



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB0618

Introduced 1/28/2005, by Rep. John A. Fritchey

#### SYNOPSIS AS INTRODUCED:

740 ILCS 175/4

from Ch. 127, par. 4104

740 ILCS 175/8

from Ch. 127, par. 4108

Amends the Whistleblower Reward and Protection Act. Provides that the State of Illinois shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred by the Attorney General, including reasonable attorneys' fees and costs, and the amount received by the State of Illinois, exclusive of any proceeds, reasonable expenses, reasonable attorneys' fees and costs that have been awarded to a Qui Tam plaintiff or any entity other than the State of Illinois or a State agency, shall be deposited in the Whistleblower Reward and Protection Fund created under the Act. Requires (instead of permits) the court to award all proceeds of an action or settlement of the claim to the affected governmental entity, minus reasonable expenses, attorneys' fees, costs, and proceeds that have been awarded to a Qui Tam plaintiff and minus an amount for reasonable expenses that the court finds to have been necessarily incurred by the Attorney General, including reasonable attorneys' fees and costs (instead of such sums as it considers appropriate to the affected entity, specifying in its order the amount to be awarded to the entity from the net proceeds that are deposited in the Whistleblower Reward and Protection Fund), when an action is brought on behalf of any of the listed governmental entities that have been adversely affected by a defendant. Excludes from any payment of proceeds the reasonable expenses, reasonable attorneys' fees, and costs to a Qui Tam plaintiff or any governmental entity other than the State of Illinois from being deposited in the Whistleblower Reward and Protection Fund. Restructures the use of the money in the Fund to pay the necessary expenses incurred by the Attorney General and for the payment of awards to the State of Illinois (instead of for payment of awards to Qui Tam plaintiffs).

LRB094 06389 LCB 36474 b

1 AN ACT concerning whistleblowers.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Whistleblower Reward and Protection Act is  
5 amended by changing Sections 4 and 8 as follows:

6 (740 ILCS 175/4) (from Ch. 127, par. 4104)

7 Sec. 4. Civil actions for false claims.

8 (a) Responsibilities of the Attorney General and the  
9 Department of State Police. The Department of State Police  
10 shall diligently investigate a civil violation under Section 3,  
11 except for civil violations under Section 3 that relate to and  
12 adversely affect primarily the system of State colleges and  
13 universities, any school district, any public community  
14 college district, any municipality, municipal corporations,  
15 units of local government, or any combination of the above  
16 under an intergovernmental agreement that includes provisions  
17 for a governing board of the agency created by the agreement.  
18 The Attorney General may bring a civil action under this  
19 Section against any person that has violated or is violating  
20 Section 3.

21 (b) Actions by private persons.

22 (1) A person may bring a civil action for a violation  
23 of Section 3 for the person and for the State. The action  
24 shall be brought in the name of the State. The action may  
25 be dismissed only if the court and the Attorney General  
26 give written consent to the dismissal and their reasons for  
27 consenting.

28 (2) A copy of the complaint and written disclosure of  
29 substantially all material evidence and information the  
30 person possesses shall be served on the State. The  
31 complaint shall be filed in camera, shall remain under seal  
32 for at least 60 days, and shall not be served on the

1 defendant until the court so orders. The State may elect to  
2 intervene and proceed with the action within 60 days after  
3 it receives both the complaint and the material evidence  
4 and information.

5 (3) The State may, for good cause shown, move the court  
6 for extensions of the time during which the complaint  
7 remains under seal under paragraph (2). Any such motions  
8 may be supported by affidavits or other submissions in  
9 camera. The defendant shall not be required to respond to  
10 any complaint filed under this Section until 20 days after  
11 the complaint is unsealed and served upon the defendant.

12 (4) Before the expiration of the 60-day period or any  
13 extensions obtained under paragraph (3), the State shall:

14 (A) proceed with the action, in which case the  
15 action shall be conducted by the State; or

16 (B) notify the court that it declines to take over  
17 the action, in which case the person bringing the  
18 action shall have the right to conduct the action.

