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Summary: SC False Claims Act

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\80_20201209.docx)

**A** **BILL**

TO ENACT THE “SOUTH CAROLINA FALSE CLAIMS ACT”; TO AMEND TITLE 15 OF THE 1976 CODE, RELATING TO CIVIL REMEDIES AND PROCEDURES, BY ADDING CHAPTER 85, TO PROVIDE LIABILITY FOR FALSE OR FRAUDULENT CLAIMS UNDER CERTAIN CIRCUMSTANCES, PROCEDURES FOR CIVIL ACTIONS FOR FALSE CLAIMS, THE PROCEDURE AND CONTENTS OF CIVIL INVESTIGATIVE DEMANDS, AND CREATING THE STATE FALSE CLAIMS ACT INVESTIGATION AND PROSECUTION FUND, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “South Carolina False Claims Act”.

SECTION 2. Title 15 of the 1976 Code is amended by adding:

“CHAPTER 85

False Claims

Section 15‑85‑10. As used in this chapter:

(1) ‘Attorney General’ means the South Carolina Attorney General, any of his Assistant Attorneys General, or any employee, investigator, or auditor employed by the Attorney General.

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

(3) ‘Guard’ means the South Carolina National Guard.

(4) ‘Investigation’ means an inquiry conducted by an investigator for the purpose of ascertaining whether a person is or has been engaged in a violation of this chapter.

(5) ‘Investigator’ means a person who is charged by the Attorney General with the duty of conducting an investigation pursuant to this act, or an officer or employee of the State acting pursuant to the direction and supervision of the Attorney General with an investigation.

(6) ‘Medicaid fraud control unit’ means the South Carolina Medicaid Fraud Control Unit certified pursuant to federal law.

(7) ‘Person’ means any natural person, corporation, joint venture, partnership, unincorporated association, or any other legal entity, including a state or political subdivision of the State;

(8) ‘Proceeds’ of the action or settlement means the damages derived from the action or settlement and shall include fines, civil penalties, payment for costs of compliance and any other economic benefit realized by the State as a result of the action.

(9) ‘Product of discovery’ includes:

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

(b) a digest, analysis, selection, compilation, or derivation of an item listed in item (a); and

(c) an index or other manner of access to an item listed in item (a).

(10) ‘Qui tam plaintiff’ means a person who brings a civil action pursuant to this chapter.

Section 15‑85‑20. (A) As used in this section:

(1) ‘Claim’ means any request or demand, whether under a contract or otherwise for money or property and whether or not the State has title to the money or property, that is:

(a) presented directly to an officer, employee, or an agent of the State, or

(b) to a contractor, grantor, or other recipient, if the money or property is to be spent or used on the State’s behalf or to advance a State program or interest and the State provides or reimburses any portion of the requested funds.

(2) ‘Knowing’ and ‘knowingly’ mean, with respect to information, that a person, with no proof of specific intent to defraud is required:

(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.

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

(4) ‘Obligation’ means an established duty whether or not fixed, arising from an express or implied contractual, grantor‑grantee, or licensor‑licensee relationship, from a fee‑based or similar relationship, from statue or regulation, or from retention of any overpayment.

(B) A person who commits any of the following acts shall be liable to the State for three times the amount of damages which the State sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the State for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the State for a civil penalty of not less than five thousand five hundred dollars and not more than eleven thousand dollars for each violation, or as adjusted in accordance with the inflation procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104‑410):

(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) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay money to the State;

(4) conspires to commit a violation of the South Carolina False Claims Act;

(5) has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(6) is authorized to make or deliver a document certifying receipt of property used or to be used by the State and knowingly makes or delivers a receipt that falsely represents the property used or to be used;

(7) knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

(8) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State; or

(9) is a beneficiary of an inadvertent submission of a false claim who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim.

(C) Notwithstanding subsection (B), the court may assess not less than two times the amount of damages which the State sustains because of the act of the person described in that subsection, and no civil penalty, if the court finds all of the following: (1) the person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the violation within thirty days after the date on which the person first obtained the information;

(2) the person fully cooperated with any investigation by the State; and

(3) at the time the person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(D) This section does not apply to claims, records, or statements made under the South Carolina Income Tax Act.

