



Rep. Ann Williams

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09700HB4190ham001

LRB097 15181 JDS 66710 a

1 AMENDMENT TO HOUSE BILL 4190

2 AMENDMENT NO. _____. Amend House Bill 4190 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois False Claims Act is amended by
5 changing Section 4 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 Attorney General or the
10 Department of State Police shall diligently investigate a civil
11 violation under Section 3. If the Attorney General finds that a
12 person violated or is violating Section 3, the Attorney General
13 may bring a civil action under this Section against the person.

14 The State shall receive an amount for reasonable expenses
15 that the court finds to have been necessarily incurred by the
16 Attorney General, including reasonable attorneys' fees and

1 costs. All such expenses, fees, and costs shall be awarded
2 against the defendant. The court may award amounts from the
3 proceeds of an action or settlement that it considers
4 appropriate to any governmental entity or program that has been
5 adversely affected by a defendant. The Attorney General, if
6 necessary, shall direct the State Treasurer to make a
7 disbursement of funds as provided in court orders or settlement
8 agreements.

9 (b) Actions by private persons.

10 (1) A person may bring a civil action for a violation
11 of Section 3 for the person and for the State. The action
12 shall be brought in the name of the State. The action may
13 be dismissed only if the court and the Attorney General
14 give written consent to the dismissal and their reasons for
15 consenting.

16 (2) A copy of the complaint and written disclosure of
17 substantially all material evidence and information the
18 person possesses shall be served on the State. The
19 complaint shall be filed in camera, shall remain under seal
20 for at least 60 days, and shall not be served on the
21 defendant until the court so orders. The State may elect to
22 intervene and proceed with the action within 60 days after
23 it receives both the complaint and the material evidence
24 and information.

25 (3) The State may, for good cause shown, move the court
26 for extensions of the time during which the complaint

1 remains under seal under paragraph (2). Any such motions
2 may be supported by affidavits or other submissions in
3 camera. The defendant shall not be required to respond to
4 any complaint filed under this Section until 20 days after
5 the complaint is unsealed and served upon the defendant.

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

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

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

13 (5) When a person brings an action under this
14 subsection (b), no person other than the State may
15 intervene or bring a related action based on the facts
16 underlying the pending action.

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

18 (1) If the State proceeds with the action, it shall
19 have the primary responsibility for prosecuting the
20 action, and shall not be bound by an act of the person
21 bringing the action. Such person shall have the right to
22 continue as a party to the action, subject to the
23 limitations set forth in paragraph (2).

24 (2) (A) The State may dismiss the action
25 notwithstanding the objections of the person initiating
26 the action if the person has been notified by the State of

1 the filing of the motion and the court has provided the
2 person with an opportunity for a hearing on the motion.

3 (B) The State may settle the action with the defendant
4 notwithstanding the objections of the person initiating
5 the action if the court determines, after a hearing, that
6 the proposed settlement is fair, adequate, and reasonable
7 under all the circumstances. Upon a showing of good cause,
8 such hearing may be held in camera.

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

16 (i) limiting the number of witnesses the person may
17 call:

18 (ii) limiting the length of the testimony of such
19 witnesses;

20 (iii) limiting the person's cross-examination of
21 witnesses; or

22 (iv) otherwise limiting the participation by the
23 person in the litigation.

24 (D) Upon a showing by the defendant that unrestricted
25 participation during the course of the litigation by the
26 person initiating the action would be for purposes of

1 harassment or would cause the defendant undue burden or
2 unnecessary expense, the court may limit the participation
3 by the person in the litigation.

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

14 (4) Whether or not the State proceeds with the action,
15 upon a showing by the State that certain actions of
16 discovery by the person initiating the action would
17 interfere with the State's investigation or prosecution of
18 a criminal or civil matter arising out of the same facts,
19 the court may stay such discovery for a period of not more
20 than 60 days. Such a showing shall be conducted in camera.
21 The court may extend the 60-day period upon a further
22 showing in camera that the State has pursued the criminal
23 or civil investigation or proceedings with reasonable
24 diligence and any proposed discovery in the civil action
25 will interfere with the ongoing criminal or civil
26 investigation or proceedings.

1 (5) Notwithstanding subsection (b), the State may
2 elect to pursue its claim through any alternate remedy
3 available to the State, including any administrative
4 proceeding to determine a civil money penalty. If any such
5 alternate remedy is pursued in another proceeding, the
6 person initiating the action shall have the same rights in
7 such proceeding as such person would have had if the action
8 had continued under this Section. Any finding of fact or
9 conclusion of law made in such other proceeding that has
10 become final shall be conclusive on all parties to an
11 action under this Section. For purposes of the preceding
12 sentence, a finding or conclusion is final if it has been
13 finally determined on appeal to the appropriate court, if
14 all time for filing such an appeal with respect to the
15 finding or conclusion has expired, or if the finding or
16 conclusion is not subject to judicial review.

17 (d) Award to Qui Tam plaintiff.

