an action under this act.

(2) A person may bring a civil action for a violation of s. 68.082 for the person and for the affected agency. Civil actions instituted under this act shall be governed by the Florida Rules of Civil Procedure and shall be brought in the name of the State of Florida. Prior to the court unsealing the complaint under subsection (3), the action may be voluntarily dismissed by the person bringing the action only if the department gives written consent to the dismissal and its reasons for such consent.

(3) The complaint shall be identified on its face as a qui tam action and shall be filed in the circuit court of the Second Judicial Circuit, in and for Leon County. Immediately upon the filing of the complaint, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General, as head of the department, and on the Comptroller, as head of the Department of Banking and Finance, by registered mail, return receipt requested. The department, or the Department of Banking and Finance under the circumstances specified in subsection (4), may elect to intervene and proceed with the action, on behalf of the state, within 60 days after it receives both the complaint and the material evidence and information.

(4) If a person brings an action under subsection (2) and the action is based upon the facts underlying a pending investigation by the Department of Banking and Finance, the Department of Banking and Finance, instead of the department, may take over the action on behalf of the state. In order to take over the action, the Department of Banking and Finance must give the department written notification within 20 days after the action is filed that the Department of Banking and Finance is conducting an investigation of the facts of the action and that the Department of Banking and Finance, instead of the department, will take over the action filed under subsection (2). If the Department of Banking and Finance takes over the action under this subsection, the word "department" as used in this act means the Department of Banking and Finance, and that department, for purposes of that action, shall have all rights and standing granted the department under this act.

(5) The department may, for good cause shown, request the court to extend the time during which the complaint remains under seal under subsection (2). Any such motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant in accordance with law.

(6) Before the expiration of the 60-day period or any extensions obtained under subsection (5), the department shall:

(a) Proceed with the action, in which case the action is conducted by the department on behalf of the state; or

(b) Notify the court that it declines to take over the action, in which case the person bringing the action has the right to conduct the action.

(7) When a person files an action under this section, no person other than the department on behalf of the state may intervene or bring an action under this act based on the facts underlying the pending action.

History.--s. 3, ch. 94-316, amended s .3, ch. 2007-236.

68.084 Rights of the parties in civil actions.--

(1) If the department, on behalf of the state, proceeds with the action, it has the primary responsibility for prosecuting the action, and is not bound by any act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations specified in subsection (2).

(2)

(a) The department may voluntarily dismiss the action notwithstanding the objections of the person initiating the action.

(b) Subject to s. 17.04, nothing in this act shall be construed to limit the authority of the department or the qui tam plaintiff to compromise a claim brought in a complaint filed under this act if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

(c) Upon a showing by the department that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the department's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to:

1. Limiting the number of witnesses the person may call;
2. Limiting the length of the testimony of the person's witnesses;
3. Limiting the person's cross-examination of witnesses; or
4. Otherwise limiting the participation by the person in the litigation.

(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the department elects not to proceed with the action, the person who initiated the action has the right to conduct the action. If the Attorney General, as head of the department, or the Comptroller, as head of the Department of Banking and Finance, so requests, it shall be served, at the requesting department's expense, with copies of all pleadings and motions filed in the action and copies of all deposition transcripts. When a person proceeds with the action, the court, without limiting the rights of the person initiating the action, may nevertheless permit the department to intervene and take over the action on behalf of the state at a later date upon showing of good cause.

(4) Whether or not the department proceeds with the action, upon a showing by the department that certain actions of discovery by the person initiating the action would interfere with an investigation by state government or the prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera by the department that the criminal or civil investigation or proceeding has been pursued with reasonable diligence and any proposed discovery in the civil action will interfere with an ongoing criminal or civil investigation or proceeding.

(5) The application of one civil remedy under this act does not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental, not mutually exclusive. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. As used in this subsection, the term "final" means not subject to judicial review.

(6) The Department of Banking and Finance, or the department, may intervene on its own behalf as a matter of right.

History.--s. 4, ch. 94-316; amended s .4, ch. 2007-236.

