

The Senate Health and Human Services Committee offered the following substitute to HB 822:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 23 and Chapter 4 of Title 49 of the Official Code of Georgia
2 Annotated, relating to equitable remedies and proceedings generally and public assistance,
3 respectively, so as to comprehensively address the submission of false claims to the state, the
4 Georgia Medicaid program, and local governments; to enact the "Georgia Taxpayer
5 Protection False Claims Act"; to provide for a short title; to provide for definitions; to
6 provide for liability to this state for certain false claims; to provide for civil actions for false
7 claims submitted to this state or to local governments; to provide for exclusions for certain
8 civil actions; to provide for procedure; to provide for burden of proof; to provide for statute
9 of limitations; to provide for venue; to provide for civil investigative demands; to provide for
10 remedies under other laws; to provide for severability; to provide for construction; to
11 substantially revise the "State False Medicaid Claims Act"; to change and provide for
12 definitions; to change the elements of false or fraudulent Medicaid claims; to redirect
13 proceeds from the Indigent Care Trust Fund to the Georgia Department of Community
14 Health; to provide for the Attorney General to intervene in a civil action; to repeal provisions
15 relating to employee discrimination or harassment by an employer while an employee
16 pursues a civil action under the "State False Medicaid Claims Act" and provide for remedies
17 for such conduct and other conduct involving employees, contractors, and agents; to change
18 and create provisions relating to the statute of limitations; to provide for related matters; to
19 repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

23 Part I of this Act shall be known and may be cited as the "Georgia Taxpayer Protection False
24 Claims Act."

25 **SECTION 1-2.**

26 Chapter 3 of Title 23 of the Official Code of Georgia Annotated, relating to equitable
27 remedies and proceedings generally, is amended by adding a new article to read as follows:

28 "ARTICLE 6

29 23-3-120.

30 As used in this article, the term:

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

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

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

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

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

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

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

47 (A) Has actual knowledge of the information;

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

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

50 No proof of specific intent to defraud is required.

51 (3) 'Local government' means any Georgia county, municipal corporation, consolidated
52 government, authority, board of education or other local public board, body, or
53 commission, town, school district, board of cooperative educational services, local public
54 benefit corporation, hospital authority, taxing authority, or other political subdivision of
55 the state or of such local government, including MARTA.

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

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

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

65 23-3-121.

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

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

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

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

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

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

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

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

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

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

92 (1) The person committing the violation of this subsection furnished officials of the state
 93 or local government responsible for investigating false claims violations with all

94 information known to such person about the violation within 30 days after the date on
 95 which the defendant first obtained the information;

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

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

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

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

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

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

112 23-3-122.

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

128 (b)(1) Subject to the exclusions set forth in this Code section, a civil action under this
 129 article may also be brought by a private person upon written approval by the Attorney

130 General. A civil action shall be brought in the name of the State of Georgia or local
131 government, as applicable. The civil action may be dismissed only if the Attorney
132 General gives written consent to the dismissal stating the reasons for consenting to such
133 dismissal and the court enters an order approving the dismissal.

134 (2) A copy of the complaint and written disclosure of substantially all material evidence
135 and information the person possesses shall be served on the Attorney General by certified
136 mail or statutory overnight delivery. The complaint shall be filed in camera and under
137 seal, shall remain under seal for at least 60 days, and shall not be served on the defendant
138 until the court so orders. The state or, if delegated the authority by the Attorney General,
139 local government may elect to intervene and proceed with the action within 60 days after
140 the Attorney General receives both the complaint and the material evidence and
141 information.

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

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

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

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

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

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

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

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

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

182 (4) Upon a showing by the state or local government that unrestricted participation
183 during the course of the litigation by the person initiating the civil action would interfere
184 with or unduly delay the state or local government's litigation of the case, or would be
185 repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion,
186 impose limitations on the person's participation, such as:

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

188 (B) Limiting the length of the testimony of such witnesses;

189 (C) Limiting the person's cross-examination of witnesses; or

190 (D) Otherwise limiting the participation of the person in the litigation.

191 (d) Upon a showing by the defendant that unrestricted participation during the course of
192 the litigation by the person initiating the civil action would be for purposes of harassment
193 or would cause the defendant undue burden or unnecessary expense, the court may limit
194 the participation of the person in the litigation.

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

201 (f) Whether or not the state or local government proceeds with the civil action, upon a
202 showing by the state or local government that certain actions of discovery by the person
203 initiating the civil action would interfere with the state or local government's investigation

204 or prosecution of a criminal or civil matter arising out of the same facts, the court may stay
205 such discovery for a period of not more than 60 days. Such a showing shall be conducted
206 in camera. The court may extend the 60 day period upon a further showing in camera that
207 the state or local government has pursued the criminal or civil investigation or proceedings
208 with reasonable diligence, and any proposed discovery in the civil action will interfere with
209 the ongoing criminal or civil investigation or proceedings.

