

Georgia Taxpayer Protection False Claims Act

(Ga. Code. Ann. §§ 23-3-120 to 127)ⁱ

§ 23-3-120. Definitions

As used in this article, the term:

(1) "Claim" means any request or demand, whether under a contract or otherwise, for money or property, and whether or not this state or a local government has title to such money or property that is:

(A) Presented to an officer, employee, or agent of the state or local government;

(B) Made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's or local government's behalf or to advance a state or local government program or interest, and if the state or local government:

(i) Provides or has provided any portion of the money or property requested or demanded; or

(ii) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

Such term shall not include requests or demands for money or property that the state or local government has paid to an individual as compensation for state or local government employment or as an income subsidy with no restrictions on that individual's use of the money or property.

(2) "Knowing" and "knowingly" mean that a person, with respect to information:

(A) Has actual knowledge of the information;

(B) Acts in deliberate ignorance of the truth or falsity of the information; or

(C) Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required.

(3) "Local government" means any Georgia county, municipal corporation, consolidated government, authority, board of education or other local public board, body, or commission, town, school district, board of cooperative educational services, local public benefit corporation, hospital authority, taxing authority, or other political subdivision of the state or of such local government, including the Metropolitan Atlanta Rapid Transit Authority.

(4) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(5) "Obligation" means an established duty, whether fixed or not, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee based or similar relationship, from law or regulation, or from the retention of any overpayment.

(6) "State" means the State of Georgia and any state department, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office, or other governmental entity performing a governmental or proprietary function for this state.

§ 23-3-121. Submission of false information; liability; no application to taxation

(a) Any person, firm, corporation, or other legal entity that:

(1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspires to commit a violation of paragraph (1), (2), (4), (5), (6), or (7) of this subsection;

(4) Has possession, custody, or control of property or money used, or to be used, by the state or local government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(5) Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or local government and, intending to defraud the state or local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

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

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or local government, or knowingly conceals, knowingly and improperly avoids, or decreases an obligation to pay or transmit money or property to the state or a local government

shall be liable to the State of Georgia for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the state or local government sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the state or local government responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the state or local government with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not more than two times the amount of the actual damages which the state or local government sustained because of the act of such person.

(c) A person violating any provision of this Code section shall also be liable to the state or local government for all costs, reasonable expenses, and reasonable attorney's fees incurred by the state or local government in prosecuting a civil action brought to recover the damages and penalties provided under this article.

(d) Any information furnished pursuant to paragraph (2) of subsection (b) of this Code section shall be exempt from disclosure under Article 4 of Chapter 18 of Title 50.

(e) This Code section shall not apply to claims, records, or statements made concerning taxes under the revenue laws of this state.

§ 23-3-122. Investigations by Attorney General; civil actions authorized; intervention by government; limitation on participating in litigation; stay of discovery; alternative remedies; division of recovery; limitations

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article. The Attorney General may delegate authority to a district attorney or other appropriate official of a local government to investigate violations that may have resulted in damages to such local government under *Code Section 23-3-121* and may delegate to the local government the authority to bring a civil action on its own behalf, or on behalf of any subdivision of such local government, to recover damages sustained by such local government as a result of such violations, as well as all multiple damages, costs, expenses, attorney's fees, and civil penalties available under *Code Section 23-3-121*. The Attorney General may delegate to a district attorney or local government the authority to pursue an action brought by a private person under subsection (b) of this Code section. Notwithstanding any such delegation of authority, the Attorney General shall retain the authority to continue or discontinue the prosecution of any such action and to withdraw any such authority previously delegated to a district attorney or local government.

(b) (1) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person upon written approval by the Attorney General. A civil action shall be brought in the name of the State of Georgia or local government, as applicable. The civil action may be dismissed only if the Attorney General gives written consent to the dismissal stating the reasons for consenting to such dismissal and the court enters an order approving the dismissal.

(2) 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 by certified mail or statutory overnight delivery. The complaint shall be filed in camera and under seal, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The state or, if delegated the authority by the Attorney General, local government may elect to intervene and proceed with the action within 60 days after the Attorney General receives both the complaint and the material evidence and information.

(3) The state or, if delegated the authority by the Attorney General, the local government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the state or local government shall:

(A) Proceed with the civil action, in which case the civil action shall be conducted by the state or local government; or

(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action.

(5) When a person brings a civil action under this subsection, no person other than the state or, if delegated the authority by the Attorney General, the local government may intervene or bring a related civil action based on the facts underlying the pending civil action.

