



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2739

Introduced 1/20/2006, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

740 ILCS 175/6

from Ch. 127, par. 4106

Amends the Whistleblower Reward and Protection Act. Provides that, where a subpoena requires the production of documentary material, the respondent shall produce the original of the documentary material, except that the Attorney General may agree that copies may be substituted for the originals. Requires that all documentary material kept or stored in electronic form, including electronic mail, shall be produced in hard copy, unless the Attorney General agrees that electronic versions may be substituted for the hard copy. Provides that the production of documentary material shall be made at the respondent's expense.

LRB094 15329 LCT 50520 b

1 AN ACT concerning civil liabilities.

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 Section 6 as follows:

6 (740 ILCS 175/6) (from Ch. 127, par. 4106)

7 Sec. 6. Subpoenas.

8 (a) In general.

9 (1) Issuance and service. Whenever the Attorney
10 General has reason to believe that any person may be in
11 possession, custody, or control of any documentary
12 material or information relevant to an investigation, the
13 Attorney General may, before commencing a civil proceeding
14 under this Act, issue in writing and cause to be served
15 upon such person, a subpoena requiring such person:

16 (A) to produce such documentary material for
17 inspection and copying,

18 (B) to answer, in writing, written interrogatories
19 with respect to such documentary material or
20 information,

21 (C) to give oral testimony concerning such
22 documentary material or information, or

23 (D) to furnish any combination of such material,
24 answers, or testimony.

25 The Attorney General may delegate the authority to issue
26 subpoenas under this subsection (a) to the Department of
27 State Police subject to conditions as the Attorney General
28 deems appropriate. Whenever a subpoena is an express demand
29 for any product of discovery, the Attorney General or his
30 or her delegate shall cause to be served, in any manner
31 authorized by this Section, a copy of such demand upon the
32 person from whom the discovery was obtained and shall

1 notify the person to whom such demand is issued of the date
2 on which such copy was served.

3 (1.5) Where a subpoena requires the production of
4 documentary material, the respondent shall produce the
5 original of the documentary material, provided, however,
6 that the Attorney General may agree that copies may be
7 substituted for the originals. All documentary material
8 kept or stored in electronic form, including electronic
9 mail, shall be produced in hard copy, unless the Attorney
10 General agrees that electronic versions may be substituted
11 for the hard copy. The production of documentary material
12 shall be made at the respondent's expense.

13 (2) Contents and deadlines. Each subpoena issued under
14 paragraph (1):

15 (A) Shall state the nature of the conduct
16 constituting an alleged violation that is under
17 investigation and the applicable provision of law
18 alleged to be violated.

19 (B) Shall identify the individual causing the
20 subpoena to be served and to whom communications
21 regarding the subpoena should be directed.

22 (C) Shall state the date, place, and time at which
23 the person is required to appear, produce written
24 answers to interrogatories, produce documentary
25 material or give oral testimony. The date shall not be
26 less than 10 days from the date of service of the
27 subpoena. Compliance with the subpoena shall be at the
28 Office of the Attorney General in either the
29 Springfield or Chicago location or at other location by
30 agreement.

31 (D) If the subpoena is for documentary material or
32 interrogatories, shall describe the documents or
33 information requested with specificity.

34 (E) Shall notify the person of the right to be
35 assisted by counsel.

36 (F) Shall advise that the person has 20 days from

1 the date of service or up until the return date
2 specified in the demand, whichever date is earlier, to
3 move, modify, or set aside the subpoena pursuant to
4 subparagraph (j) (2) (A) of this Section.

5 (b) Protected material or information.

6 (1) In general. A subpoena issued under subsection (a)
7 may not require the production of any documentary material,
8 the submission of any answers to written interrogatories,
9 or the giving of any oral testimony if such material,
10 answers, or testimony would be protected from disclosure
11 under:

12 (A) the standards applicable to subpoenas or
13 subpoenas duces tecum issued by a court of this State
14 to aid in a grand jury investigation; or

15 (B) the standards applicable to discovery requests
16 under the Code of Civil Procedure, to the extent that
17 the application of such standards to any such subpoena
18 is appropriate and consistent with the provisions and
19 purposes of this Section.