Section 15‑85‑30. (A) The Attorney General shall diligently investigate a civil violation pursuant to Section 15‑85‑20. If the Attorney General finds that a person has violated or is violating the provisions of Section 15‑85‑20, then the Attorney General may bring a civil action pursuant to this section against the person. An action brought pursuant to this section must be filed in Richland County.

(B) For an action by a private person:

(1) A person may bring a civil action for a violation of Section 15‑85‑20 for the person and for the State. The action must be brought in the name of the State. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting. An action brought pursuant to this section must be filed in Richland County.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses must be served on the State. The complaint and all attachments must be filed in camera, must remain under seal for at least sixty days, and may not be served on the defendant until the court orders it served. The State may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to item (2). The motions may be supported by affidavits or other submissions in camera. The defendant may not be required to respond to a complaint filed pursuant to this section until thirty days after the complaint is unsealed and served on the defendant.

(4) Before the expiration of the sixty‑day period or an extension obtained pursuant to item (3), the State shall:

(a) proceed with the action, in which case the action must be conducted by the State, or

(b) notify the court that it declines to take over the action, and the person bringing the action has the right to conduct the action.

(5) When a person brings an action pursuant to this subsection, no person other than the State may intervene or bring a separate, related action based on the facts underlying the pending action.

(C) In qui tam actions:

(1) If the State proceeds with the action, then it has the primary responsibility for prosecuting the action, and is not bound by an act of the qui tam plaintiff bringing the action. The person has the right to continue as a party to the action, subject to the limitations provided in item (3).

(2) If the State proceeds, then the State may file its own complaint or amend the complaint of a qui tam plaintiff who has brought an action under this chapter to clarify or add detail to the claims in which the State is proceeding and to add any additional claims with respect to which the State contends it is entitled to relief. For statute of limitations purposes, any such State 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 arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(3)(a) The State may dismiss the action notwithstanding the objections of the qui tam plaintiff initiating the action if the qui tam plaintiff has been notified by the State of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(b) The State may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff initiating the 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, a hearing may be held in camera.

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

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of the witnesses;

(iii) limiting the person’s cross‑examination of witnesses; or

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

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

(4) If the State elects not to proceed with the action, then the qui tam plaintiff who initiated the action has the right to conduct the action. If the State requests, then it must be served with copies of all pleadings filed in the action and must be supplied with copies of all deposition transcripts at the state’s expense. When a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff initiating the action, may permit the State to intervene at a later date upon a showing of good cause.

(5) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the qui tam plaintiff initiating the action would interfere with the state’s investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay discovery for a period of not more than sixty days. This showing must be conducted in camera. The court may extend the sixty‑day period upon a further showing in camera that the State pursued the criminal or civil investigation or proceedings with reasonable diligence and proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(6) Notwithstanding the provisions of subsection (B), the State may elect to pursue its claim through an alternate remedy available to the State, including an administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued in another proceeding, then the qui tam plaintiff initiating the action has the same rights in the proceeding as the qui tam plaintiff would have had if the action had continued pursuant to the provisions of this section. A finding of fact or conclusion of law made in another proceeding that has become final is conclusive on all parties to an action pursuant to the provisions of this section. A finding or conclusion is final pursuant to the provisions of this section if it has been finally determined on appeal to the appropriate court, if all time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(D) In an award to a qui tam plaintiff:

(1) If the State proceeds with an action brought by a qui tam plaintiff pursuant to subsection (B), then the qui tam plaintiff shall receive at least fifteen percent but not more than twenty‑five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action and subject to the limitations of this item. When the action is one the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Legislative Audit Council’s 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 ten percent of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff bringing the action in advancing the case to litigation. Payment to a qui tam plaintiff pursuant to the provisions of this item must be made from the proceeds. This person also shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys’ fees and costs. The State also shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the Attorney General, including reasonable attorneys’ fees and costs, which must be paid directly to the Attorney General. All expenses, fees, and costs must be awarded against the defendant.