(6) Any evidence and information provided to the Attorney General or his or her designee, including any district attorney or local government, by a private person in connection with an action under this Code section shall not constitute public records and shall be exempt from disclosure under Article 4 of Chapter 18 of Title 50. Any such evidence also shall be protected by the common interest privilege and work product doctrine. To effectuate the law enforcement purposes of this article in combating fraud and false claims directed at the public's funds, it is the public policy of this state that private persons be authorized to take actions to provide to the Attorney General or local government such information and evidence.

(c) (1) If the state or local government elects to intervene and proceeds with the civil action, it shall have the primary responsibility for prosecuting the civil action and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.

(2) If the Attorney General has consented to a dismissal or elected not to proceed with a civil action, a local government may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the local government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(3) The state or local government may settle the civil action with the defendant, notwithstanding the objections of the person initiating the civil action, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the state or local government that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the state or local government's litigation 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, such as:

(A) Limiting the number of witnesses the person may call;

- (B) Limiting the length of the testimony of such witnesses;
- (C) Limiting the person's cross-examination of witnesses; or
- (D) Otherwise limiting the participation of 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 civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation of the person in the litigation.

(e) If the state or local government elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the state or local government so requests, it shall be served with copies of all pleadings filed in the civil action and shall be supplied, without cost, with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the state or local government to intervene at a later date upon a showing of good cause.

(f) Whether or not the state or local government proceeds with the civil action, upon a showing by the state or local government that certain actions of discovery by the person initiating the civil action would interfere with the state or local government's investigation or 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 that the state or local government has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(g) Notwithstanding subsection (b) of this Code section, the state or local government may elect to pursue its claim through any alternate remedy available to the state or local government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that becomes final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion shall be deemed final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(h) (1) If the state or local government proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, or State Accounting Office 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, taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state or local government does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state or local government proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of this article upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of this article, such

person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General or local government attorney to whom the Attorney General has delegated authority.

(4) If the state or local government does not proceed with the civil action and the person bringing the civil action conducts the civil action, the court may award to the defendant its reasonable attorney's fees and expenses against the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(i) For purposes of this subsection, the term "public employee," "public official," and "public employment" shall include federal, state, and local employees and officials. No civil action shall be brought under this article by a person who is or was a public employee or public official if the allegations of such action are substantially based upon:

(1) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office; or

(2) Information or records to which such person had access as a result of his or her public employment or office.

(j) (1) No court shall have jurisdiction over a civil action brought under subsection (b) of this Code section against a member of the General Assembly or a member of the judiciary if the civil action is based on evidence or information known to the state when the civil action was brought.

(2) In no event may a person bring a civil action under subsection (b) of this Code section which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.

(3) The court shall dismiss a civil action or claim under this Code section, unless opposed by the state or local government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(A) In a state criminal, civil, or administrative hearing in which the state or local government or its agent is a party;

(B) In a state or local government legislative or other state or local government report, hearing, audit, or investigation that is made on the public record or disseminated broadly to the general public, provided that such information shall not be deemed publicly disclosed in a report or investigation because it was disclosed or provided pursuant to Article 4 of Chapter 18 of Title 50, the federal Freedom of Information Act, or under any other federal, state, or local law, rule, or program enabling the public to request, receive, or view documents or information in the possession of public officials or public agencies; or

(C) From the news media, provided that such allegations or transactions are not publicly disclosed in the news media merely because information of allegations or transactions have been posted on the Internet or on a computer network, unless the action is brought by the Attorney General or local government, or the person bringing the action is an original source of the information. For purposes of this subparagraph, the term "original source" means a person who:

(i) Prior to a public disclosure under this paragraph, has voluntarily disclosed to the state or a local government the information on which allegations or transactions in a claim are based; or

(ii) Has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions and who has voluntarily provided the information to the state or a local government before filing a civil action under this Code section.

(k) The state or local government shall not be liable for expenses which a private person incurs in bringing a civil action under this article.

(l) (1) Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of a civil action under this Code section or other efforts to stop one or more violations of this article.

(2) Relief under paragraph (1) of this subsection shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on

the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this subsection may be brought in the appropriate superior court of this state for the relief provided in this subsection.

(3) A civil action under this subsection shall not be brought more than three years after the date when the discrimination occurred.