20 (2) Effect on other orders, rules, and laws. Any such
21 subpoena which is an express demand for any product of
22 discovery supersedes any inconsistent order, rule, or
23 provision of law (other than this Section) preventing or
24 restraining disclosure of such product of discovery to any
25 person. Disclosure of any product of discovery pursuant to
26 any such subpoena does not constitute a waiver of any right
27 or privilege which the person making such disclosure may be
28 entitled to invoke to resist discovery of trial preparation
29 materials.

30 (c) Service in general. Any subpoena issued under
31 subsection (a) may be served by any person so authorized by the
32 Attorney General or by any person authorized to serve process
33 on individuals within Illinois, through any method prescribed
34 in the Code of Civil Procedure or as otherwise set forth in
35 this Act.

36 (d) Service upon legal entities and natural persons.

1 (1) Legal entities. Service of any subpoena issued
2 under subsection (a) or of any petition filed under
3 subsection (j) may be made upon a partnership, corporation,
4 association, or other legal entity by:

5 (A) delivering an executed copy of such subpoena or
6 petition to any partner, executive officer, managing
7 agent, general agent, or registered agent of the
8 partnership, corporation, association or entity;

9 (B) delivering an executed copy of such subpoena or
10 petition to the principal office or place of business
11 of the partnership, corporation, association, or
12 entity; or

13 (C) depositing an executed copy of such subpoena or
14 petition in the United States mails by registered or
15 certified mail, with a return receipt requested,
16 addressed to such partnership, corporation,
17 association, or entity as its principal office or place
18 of business.

19 (2) Natural person. Service of any such subpoena or
20 petition may be made upon any natural person by:

21 (A) delivering an executed copy of such subpoena or
22 petition to the person; or

23 (B) depositing an executed copy of such subpoena or
24 petition in the United States mails by registered or
25 certified mail, with a return receipt requested,
26 addressed to the person at the person's residence or
27 principal office or place of business.

28 (e) Proof of service. A verified return by the individual
29 serving any subpoena issued under subsection (a) or any
30 petition filed under subsection (j) setting forth the manner of
31 such service shall be proof of such service. In the case of
32 service by registered or certified mail, such return shall be
33 accompanied by the return post office receipt of delivery of
34 such subpoena.

35 (f) Documentary material.

36 (1) Sworn certificates. The production of documentary

1 material in response to a subpoena served under this
2 Section shall be made under a sworn certificate, in such
3 form as the subpoena designates, by:

4 (A) in the case of a natural person, the person to
5 whom the subpoena is directed, or

6 (B) in the case of a person other than a natural
7 person, a person having knowledge of the facts and
8 circumstances relating to such production and
9 authorized to act on behalf of such person.

10 The certificate shall state that all of the documentary
11 material required by the demand and in the possession,
12 custody, or control of the person to whom the subpoena is
13 directed has been produced and made available to the
14 Attorney General.

15 (2) Production of materials. Any person upon whom any
16 subpoena for the production of documentary material has
17 been served under this Section shall make such material
18 available for inspection and copying to the Attorney
19 General at the place designated in the subpoena, or at such
20 other place as the Attorney General and the person
21 thereafter may agree and prescribe in writing, or as the
22 court may direct under subsection (j)(1). Such material
23 shall be made so available on the return date specified in
24 such subpoena, or on such later date as the Attorney
25 General may prescribe in writing. Such person may, upon
26 written agreement between the person and the Attorney
27 General, substitute copies for originals of all or any part
28 of such material.

29 (g) Interrogatories. Each interrogatory in a subpoena
30 served under this Section shall be answered separately and
31 fully in writing under oath and shall be submitted under a
32 sworn certificate, in such form as the subpoena designates by:

33 (1) in the case of a natural person, the person to whom
34 the subpoena is directed, or

35 (2) in the case of a person other than a natural
36 person, the person or persons responsible for answering

1 each interrogatory.