19 (5) When a person brings an action under this subsection  
20 (b), no person other than the State may intervene or bring a  
21 related action based on the facts underlying the pending  
22 action.

23 (c) Rights of the parties to Qui Tam actions.

24 (1) If the State proceeds with the action, it shall  
25 have the primary responsibility for prosecuting the  
26 action, and shall not be bound by an act of the person  
27 bringing the action. Such person shall have the right to  
28 continue as a party to the action, subject to the  
29 limitations set forth in paragraph (2).

30 (2) (A) The State may dismiss the action  
31 notwithstanding the objections of the person  
32 initiating the action if the person has been notified  
33 by the State of the filing of the motion and the court  
34 has provided the person with an opportunity for a  
35 hearing on the motion.

36 (B) The State may settle the action with the

1 defendant notwithstanding the objections of the person  
2 initiating the action if the court determines, after a  
3 hearing, that the proposed settlement is fair,  
4 adequate, and reasonable under all the circumstances.  
5 Upon a showing of good cause, such hearing may be held  
6 in camera.

7 (C) Upon a showing by the State that unrestricted  
8 participation during the course of the litigation by  
9 the person initiating the action would interfere with  
10 or unduly delay the State's prosecution of the case, or  
11 would be repetitious, irrelevant, or for purposes of  
12 harassment, the court may, in its discretion, impose  
13 limitations on the person's participation, such as:

14 (i) limiting the number of witnesses the  
15 person may call:

16 (ii) limiting the length of the testimony of  
17 such witnesses;

18 (iii) limiting the person's cross-examination  
19 of witnesses; or

20 (iv) otherwise limiting the participation by  
21 the person in the litigation.

22 (D) Upon a showing by the defendant that  
23 unrestricted participation during the course of the  
24 litigation by the person initiating the action would be  
25 for purposes of harassment or would cause the defendant  
26 undue burden or unnecessary expense, the court may  
27 limit the participation by the person in the  
28 litigation.

29 (3) If the State elects not to proceed with the action,  
30 the person who initiated the action shall have the right to  
31 conduct the action. If the State so requests, it shall be  
32 served with copies of all pleadings filed in the action and  
33 shall be supplied with copies of all deposition transcripts  
34 (at the State's expense). When a person proceeds with the  
35 action, the court, without limiting the status and rights  
36 of the person initiating the action, may nevertheless

1 permit the State to intervene at a later date upon a  
2 showing of good cause.

3 (4) Whether or not the State proceeds with the action,  
4 upon a showing by the State that certain actions of  
5 discovery by the person initiating the action would  
6 interfere with the State's investigation or prosecution of  
7 a criminal or civil matter arising out of the same facts,  
8 the court may stay such discovery for a period of not more  
9 than 60 days. Such a showing shall be conducted in camera.  
10 The court may extend the 60-day period upon a further  
11 showing in camera that the State has pursued the criminal  
12 or civil investigation or proceedings with reasonable  
13 diligence and any proposed discovery in the civil action  
14 will interfere with the ongoing criminal or civil  
15 investigation or proceedings.

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

32 (d) Award to Qui Tam plaintiff.

33 (1) If the State proceeds with an action brought by a  
34 person under subsection (b), such person shall, subject to  
35 the second sentence of this paragraph, receive at least 15%  
36 but not more than 25% of the proceeds of the action or