(2) If the State does not proceed with an action pursuant to this section, then the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount may not be less than twenty‑five percent and not more than thirty percent of the proceeds of the action or settlement and must be paid out of the proceeds. The person also shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys’ fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(3) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of Section 15‑85‑20 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive pursuant to item (1) or (2), taking into account the role of that person in advancing the case to litigation and relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his role in the violation of Section 15‑85‑20, then that person must be dismissed from the civil action and shall not receive a share of the proceeds of the action. A dismissal does not prejudice the right of the State or other qui tam plaintiffs to continue the action.

(4) If the State does not proceed with the action and the person bringing the action conducts the action, then the court may award to the defendant its reasonable attorneys’ fees and expenses if the defendant prevails in the action and the court finds by clear and convincing evidence that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(E)(1) A court does not have jurisdiction over an action brought by a former or present member of the guard pursuant to subsection (B) against a member of the guard arising out of the person’s service in the guard.

(2) A court does not have jurisdiction over an action brought pursuant to subsection (B) against a member of the General Assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known to the State when the action was brought. ‘Exempt official’ means the following officials in state service: directors of state agencies, the Adjutant General, the Assistant Adjutant General, members of state boards and commissions, and all other positions appointed by the Governor by and with the consent of the Senate.

(3) A person may not bring an action pursuant to subsection (B) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(4)(a) The court shall dismiss an action or claim under this section, unless opposed by the State, if substantially the same allegations or transactions as alleged in the action or claim were publically disclosed:

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

(ii) in a legislative, government accountability office, or other State report, hearing, audit, or investigation; or

(iii) from the news media unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(b) For the purposes of this item, ‘original source’ means an individual who either: (i) prior to a public disclosure under subsection(E)(4)(a) has voluntarily disclosed to the State the information on which allegations or transactions in a claim are based; or (ii) who has public knowledge that is independent of and materially adds to the publically disclosed allegations or transactions, and who has voluntarily provided the information to the State before filing an action under this section.

(F) The State is not liable for expenses which a person incurs in bringing an action pursuant to this section.

(G) An 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 an action under this section or other efforts to stop one or more violations of this subchapter,

(H) Relief under subsection (G) shall include reinstatement with the same seniority status that 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 attorneys’ fees. An action under this subsection may be brought in the appropriate circuit court for the relief provided in this subsection.

(I) A civil action under this subsection may not be brought more than three years after the date when the retaliation occurred.

Section 15‑85‑40. (A) A subpoena requiring the attendance of a witness at a trial or hearing conducted pursuant to Section 15‑85‑30 may be served at any place in the State.

(B) A civil action pursuant to Section 15‑85‑30 may not be brought:

(1) more than six years after the date on which the violation of Section 15‑85‑20 is committed; or

(2) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation is committed, whichever occurs last.

(C) If the State proceeds, then the State may file its own complaint or amend the complaint of a person who has brought an action under this chapter to clarify or add detail to the claims in which the State is proceeding and to add any additional claims with respect to which the State contends it is entitled to relief. For statute of limitations purposes, any such State 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 arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(D) In an action brought pursuant to Section 15‑85‑30, the State is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(E) Notwithstanding another provision of law, a final judgment rendered in favor of the State in a criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, estops the defendant from denying the essential elements of the offense in an action which involves the same transaction as in the criminal proceeding and which is brought pursuant to Section 15‑85‑30(A) or (B).

Section 15‑85‑50. (A) Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to an investigation, the Attorney General, or designee, before commencing a civil proceeding pursuant to this chapter, may issue in writing and cause to be served upon a person, a civil investigative demand requiring the person to:

(1) produce documentary material for inspection and copying;

(2) answer, in writing, written interrogatories with respect to documentary material or information;

(3) give oral testimony concerning documentary material or information; or

(4) furnish a combination of material, answers, or testimony.

(B) The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General shall cause to be served, in a manner authorized by this section, a copy of the demand upon the person from whom the discovery was obtained and shall notify the person to whom the demand is issued of the date on which the copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam plaintiff if the Attorney General or designee determines it is necessary as part of any false claims act investigation.