§ 23-3-123. Statute of limitations; service of subpoena; limitation on disclosures; intervention; preponderance of the evidence standard; effect of criminal conviction on civil actions

(a) Except as provided in paragraph (3) of subsection (l) of *Code Section 23-3-122*, all civil actions under this article shall be filed pursuant to *Code Section 23-3-122* within six years after the date the violation was committed or three years after the date when facts material to the right of civil action are known or reasonably should have been known by the state or local government official charged with the responsibility to act in the circumstances, whichever occurs last; provided, however, that in no event shall any civil action be filed more than ten years after the date upon which the violation was committed.

(b) A subpoena requiring the attendance of a witness at a trial or hearing conducted under *Code Section 23-3-122* may be served at any place in this state.

(c) For purposes of applying subsection (b) of *Code Section 9-11-9*, in pleading a civil action brought under this article, the qui tam plaintiff shall not be required to identify specific claims that result from an alleged course of misconduct or any specific records or statements used if the facts alleged in the complaint, if ultimately proven true, would provide a reasonable indication that one or more violations of *Code Section 23-3-121* are likely to have occurred and if the allegations in the pleading provide adequate notice of the specific nature of the alleged misconduct to permit the state or a local government to investigate effectively and defendants to defend fairly the allegations made.

(d) If the state or local government elects to intervene and proceed with a civil action brought under subsection (b) of *Code Section 23-3-122*, the state or local government may file its own complaint or amend the complaint of a person who has brought an action under such subsection to clarify or add detail to the claims in which the state or local government is intervening and to add any additional claims with respect to which the state or local government contends it is entitled to relief. For statute of limitations purposes, any such state or local government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the state or local government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(e) In any action brought under *Code Section 23-3-122*, the plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(f) Notwithstanding any other provision of law, a final judgment rendered in favor of the state or local government or the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any civil action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of *Code Section 23-3-122*.

§ 23-3-124. Venue

All civil actions brought under this article in a court of this state shall be brought in the county where the defendant or any one defendant, in the case of multiple defendants or defendants who are not residents of the State of Georgia, resides, can be found, transacts business, or commits an act in furtherance of the submittal of a false or fraudulent claim to the state or local government. Civil actions under this article may be brought in courts of the United States and other states if there is pendent jurisdiction.

§ 23-3-125. Civil investigative demands

(a) As used in this Code section, the term:

(1) "Custodian" means the custodian, or any deputy custodian, designated by the Attorney General under paragraph (1) of subsection (j) of this Code section.

(2) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document or data compilations stored in or accessible through computer or other information retrieval system, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(3) "False claims law" means:

(A) This article; and

(B) Any Act of Congress or of the legislature which prohibits or makes available to the federal government, state, or any local government in any court of this state, of another state or the District of Columbia, or of local government or of the United States any civil remedy with respect to any false claim against, bribery of, or corruption of any officer or employee of any state, the District of Columbia, local government, or the United States.

(4) "False claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law.

(5) "False claims law investigator" means any attorney or investigator employed by the Department of Law or any other agency of the federal government, state, or any local government who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the state or local government or the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation.

(6) "Official use" means any use that is consistent with the law and the regulations and policies of the Department of Law or any other agency of the federal government, state, or any local government participating in any of the matters in question, including use in connection with internal memoranda, and reports; communications between the Attorney General or any other agency of the federal government, state, or any local government participating in the matters in question and any other agency of the federal government, state, or any local government, or a contractor of an agency of the federal government, state, or any local government, undertaken in furtherance of a federal, state, or local government or other governmental investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with federal, state, or local government or other governmental investigators, auditors, consultants and experts, the counsel of other parties, arbitrators, and mediators, concerning an investigation, case, or proceeding.

(7) "Person" means any natural person, partnership, corporation, association, or other legal entity, including any state or local government or political subdivision of a state.

(8) "Product of discovery" includes:

(A) The original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) Any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A) of this paragraph; and

(C) Any index or other manner of access to any item listed in subparagraph (A) of this paragraph.

(b) (1) For purposes of this Code section, whenever the Attorney General, or his or her designee, has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or his or her designee, may, before commencing a civil proceeding under subsection (a) of *Code Section 23-3-122* or other false claims law, or making an election under subsection (b) of *Code*

Section 23-3-122, issue in writing and cause to be served upon such person a civil investigative demand requiring such person to:

- (A) Produce such documentary material for inspection and copying;
- (B) Answer in writing written interrogatories with respect to such documentary material or information;
- (C) Give oral testimony concerning such documentary material or information; or
- (D) Furnish any combination of such documentary material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection, including to a district attorney or other local government attorney. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the deputy attorney general, or an assistant attorney general shall cause to be served, in any manner authorized by this Code section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this Code section may be shared with any qui tam relator if the Attorney General or such designee determine it is necessary as part of any false claims law investigation.