2 If any interrogatory is objected to, the reasons for the
3 objection shall be stated in the certificate instead of an
4 answer. The certificate shall state that all information
5 required by the subpoena and in the possession, custody,
6 control, or knowledge of the person to whom the demand is
7 directed has been submitted. To the extent that any information
8 is not furnished, the information shall be identified and
9 reasons set forth with particularity regarding the reasons why
10 the information was not furnished.

11 (h) Oral examinations.

12 (1) Procedures. The examination of any person pursuant
13 to a subpoena for oral testimony served under this Section
14 shall be taken before an officer authorized to administer
15 oaths and affirmations by the laws of this State or of the
16 place where the examination is held. The officer before
17 whom the testimony is to be taken shall put the witness on
18 oath or affirmation and shall, personally or by someone
19 acting under the direction of the officer and in the
20 officer's presence, record the testimony of the witness.
21 The testimony shall be taken stenographically and shall be
22 transcribed. When the testimony is fully transcribed, the
23 officer before whom the testimony is taken shall promptly
24 transmit a certified copy of the transcript of the
25 testimony in accordance with the instructions of the
26 Attorney General. This subsection shall not preclude the
27 taking of testimony by any means authorized by, and in a
28 manner consistent with, the Code of Civil Procedure.

29 (2) Persons present. The investigator conducting the
30 examination shall exclude from the place where the
31 examination is held all persons except the person giving
32 the testimony, the attorney for and any other
33 representative of the person giving the testimony, the
34 attorney for the State, any person who may be agreed upon
35 by the attorney for the State and the person giving the
36 testimony, the officer before whom the testimony is to be

1 taken, and any stenographer taking such testimony.

2 (3) Where testimony taken. The oral testimony of any
3 person taken pursuant to a subpoena served under this
4 Section shall be taken in the county within which such
5 person resides, is found, or transacts business, or in such
6 other place as may be agreed upon by the Attorney General
7 and such person.

8 (4) Transcript of testimony. When the testimony is
9 fully transcribed, the Attorney General or the officer
10 before whom the testimony is taken shall afford the
11 witness, who may be accompanied by counsel, a reasonable
12 opportunity to review and correct the transcript, in
13 accordance with the rules applicable to deposition
14 witnesses in civil cases. Upon payment of reasonable
15 charges, the Attorney General shall furnish a copy of the
16 transcript to the witness, except that the Attorney General
17 may, for good cause, limit the witness to inspection of the
18 official transcript of the witness' testimony.

19 (5) Conduct of oral testimony.

20 (A) Any person compelled to appear for oral
21 testimony under a subpoena issued under subsection (a)
22 may be accompanied, represented, and advised by
23 counsel, who may raise objections based on matters of
24 privilege in accordance with the rules applicable to
25 depositions in civil cases. If such person refuses to
26 answer any question, a petition may be filed in circuit
27 court under subsection (j)(1) for an order compelling
28 such person to answer such question.

29 (B) If such person refuses any question on the
30 grounds of the privilege against self-incrimination,
31 the testimony of such person may be compelled in
32 accordance with Article 106 of the Code of Criminal
33 Procedure of 1963.

34 (6) Witness fees and allowances. Any person appearing
35 for oral testimony under a subpoena issued under subsection
36 (a) shall be entitled to the same fees and allowances which

1 are paid to witnesses in the circuit court.

2 (i) Custodians of documents, answers, and transcripts.

3 (1) Designation. The Attorney General or his or her
4 delegate shall serve as custodian of documentary material,
5 answers to interrogatories, and transcripts of oral
6 testimony received under this Section.

7 (2) Except as otherwise provided in this Section, no
8 documentary material, answers to interrogatories, or
9 transcripts of oral testimony, or copies thereof, while in
10 the possession of the custodian, shall be available for
11 examination by any individual, except as determined
12 necessary by the Attorney General and subject to the
13 conditions imposed by him or her for effective enforcement
14 of the laws of this State, or as otherwise provided by
15 court order.