(C) Each civil investigative demand issued pursuant to subsection (A) must state the nature of the conduct constituting an alleged violation, which is under investigation, and the applicable provision of law alleged to be violated.

(D) If the demand is for the production of documentary material, then the demand must:

(1) describe each class of documentary material to be produced with definiteness and certainty as to permit the material to be fairly identified;

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

(3) identify the investigator to whom the material must be made available.

(E) If the demand is for answers to written interrogatories, then the demand must:

(1) list with specificity the written interrogatories to be answered;

(2) prescribe dates at which time answers to written interrogatories must be submitted; and

(3) identify the investigator to whom the answers must be submitted.

(F) If the demand is for the giving of oral testimony, then the demand must:

(1) prescribe a date, time, and place at which oral testimony must be commenced;

(2) identify an investigator who shall conduct the examination and identify the custodian to whom the transcript of the examination must be submitted;

(3) specify that the attendance and testimony are necessary to the conduct of the investigation;

(4) notify the person receiving the demand of the right to be accompanied by an attorney and another representative; and

(5) 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.

(G) A civil investigative demand issued pursuant to this section which is an express demand for a product of discovery may not be returned or returnable until twenty days after a copy of the demand is served upon the person from whom the discovery was obtained.

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

(I) The Attorney General shall not authorize the issuance pursuant to this 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.

(J) A civil investigative demand issued pursuant to subsection (A) may not require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony if the material, answers, or testimony would be protected from disclosure pursuant to the standards applicable to:

(1) subpoenas or subpoenas duces tecum issued by a court of this State to aid in grand jury investigations; or

(2) discovery requests pursuant to the Rules of Civil Procedure, to the extent that the application of these standards to a demand is appropriate and consistent with the provisions and purposes of this section.

(K) Except as provided in this section, a demand which is an express demand for a product of discovery supersedes an inconsistent order, rule, or provision of law preventing or restraining disclosure of a product of discovery to another person. Disclosure of a product of discovery pursuant to an express demand does not constitute a waiver of any right or privilege which the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

Section 15‑85‑60. (A)(1) A civil investigative demand issued pursuant to Section 15‑85‑50(A) may be served by an investigator, or by another person authorized to serve process on individuals within this State.

(2) A demand or petition filed pursuant to Section 15‑85‑110 may be served upon a person who is not found within this State in a manner as the Rules of Civil Procedure and applicable statutory law prescribe for service of process outside this State. To the extent that the courts of this State can assert jurisdiction over a person consistent with due process, the courts of this State have the same jurisdiction to take an action respecting compliance with this section by a person that the court would have if the person were personally within the jurisdiction of the court.

(B) Service of a civil investigative demand issued pursuant to Section 15‑85‑50 or of a petition filed pursuant to Section 15‑85‑110 may be made upon a partnership, corporation, association, or other legal entity by:

(1) delivering an executed copy of the demand or petition to a partner, executive officer, managing agent, general agent, or registered agent of the partnership, corporation, association, or entity;

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

(3) depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the partnership, corporation, association, or entity at its principal office or place of business.

(C) Service of a demand or petition pursuant to Section 15‑85‑50, or filed pursuant to Section 15‑85‑110, may be made on a natural person by:

(1) delivering an executed copy of the demand or petition to the person; or

(2) depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person’s residence or principal office or place of business.

(D) A verified return by the individual serving a civil investigative demand issued pursuant to Section 15‑85‑50 or a petition filed pursuant to Section 15‑85‑110 providing the manner of service is proof of service. In the case of service by registered or certified mail, the return is accompanied by the return post office receipt of delivery of the demand.

Section 15‑85‑70. (A) The production of documentary material in response to a civil investigative demand served pursuant to Section 15‑85‑50 must be made under a sworn certificate, in a form as the demand designates, by:

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

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

(B) The certificate must 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 investigator identified in the demand.

(C) A person upon whom a civil investigative demand for the production of documentary material has been served pursuant to Section 15‑85‑50 shall make the material available for inspection and copying to the investigator identified in the demand at the principal place of business of the person, or at another place as the investigator and the person may agree and prescribe in writing, or as the court may direct pursuant to Section 15‑85‑110(A). The material must be made available on the return date specified in the demand, or on a later date as the investigator may prescribe in writing. The person, upon written agreement between the person and the investigator, may substitute copies for originals of all or any part of the material.