(2) (A) Each civil investigative demand issued under paragraph (1) of this subsection shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation and the applicable provision of law alleged to have been violated.

(B) If such demand is for the production of documentary material, the demand shall:

(i) Describe each class of documentary material to be produced with such definiteness and certainty as to permit such documentary material to be fairly identified;

(ii) Prescribe a return date for each such class which will provide a reasonable period of time within which the documentary material so demanded may be assembled and made available for inspection and copying; and

(iii) Identify the false claims law investigator to whom such documentary material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall:

(i) Set forth with specificity the written interrogatories to be answered;

(ii) Prescribe dates at which time the answers to such written interrogatories shall be submitted; and

(iii) Identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall:

(i) Prescribe a date, time, and place at which the oral testimony shall be commenced;

(ii) Identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(iii) Specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this Code section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the product of discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this Code section shall be a date which is not less than seven days after the date on which such demand is received, unless the Attorney General or his or her designee determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General or his or her designee shall not authorize the issuance under this Code section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(c) (1) A civil investigative demand issued under subsection (b) of this Code section shall not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such documentary material, answers, or testimony would be protected from disclosure under:

(A) Standards applicable to subpoenas or subpoenas duces tecum issued by a court of the state or of the United States to aid in a grand jury investigation; or

(B) Standards applicable to discovery requests under Chapter 11 of Title 9, the "Georgia Civil Practice Act," to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this Code section.

(2) Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this Code section, preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand shall not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(d) (1) Any civil investigative demand issued under subsection (b) of this Code section may be served in this state by a false claims law investigator or by a sheriff, deputy sheriff, marshal, or deputy marshal at any place within the territorial jurisdiction of any court of this state.

(2) Any such demand or any petition filed under subsection (k) of this Code section may be served upon any person who is not found within the territorial jurisdiction of any court of this state in such manner as applicable law prescribes for service outside this state. To the extent that the courts of this state can assert jurisdiction over any such person consistent with due process, any such court shall have the same jurisdiction to take any action respecting compliance with this Code section by any such person that such court would have if such person were personally within the jurisdiction of such court. Compliance with this Code section may also be enforced in courts of other states, of the District of Columbia, and of the United States.

(e) (1) Service of any civil investigative demand issued under subsection (b) of this Code section or of any petition filed under subsection (k) of this Code section may be made upon a partnership, corporation, association, or other legal entity by:

(A) Delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) Delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) Depositing an executed copy of such demand or petition via the United States Postal Service by registered or certified mail or statutory overnight delivery, return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Service of any such demand or petition may be made upon any natural person by:

(A) Delivering an executed copy of such demand or petition to the person; or

(B) Depositing an executed copy of such demand or petition via the United States Postal Service by registered or certified mail or statutory overnight delivery, return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(f) A verified return by the individual serving any civil investigative demand issued under subsection (b) of this Code section or any petition filed under subsection (k) of this Code section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail or statutory overnight delivery, such return shall be accompanied by the return post office receipt or other receipt of delivery of such demand.

(g) (1) The production of documentary material in response to a civil investigative demand served under this Code section shall be made under a sworn certificate, in such form as the demand designates, by:

(A) In the case of a natural person, the person to whom the demand is directed; or

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

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(2) Any person upon whom any civil investigative demand for the production of documentary material has been served under this Code section shall make such documentary material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under paragraph (1) of subsection (k) of this Code section. Such documentary material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such documentary material.

(h) Each interrogatory in a civil investigative demand served under this Code section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by:

(1) In the case of a natural person, the person to whom the demand is directed; or

(2) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

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

(i) (1) The examination of any person pursuant to a civil investigative demand for oral testimony served under this Code section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this state, or of the United States, or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by and in a manner consistent with Chapter 11 of Title 9, the "Georgia Civil Practice Act."

(2) The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the state or local government, any person who may be agreed upon by the attorney for the state or local government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) The oral testimony of any person taken pursuant to a civil investigative demand served under this Code section shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be

signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence, or the refusal to sign of the witness, together with the reasons, if any, given therefor.

(5) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General or his or her designee may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

(7) (A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (b) of this Code section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and shall not, directly or through counsel, otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the superior court under paragraph (1) of subsection (k) of this Code section for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of Title 24.