1 settlement of the claim, depending upon the extent to which  
2 the person substantially contributed to the prosecution of  
3 the action. Where the action is one which the court finds  
4 to be based primarily on disclosures of specific  
5 information (other than information provided by the person  
6 bringing the action) relating to allegations or  
7 transactions in a criminal, civil, or administrative  
8 hearing, in a legislative, administrative, or Auditor  
9 General's report, hearing, audit, or investigation, or  
10 from the news media, the court may award such sums as it  
11 considers appropriate, but in no case more than 10% of the  
12 proceeds, taking into account the significance of the  
13 information and the role of the person bringing the action  
14 in advancing the case to litigation. Any payment to a  
15 person under the first or second sentence of this paragraph  
16 (1) shall be made from the proceeds. Any such person shall  
17 also receive an amount for reasonable expenses which the  
18 court finds to have been necessarily incurred, plus  
19 reasonable attorneys' fees and costs. The State of Illinois  
20 shall also receive an amount for reasonable expenses which  
21 the court finds to have been necessarily incurred by the  
22 Attorney General, including reasonable attorneys' fees and  
23 costs, and the amount received by the State of Illinois,  
24 exclusive of any proceeds, reasonable expenses, reasonable  
25 attorneys' fees and costs that have been awarded to a Qui  
26 Tam plaintiff or any entity other than the State of  
27 Illinois or a State agency, shall be deposited in the  
28 Whistleblower Reward and Protection Fund created under  
29 this Act. All such expenses, fees, and costs shall be  
30 awarded against the defendant. When an action under this  
31 Act is brought on behalf of the system of State colleges  
32 and universities, any school district, any public  
33 community college district, any municipality, any  
34 municipal corporation, any unit of local government, or any  
35 combination of the above under an intergovernmental  
36 agreement that has been adversely affected by a defendant,

1       the court shall ~~may~~ award all proceeds of an action or  
2       settlement of the claim to the affected governmental  
3       entity, minus reasonable expenses, attorneys' fees, costs,  
4       and proceeds that have been awarded to a Qui Tam plaintiff  
5       and minus an amount for reasonable expenses that the court  
6       finds to have been necessarily incurred by the Attorney  
7       General, including reasonable attorneys' fees and costs.  
8       ~~such sums as it considers appropriate to the affected~~  
9       ~~entity, specifying in its order the amount to be awarded to~~  
10      ~~the entity from the net proceeds that are deposited in the~~  
11      ~~Whistleblower Reward and Protection Fund.~~

12           (2) If the State does not proceed with an action under  
13       this Section, the person bringing the action or settling  
14       the claim shall receive an amount which the court decides  
15       is reasonable for collecting the civil penalty and damages.  
16       The amount shall be not less than 25% and not more than 30%  
17       of the proceeds of the action or settlement and shall be  
18       paid out of such proceeds. Such person shall also receive  
19       an amount for reasonable expenses which the court finds to  
20       have been necessarily incurred, plus reasonable attorneys'  
21       fees and costs. All such expenses, fees, and costs shall be  
22       awarded against the defendant.

23           (3) Whether or not the State proceeds with the action,  
24       if the court finds that the action was brought by a person  
25       who planned and initiated the violation of Section 3 upon  
26       which the action was brought, then the court may, to the  
27       extent the court considers appropriate, reduce the share of  
28       the proceeds of the action which the person would otherwise  
29       receive under paragraph (1) or (2) of this subsection (d),  
30       taking into account the role of that person in advancing  
31       the case to litigation and any relevant circumstances  
32       pertaining to the violation. If the person bringing the  
33       action is convicted of criminal conduct arising from his or  
34       her role in the violation of Section 3, that person shall  
35       be dismissed from the civil action and shall not receive  
36       any share of the proceeds of the action. Such dismissal

1 shall not prejudice the right of the State to continue the  
2 action.

3 (4) If the State does not proceed with the action and  
4 the person bringing the action conducts the action, the  
5 court may award to the defendant its reasonable attorneys'  
6 fees and expenses if the defendant prevails in the action  
7 and the court finds that the claim of the person bringing  
8 the action was clearly frivolous, clearly vexatious, or  
9 brought primarily for purposes of harassment.

10 (e) Certain actions barred.

11 (1) No court shall have jurisdiction over an action  
12 brought by a former or present member of the Guard under  
13 subsection (b) of this Section against a member of the  
14 Guard arising out of such person's service in the Guard.

15 (2) (A) No court shall have jurisdiction over an action  
16 brought under subsection (b) against a member of the  
17 General Assembly, a member of the judiciary, or an  
18 exempt official if the action is based on evidence or  
19 information known to the State when the action was  
20 brought.