Section 15‑85‑80. (A) Each interrogatory in a civil investigative demand served pursuant to Section 15‑85‑50 must be answered separately and fully in writing under oath and must be submitted under a sworn certificate, in a form as the demand designates by:

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

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

(B) If an interrogatory is objected to, then the reasons for the objection must be stated in the certificate instead of an answer. The certificate must 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 information is not furnished, the information must be identified and reasons provided with particularity regarding the reasons why the information was not furnished.

Section 15‑85‑90. (A) The examination of a person pursuant to a civil investigative demand for oral testimony served pursuant to Section 15‑85‑50 must be taken before an officer authorized to administer oaths and affirmations by the laws of the State or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness under oath or affirmation and, personally or by someone acting under the direction of the officer and in the officer’s presence, shall record the testimony of the witness. The testimony must be taken stenographically and must 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 does not preclude the taking of testimony by another means authorized by, and in a manner consistent with, the Rules of Civil Procedure or other applicable statutory law.

(B) The 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 another representative of the person giving the testimony, the attorney for the State, a person who may be agreed upon by the attorney for the State and the person giving the testimony, the officer before whom the testimony is to be taken, and a stenographer taking the testimony.

(C) The oral testimony of a person taken pursuant to a civil investigative demand served pursuant to Section 15‑85‑50 must be taken in the county within which the person resides, is found, or transacts business, or in another place as may be agreed upon by the investigator conducting the examination and the person.

(D) When the testimony is fully transcribed, the 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 the examination and reading are waived by the witness. Changes in form or substance which the witness desires to make must be entered and identified upon the transcript by the officer or the investigator, with a statement of the reasons given by the witness for making the changes. The transcript must 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 thirty days after being afforded a reasonable opportunity to examine it, then the officer or investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons given.

(E) 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 investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(F) Upon payment of reasonable charges, the investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General may, for good cause, limit the witness to inspection of the official transcript of his testimony.

(G) A person compelled to appear for oral testimony pursuant to a civil investigative demand issued pursuant to Section 15‑85‑50 may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, with respect to a question asked of the person. The person or counsel may object on the record to a 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 the person is entitled to refuse to answer the question on the grounds of a constitutional or other legal right or privilege, including the privilege against self‑incrimination. If the person refuses to answer a question, then a petition may be filed in circuit court pursuant to Section 15‑85‑110(A) for an order compelling the person to answer the question.

(H) A person appearing for oral testimony pursuant to a civil investigative demand issued pursuant to Section 15‑85‑50 is entitled to the same fees and allowances which are paid to witnesses in the circuit court.

Section 15‑85‑100. (A) The Attorney General shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received pursuant to this chapter.

(B) Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies of these, while in the possession of the custodian, are available for examination. The prohibition on the availability of material, answers, or transcripts does not apply if consent is given by the person who produced the material, answers, or transcripts or, in the case of a product of discovery produced pursuant to an express demand for the material, consent is given by the person from whom the discovery was obtained. Nothing in this subsection is intended to prevent disclosure to, at the discretion of the Attorney General, the General Assembly, including a committee or subcommittee of the General Assembly, or to another state agency for use by an agency in furtherance of its statutory responsibilities, or to another state Attorney General, or to a federal investigative entity, or to an appropriate investigative entity of another state.

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

(1) documentary material and answers to interrogatories must be available for examination by the person who produced the material or answers, or by a representative for that person authorized by that person to examine the material and answers; and

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

Section 15‑85‑110. (A) When a person fails to comply with a civil investigative demand issued pursuant to Section 15‑85‑50, or whenever satisfactory copying or reproduction of material requested in the demand cannot be done and the person refuses to surrender the material, the Attorney General may file, in the circuit court of a county in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of the civil investigative demand.