(8) Any person appearing for oral testimony under a civil investigative demand issued under subsection (b) of this Code section shall be entitled to the same fees and allowances which are paid to witnesses in the superior courts and state courts of Georgia.

(j) (1) The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this Code section and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(2) (A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this Code section shall transmit them to the custodian. The custodian shall take physical possession of such documentary material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4) of this subsection.

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator or other officer or employee of the Attorney General or any other agency of the state or local government participating in an investigation of the matters in question. Such documentary material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this Code section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Attorney General or any other agency of the federal government or of a state or local government participating in an investigation of the matters in question authorized under subparagraph (B) of this paragraph. The prohibition in the preceding sentence on the availability of documentary material, answers, or transcripts shall not apply if consent is given by the person who produced such documentary material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such documentary material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the General Assembly, including any committee or subcommittee of the General Assembly, or to any other agency of the state or local government or the United States for use by such agency in furtherance of its statutory responsibilities.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe:

(i) Documentary material and answers to interrogatories shall be available for examination by the person who produced such documentary material or answers, or by a representative of that person authorized by that person to examine such documentary material and answers; and

(ii) Transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Whenever the Attorney General, an attorney for a local government, or an attorney for any agency of a local government participating in an investigation of the matter in question has been designated to appear before any court, grand jury, or state or local government or federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this Code section may deliver to such attorney such documentary material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such documentary material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(4) If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this Code section, and:

(A) Any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state or local government or federal agency involving such documentary material, has been completed; or

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

the custodian shall, upon written request of the person who produced such documentary material, return to such person any such documentary material, other than copies furnished to the false claims law investigator under paragraph (2) of subsection (g) of this Code section or made for the state under subparagraph (B) of paragraph (2) of this subsection, which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(5) In the event of the death, disability, or separation from service of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this Code section, or in the event of the official relief of such custodian from responsibility for the custody and control of such documentary material, answers, or transcripts, the Attorney General or his or her designee shall promptly:

(A) Designate another false claims law investigator to serve as custodian of such documentary material, answers, or transcripts; and

(B) Transmit in writing to the person who produced such documentary material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such documentary material, answers, or transcripts, the same duties and responsibilities as were imposed by this Code section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(k) (1) Whenever any person fails to comply with any civil investigative demand issued under subsection (b) of this Code section, or whenever satisfactory copying or reproduction of any documentary material requested in such demand cannot be done and such person refuses to surrender such documentary material, the Attorney General or local government may file in any county or district in which such person resides, is found, or transacts business and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) (A) Any person who has received a civil investigative demand issued under subsection (b) of this Code section may file in the appropriate court and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the superior court for any

county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph shall be filed:

(i) Within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A) of this paragraph and may be based upon any failure of the demand to comply with the provisions of this Code section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(A) In the case of any civil investigative demand issued under subsection (b) of this Code section which is an express demand for any product of discovery, the person from whom such discovery was obtained may file in the superior court for the county in which the proceeding in which such discovery was obtained is or was last pending and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph shall be filed:

(i) Within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A) of this paragraph and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this Code section or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced by, or transcripts of oral testimony given by, any person in compliance with any civil investigative demand issued under subsection (b) of this Code section, such person and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file in the superior court for any county within which the office of such custodian is situated and serve upon such custodian a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this Code section.

(5) Whenever any petition is filed under this subsection in any superior court for any county, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry out the provisions of this Code section. Any final order so entered shall be subject to appeal. Any disobedience of any final order entered under this Code section by any court shall be punished as a contempt of the court.

(6) Chapter 11 of Title 9, the "Georgia Civil Practice Act," shall apply to any petition filed in this state under this subsection, to the extent that such rules are not inconsistent with the provisions of this Code section.

(l) Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (b) of this Code section shall be exempt from disclosure under Article 4 of Chapter 18 of Title 50.

§ 23-3-126. Remedies nonexclusive; construction of provisions

(a) The provisions of this article shall not be deemed exclusive, and the remedies provided for in this article shall be in addition to any other remedies provided for in any other law or available under common law.

(b) This article shall be broadly construed and applied to promote the public's interest in combating fraud and false claims directed at the public's funds.

§ 23-3-127. Proceedings involving Medicaid

If a civil action can be commenced pursuant to Article 7B of Chapter 4 of Title 49, the "State False Medicaid Claims Act," the claimant shall proceed under Article 7B of Chapter 4 of Title 49.

ⁱ Last updated June 26, 2014.