16 (3) Conditions for return of material. If any
17 documentary material has been produced by any person in the
18 course of any investigation pursuant to a subpoena under
19 this Section and:

20 (A) any case or proceeding before the court or
21 grand jury arising out of such investigation, or any
22 proceeding before any State agency involving such
23 material, has been completed, or

24 (B) no case or proceeding in which such material
25 may be used has been commenced within a reasonable time
26 after completion of the examination and analysis of all
27 documentary material and other information assembled
28 in the course of such investigation,

29 the custodian shall, upon written request of the person who
30 produced such material, return to such person any such
31 material which has not passed into the control of any
32 court, grand jury, or agency through introduction into the
33 record of such case or proceeding.

34 (j) Judicial proceedings.

35 (1) Petition for enforcement. Whenever any person
36 fails to comply with any subpoena issued under subsection

1 (a), or whenever satisfactory copying or reproduction of
2 any material requested in such demand cannot be done and
3 such person refuses to surrender such material, the
4 Attorney General may file, in the circuit court of any
5 county in which such person resides, is found, or transacts
6 business, or the circuit court of the county in which an
7 action filed pursuant to Section 4 of this Act is pending
8 if the action relates to the subject matter of the subpoena
9 and serve upon such person a petition for an order of such
10 court for the enforcement of the subpoena.

11 (2) Petition to modify or set aside subpoena.

12 (A) Any person who has received a subpoena issued
13 under subsection (a) may file, in the circuit court of
14 any county within which such person resides, is found,
15 or transacts business, and serve upon the Attorney
16 General a petition for an order of the court to modify
17 or set aside such subpoena. In the case of a petition
18 addressed to an express demand for any product of
19 discovery, a petition to modify or set aside such
20 demand may be brought only in the circuit court of the
21 county in which the proceeding in which such discovery
22 was obtained is or was last pending. Any petition under
23 this subparagraph (A) must be filed:

24 (i) within 20 days after the date of service of
25 the subpoena, or at any time before the return date
26 specified in the subpoena, whichever date is
27 earlier, or

28 (ii) within such longer period as may be
29 prescribed in writing by the Attorney General.

30 (B) The petition shall specify each ground upon
31 which the petitioner relies in seeking relief under
32 subparagraph (A), and may be based upon any failure of
33 the subpoena to comply with the provisions of this
34 Section or upon any constitutional or other legal right
35 or privilege of such person. During the pendency of the
36 petition in the court, the court may stay, as it deems

1 proper, the running of the time allowed for compliance
2 with the subpoena, in whole or in part, except that the
3 person filing the petition shall comply with any
4 portion of the subpoena not sought to be modified or
5 set aside.

6 (3) Petition to modify or set aside demand for product
7 of discovery. In the case of any subpoena issued under
8 subsection (a) which is an express demand for any product
9 of discovery, the person from whom such discovery was
10 obtained may file, in the circuit court of the county in
11 which the proceeding in which such discovery was obtained
12 is or was last pending, a petition for an order of such
13 court to modify or set aside those portions of the subpoena
14 requiring production of any such product of discovery,
15 subject to the same terms, conditions, and limitations set
16 forth in subparagraph (j) (2) of this Section.

17 (4) Jurisdiction. Whenever any petition is filed in any
18 circuit court under this subsection (j), such court shall
19 have jurisdiction to hear and determine the matter so
20 presented, and to enter such orders as may be required to
21 carry out the provisions of this Section. Any final order
22 so entered shall be subject to appeal in the same manner as
23 appeals of other final orders in civil matters. Any
24 disobedience of any final order entered under this Section
25 by any court shall be punished as a contempt of the court.

26 (k) Disclosure exemption. Any documentary material,
27 answers to written interrogatories, or oral testimony provided
28 under any subpoena issued under subsection (a) shall be exempt
29 from disclosure under the Illinois Administrative Procedure
30 Act.

31 (Source: P.A. 92-651, eff. 7-11-02; 93-579, eff. 1-1-04.)