21 (B) For purposes of this paragraph (2), "exempt  
22 official" means any of the following officials in State  
23 service: directors of departments established under  
24 the Civil Administrative Code of Illinois, the  
25 Adjutant General, the Assistant Adjutant General, the  
26 Director of the State Emergency Services and Disaster  
27 Agency, members of the boards and commissions, and all  
28 other positions appointed by the Governor by and with  
29 the consent of the Senate.

30 (3) In no event may a person bring an action under  
31 subsection (b) which is based upon allegations or  
32 transactions which are the subject of a civil suit or an  
33 administrative civil money penalty proceeding in which the  
34 State is already a party.

35 (4) (A) No court shall have jurisdiction over an  
36 action under this Section based upon the public

1 disclosure of allegations or transactions in a  
2 criminal, civil, or administrative hearing, in a  
3 legislative, administrative, or Auditor General's  
4 report, hearing, audit, or investigation, or from the  
5 news media, unless the action is brought by the  
6 Attorney General or the person bringing the action is  
7 an original source of the information.

8 (B) For purposes of this paragraph (4), "original  
9 source" means an individual who has direct and  
10 independent knowledge of the information on which the  
11 allegations are based and has voluntarily provided the  
12 information to the State before filing an action under  
13 this Section which is based on the information.

14 (f) State not liable for certain expenses. The State is not  
15 liable for expenses which a person incurs in bringing an action  
16 under this Section.

17 (g) Any employee who is discharged, demoted, suspended,  
18 threatened, harassed, or in any other manner discriminated  
19 against in the terms and conditions of employment by his or her  
20 employer because of lawful acts done by the employee on behalf  
21 of the employee or others in furtherance of an action under  
22 this Section, including investigation for, initiation of,  
23 testimony for, or assistance in an action filed or to be filed  
24 under this Section, shall be entitled to all relief necessary  
25 to make the employee whole. Such relief shall include  
26 reinstatement with the seniority status such employee would  
27 have had but for the discrimination, 2 times the amount of back  
28 pay, interest on the back pay, and compensation for any special  
29 damages sustained as a result of the discrimination, including  
30 litigation costs and reasonable attorneys' fees. An employee  
31 may bring an action in the appropriate circuit court for the  
32 relief provided in this subsection (g).

33 (Source: P.A. 89-260, eff. 1-1-96.)

34 (740 ILCS 175/8) (from Ch. 127, par. 4108)

35 Sec. 8. Funds; Grants.

1 (a) There is hereby created the Whistleblower Reward and  
2 Protection Fund as a special fund in the State Treasury. All  
3 proceeds of an action or settlement of a claim brought under  
4 this Act by the State of Illinois, exclusive of any payment of  
5 proceeds, reasonable expenses, reasonable attorneys' fees, and  
6 costs to a Qui Tam plaintiff or any governmental entity other  
7 than the State of Illinois pursuant to subsection (d) of  
8 Section 4 of this Act, shall be deposited in the Fund.

9 (b) Monies in the Fund shall be allocated, subject to  
10 appropriation, as follows: One-sixth of the monies shall be  
11 paid to the Attorney General and one-sixth of the monies shall  
12 be paid to the Department of State Police for State law  
13 enforcement purposes. The remaining two-thirds of the monies in  
14 the Fund shall be used for payment of ~~awards to Qui Tam~~  
15 ~~plaintiffs, for~~ attorneys' fees and expenses necessarily  
16 incurred by the Attorney General and for payment of awards to  
17 the State of Illinois., ~~and as otherwise specified in this~~  
18 ~~Act.~~ The Attorney General shall direct the State Treasurer to  
19 make disbursement of funds to the State of Illinois as provided  
20 in court orders setting the State of Illinois' ~~these~~ awards,  
21 fees, and expenses. The State Treasurer shall transfer the  
22 remaining funds ~~any fund balances in excess of those required~~  
23 ~~for these purposes~~ to the General Revenue Fund.

24 (Source: P.A. 87-662.)