(B) A person who has received a civil investigative demand issued pursuant to Section 15‑85‑50 may file, in the circuit court of a county within which the person resides, is found, or transacts business, and serve upon the investigator identified in the demand a petition for an order of the court to modify or set aside the demand. In the case of a petition addressed to an express demand for a product of discovery, a petition to modify or set aside the demand may be brought only in the circuit court of the county in which the proceeding in which discovery was obtained or was last pending. A petition pursuant to this subsection must be filed within:

(1) twenty days after the date of service of the civil investigative demand, or at a time before the return date specified in the demand, whichever date is earlier; or

(2) a longer period as may be prescribed in writing by an investigator identified in the demand.

(C) The petition must specify each ground upon which the petitioner relies in seeking relief pursuant to subsection (B) and may be based upon failure of the demand to comply with the provisions of this chapter or upon a constitutional or other legal right or privilege of the 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 the portion of the demand not sought to be modified or set aside.

(D) In the case of a civil investigative demand issued pursuant to Section 15‑85‑50 which is an express demand for a product of discovery, the person from whom discovery was obtained may file, in the circuit court of the county in which the proceeding in which discovery was obtained or was last pending, and serve upon an investigator identified in the demand and upon the recipient of the demand, a petition for an order of the court to modify or set aside those portions of the demand requiring production of a product of discovery. A petition pursuant to this subsection must be filed within:

(1) twenty days after the date of service of the civil investigative demand, or at a time before the return date specified in the demand, whichever date is earlier; or

(2) a longer period as may be prescribed in writing by an investigator identified in the demand.

(E) The petition shall specify each ground upon which the petitioner relies in seeking relief upon subsection (D) and may be based upon failure of the portions of the demand from which relief is sought to comply with the provisions of this section or upon a 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 from compliance with the demand.

(F) At a time during which a custodian is in custody or control of documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by a person in compliance with a civil investigative demand issued pursuant to Section 15‑85‑50, the person, and in the case of an express demand for a product of discovery, the person from whom discovery was obtained, may file, in the circuit court of the county within which the office of the custodian is situated, and serve upon this custodian, a petition for an order of the court to require the performance by the custodian of a duty imposed upon the custodian by this chapter.

(G) When a petition is filed in a circuit court pursuant to this section, the court has jurisdiction to hear and determine the matter so presented, and to enter orders as may be required to carry out the provisions of this section. A final order entered is subject to appeal in the same manner as appeals of other final orders in civil matters. A disobedience of a final order entered pursuant to this section by a court is punishable as contempt of court.

(H) Documentary material, answers to written interrogatories, or oral testimony provided pursuant to a civil investigative demand issued pursuant to Section 15‑85‑50 is exempt from disclosure under the South Carolina Administrative Procedures Act.

Section 15‑85‑120. (A) There is created the State False Claims Act Investigation and Prosecution Fund as a special fund in the state treasury, to be administered by the Attorney General. All proceeds of an action or settlement of a claim brought pursuant to this chapter must be deposited in the fund, except that in cases involving Medicaid, the proceeds deposited will be after repayment of the federal share.

(B)(1) Monies in the fund must be allocated as follows:

(a) twenty‑five percent of the monies must be retained by the Attorney General; and

(b) the remaining seventy‑five percent of the monies in the fund must be used for payment of awards, calculated on the full amount, to qui tam plaintiffs, as provided in Section 15‑85‑30(D), and to persons who report, in good faith, a violation of Section 15‑85‑20 pursuant to the provisions of Section 15‑85‑120.

(2) Except in cases involving Medicaid, the proceeds deposited in the fund shall be allocated first for payment of awards to the qui tam plaintiff, then any remaining monies shall be allocated twenty‑five percent to the Attorney General and seventy‑five percent to South Carolina Medicaid.

(C) The Attorney General shall make disbursements of funds as provided in court orders setting awards, fees, and expenses. The Attorney General shall transfer fund balances in excess of those required to the General Fund; however, fund balances related to the South Carolina Medicaid Program shall be transferred to the Department of Health and Human Services.

Section 15‑85‑130. The Rules of Civil Procedure apply to all proceedings pursuant to this chapter, except when inconsistent with the provisions of this chapter.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent, or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor.

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