68.085 Awards to plaintiffs bringing action.--

(1) If the department proceeds with and prevails in an action brought by a person under this act, except as provided in subsection (2), the court shall order the distribution to the person of at least 15 percent but not more than 25 percent of the proceeds recovered under any judgment obtained by the department in an action under s. 68.082 or of the proceeds of any settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(2) If the department proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing; a legislative, administrative, inspector general, or auditor general report, hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds recovered under a judgment or received in settlement of a claim under this act, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) If the department does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment rendered in an action under this act or in settlement of a claim under this act.

(4) Following any distributions under subsection (1), subsection (2), or subsection (3), the agency injured by the submission of a false or fraudulent claim shall be awarded an amount not to exceed its compensatory damages. Any remaining proceeds, including civil penalties awarded under s. 68.082, shall be deposited in the General Revenue Fund.

(5) Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

(6) Whether or not the department proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of s. 68.082 upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of s. 68.082, the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the department to continue the action.

History.--s. 5, ch. 94-316; s. 11, ch. 95-153; amended s. 5, ch 2007-236.

68.086 Expenses; attorney's fees and costs.--

(1) If the department initiates an action under this act or assumes control of an action brought by a person under this act, the department shall be awarded its reasonable attorney's fees, expenses, and costs.

(2) If the court awards the person bringing the action proceeds under this act, the person shall also be awarded an amount for reasonable attorney's fees and costs. Payment for reasonable attorney's fees and costs shall be made from the recovered proceeds before the distribution of any award.

(3) If the department does not proceed with an action under this act and the person bringing the action conducts the action defendant is the prevailing party, the court may shall award to the defendant its reasonable attorney's fees and costs if the defendant prevails in the action and the court finds that the claim of against the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(4) No liability shall be incurred by the state government, the affected agency, or the department for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending

an action under this act.

History.--s. 6, ch. 94-316; amended s.2, ch 2009-193.

68.087 Exemptions to civil actions.--

(1) No court shall have jurisdiction over an action brought under this act against a member of the Legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state government when the action was brought. For purposes of this subsection, the term "senior executive branch official" means any person employed in the executive branch of government holding a position in the Senior Management Service as defined in s. 110.402.

(2) In no event may a person bring an action under s. 68.083(2) based upon allegations or transactions that are the subject of a civil action or an administrative proceeding in which the agency is already a party.

(3) No court shall have jurisdiction over an action brought under this act based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, inspector general, or Auditor General, Comptroller, or Department of Banking and Finance report, hearing, audit, or investigation; or from the news media, unless the action is brought by the department, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "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 department before filing an action under this act based on the information.

(4) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) is:

(a) Acting as an attorney for state government; or

(b) An employee or former employee of state government, and the action is based, in whole or in part, upon information obtained in the course or scope of government employment.

(5) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) obtained the information from an employee or former employee of state government who was not acting in the course or scope of government employment.

(6) No court shall have jurisdiction over an action brought under this act against a local government. For the purposes of this subsection, the term "local government" means any county or municipality.

History.--s. 7, ch. 94-316; s. 12, ch. 95-153.

68.088 Protection for participating employees.--

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 act, including investigation for initiation of, testimony for, or assistance in an action filed or to be

filed under this act, shall have a cause of action under s. 112.3187.
History.--s. 8, ch. 94-316.

68.089 Limitation of actions.--

A civil action under this act may not be brought:

- (1) More than 6 years after the date on which the violation of s. 68.082 is committed; or
- (2) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

History.--s. 9, ch. 94-316; amended s .6, ch. 2007-236.

68.09 Burden of proof.--

In any action brought under this act, the State of Florida or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

History.--s. 10, ch. 94-316.

68.091 Construction and severability of provisions.--

- (1) This act shall be liberally construed to effectuate its remedial and deterrent purposes.
- (2) If any provision of this act or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this act.

History.--s. 11, ch. 94-316.

68.092 Deposit of recovered moneys.--

All moneys recovered by the Comptroller, as head of the Department of Banking and Finance, under s. 68.086(1) in any civil action for violation of the Florida False Claims Act shall be deposited in the Administrative Trust Fund of the Department of Banking and Finance. History.-s. 13, ch. 94-316.