18 (1) If the State proceeds with an action brought by a
19 person under subsection (b), such person shall, subject to
20 the second sentence of this paragraph, receive at least 15%
21 but not more than 25% of the proceeds of the action or
22 settlement of the claim, depending upon the extent to which
23 the person substantially contributed to the prosecution of
24 the action. Where the action is one which the court finds
25 to be based primarily on disclosures of specific
26 information (other than information provided by the person

1 bringing the action) relating to allegations or
2 transactions in a criminal, civil, or administrative
3 hearing, in a legislative, administrative, or Auditor
4 General's report, hearing, audit, or investigation, or
5 from the news media, the court may award such sums as it
6 considers appropriate, but in no case more than 10% of the
7 proceeds, taking into account the significance of the
8 information and the role of the person bringing the action
9 in advancing the case to litigation. Any payment to a
10 person under the first or second sentence of this paragraph
11 (1) shall be made from the proceeds. Any such person shall
12 also receive an amount for reasonable expenses which the
13 court finds to have been necessarily incurred, plus
14 reasonable attorneys' fees and costs. The State shall also
15 receive an amount for reasonable expenses which the court
16 finds to have been necessarily incurred by the Attorney
17 General, including reasonable attorneys' fees and costs.
18 All such expenses, fees, and costs shall be awarded against
19 the defendant. The court may award amounts from the
20 proceeds of an action or settlement that it considers
21 appropriate to any governmental entity or program that has
22 been adversely affected by a defendant. The Attorney
23 General, if necessary, shall direct the State Treasurer to
24 make a disbursement of funds as provided in court orders or
25 settlement agreements.

26 (2) If the State does not proceed with an action under

1 this Section, the person bringing the action or settling
2 the claim shall receive an amount which the court decides
3 is reasonable for collecting the civil penalty and damages.
4 The amount shall be not less than 25% and not more than 30%
5 of the proceeds of the action or settlement and shall be
6 paid out of such proceeds. Such person shall also receive
7 an amount for reasonable expenses which the court finds to
8 have been necessarily incurred, plus reasonable attorneys'
9 fees and costs. All such expenses, fees, and costs shall be
10 awarded against the defendant. The court may award amounts
11 from the proceeds of an action or settlement that it
12 considers appropriate to any governmental entity or
13 program that has been adversely affected by a defendant.
14 The Attorney General, if necessary, shall direct the State
15 Treasurer to make a disbursement of funds as provided in
16 court orders or settlement agreements.

17 (3) Whether or not the State proceeds with the action,
18 if the court finds that the action was brought by a person
19 who planned and initiated the violation of Section 3 upon
20 which the action was brought, then the court may, to the
21 extent the court considers appropriate, reduce the share of
22 the proceeds of the action which the person would otherwise
23 receive under paragraph (1) or (2) of this subsection (d),
24 taking into account the role of that person in advancing
25 the case to litigation and any relevant circumstances
26 pertaining to the violation. If the person bringing the

1 action is convicted of criminal conduct arising from his or
2 her role in the violation of Section 3, that person shall
3 be dismissed from the civil action and shall not receive
4 any share of the proceeds of the action. Such dismissal
5 shall not prejudice the right of the State to continue the
6 action, represented by the Attorney General.

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

14 (e) Certain actions barred.

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

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

24 (B) For purposes of this paragraph (2), "exempt
25 official" means any of the following officials in State
26 service: directors of departments established under the

1 Civil Administrative Code of Illinois, the Adjutant
2 General, the Assistant Adjutant General, the Director of
3 the State Emergency Services and Disaster Agency, members
4 of the boards and commissions, and all other positions
5 appointed by the Governor by and with the consent of the
6 Senate.

7 (3) In no event may a person bring an action under
8 subsection (b) which is based upon allegations or
9 transactions which are the subject of a civil suit or an
10 administrative civil money penalty proceeding in which the
11 State is already a party.

12 (4) (A) The court shall dismiss an action or claim under
13 this Section, unless opposed by the State, if substantially
14 the same allegations or transactions as alleged in the
15 action or claim were publicly disclosed: ~~No court shall~~
16 have jurisdiction over an action under this Section based
17 upon the public disclosure of allegations or transactions

18 (i) in a criminal, civil, or administrative
19 hearing in which the State or its agent is a party; 7

20 (ii) in a State legislative, State administrative,
21 or Auditor General, or other State General's report,
22 hearing, audit, or investigation; 7 or

23 (iii) from the news media,

24 unless the action is brought by the Attorney General or the
25 person bringing the action is an original source of the
26 information.

1 (B) For purposes of this paragraph (4), "original
2 source" means an individual who either (i) prior to a
3 public disclosure under subparagraph (A) of this paragraph
4 (4), has voluntarily disclosed to the State the information
5 on which allegations or transactions in a claim are based,
6 or (ii) has knowledge that is independent of and materially
7 adds to the publicly disclosed allegations or
8 transactions, ~~has direct and independent knowledge of the~~
9 ~~information on which the allegations are based~~ and who has
10 voluntarily provided the information to the State before
11 filing an action under this Section ~~which is based on the~~
12 ~~information.~~

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

16 (g) Relief from retaliatory actions.

17 (1) In general, any employee, contractor, or agent
18 shall be ~~is~~ entitled to all relief necessary to make that
19 employee, contractor, or agent whole, if that employee,
20 contractor, or agent is discharged, demoted, suspended,
21 threatened, harassed, or in any other manner discriminated
22 against in the terms and conditions of employment because
23 of lawful acts done by the employee, contractor, ~~or agent~~
24 ~~on behalf of the employee, contractor, or agent,~~ or
25 associated others in furtherance of an action under this
26 Section or other efforts to stop one or more violations of

1 this Act.

2 (2) Relief under paragraph (1) shall include
3 reinstatement with the same seniority status that the
4 employee, contractor, or agent would have had but for the
5 discrimination, 2 times the amount of back pay, interest on
6 the back pay, and compensation for any special damages
7 sustained as a result of the discrimination, including
8 litigation costs and reasonable attorneys' fees. An action
9 under this subsection (g) may be brought in the appropriate
10 circuit court for the relief provided in this subsection
11 (g).

12 (3) A civil action under this subsection may not be
13 brought more than 3 years after the date when the
14 retaliation occurred.

15 (Source: P.A. 96-1304, eff. 7-27-10.)".