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

221 (h)(1) If the state or local government proceeds with a civil action brought by a private
222 person under subsection (b) of this Code section, such person shall, subject to the second
223 sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the
224 proceeds of the civil action or settlement of the claim, depending upon the extent to
225 which the person substantially contributed to the prosecution of the civil action. Where
226 the civil action is one which the court finds to be based primarily on disclosures of
227 specific information, other than information provided by the person bringing the civil
228 action, relating to allegations or transactions in a criminal, civil, or administrative
229 hearing; in a legislative, administrative, or State Accounting Office report, hearing, audit,
230 or investigation; or from the news media, the court may award such sums as it considers
231 appropriate, but in no case more than 10 percent of the proceeds, taking into account the
232 significance of the information and the role of the person bringing such civil action in
233 advancing the case to litigation. Any payment to a person under the first or second
234 sentence of this paragraph shall be made from the proceeds. Any such person shall also
235 receive an amount for reasonable expenses which the court finds to have been necessarily
236 incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs
237 shall be awarded against the defendant.

238 (2) If the state or local government does not proceed with a civil action under this Code
239 section, the person bringing the civil action or settling the claim shall receive an amount
240 which the court decides is reasonable for collecting the civil penalty and damages. Such

241 amount shall be not less than 25 percent and not more than 30 percent of the proceeds of
 242 the civil action or settlement and shall be paid out of such proceeds. Such person shall
 243 also receive an amount for reasonable expenses which the court finds to have been
 244 necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees,
 245 and costs shall be awarded against the defendant.

246 (3) Whether or not the state or local government proceeds with the civil action, if the
 247 court finds that the civil action was brought by a person who planned and initiated the
 248 violation of this article upon which the civil action was brought, then the court may, to
 249 the extent the court considers appropriate, reduce the share of the proceeds of the civil
 250 action which the person would otherwise receive under paragraph (1) or (2) of this
 251 subsection, taking into account the role of that person in advancing the case to litigation
 252 and any relevant circumstances pertaining to the violation. If the person bringing the
 253 civil action is convicted of criminal conduct arising from his or her role in the violation
 254 of this article, such person shall be dismissed from the civil action and shall not receive
 255 any share of the proceeds of the civil action. Such dismissal shall not prejudice the right
 256 of the State of Georgia to continue the civil action, represented by the Attorney General
 257 or local government attorney to whom the Attorney General has delegated authority.

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

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

268 (1) Allegations of wrongdoing or misconduct which such person had a duty or obligation
 269 to report or investigate within the scope of his or her public employment or office; or
 270 (2) Information or records to which such person had access as a result of his or her public
 271 employment or office.

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

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

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

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

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

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

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

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

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

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

313 (2) Relief under paragraph (1) of this subsection shall include reinstatement with the
314 same seniority status that the employee, contractor, or agent would have had but for the
315 discrimination, two times the amount of back pay, interest on the back pay, and
316 compensation for any special damages sustained as a result of the discrimination,
317 including litigation costs and reasonable attorney's fees. An action under this subsection
318 may be brought in the appropriate superior court of this state for the relief provided in this
319 subsection.

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

322 23-3-123.

323 (a) Except as provided in paragraph (3) of subsection (1) of Code Section 23-3-122, all
324 civil actions under this article shall be filed pursuant to Code Section 23-3-122 within six
325 years after the date the violation was committed or three years after the date when facts
326 material to the right of civil action are known or reasonably should have been known by
327 the state or local government official charged with the responsibility to act in the
328 circumstances, whichever occurs last; provided, however, that in no event shall any civil
329 action be filed more than ten years after the date upon which the violation was committed.

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

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

340 (d) If the state or local government elects to intervene and proceed with a civil action
341 brought under subsection (b) of Code Section 23-3-122, the state or local government may
342 file its own complaint or amend the complaint of a person who has brought an action under
343 such subsection to clarify or add detail to the claims in which the state or local government
344 is intervening and to add any additional claims with respect to which the state or local
345 government contends it is entitled to relief. For statute of limitations purposes, any such
346 state or local government pleading shall relate back to the filing date of the complaint of
347 the person who originally brought the action, to the extent that the claim of the state or

348 local government arises out of the conduct, transactions, or occurrences set forth, or
 349 attempted to be set forth, in the prior complaint of that person.

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

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

359 23-3-124.

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

366 23-3-125.

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

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

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

375 (3) 'False claims law' means:

376 (A) This article; and

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

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

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

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

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

409 (8) 'Product of discovery' includes:

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

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

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

418 (b)(1) For purposes of this Code section, whenever the Attorney General, or his or her
 419 designee, has reason to believe that any person may be in possession, custody, or control

420 of any documentary material or information relevant to a false claims law investigation,
 421 the Attorney General, or his or her designee, may, before commencing a civil proceeding
 422 under subsection (a) of Code Section 23-3-122 or other false claims law, or making an
 423 election under subsection (b) of Code Section 23-3-122, issue in writing and cause to be
 424 served upon such person a civil investigative demand requiring such person to:

425 (A) Produce such documentary material for inspection and copying;

426 (B) Answer in writing written interrogatories with respect to such documentary
 427 material or information;

428 (C) Give oral testimony concerning such documentary material or information; or

429 (D) Furnish any combination of such documentary material, answers, or testimony.

430 The Attorney General may delegate the authority to issue civil investigative demands
 431 under this subsection, including to a district attorney or other local government attorney.

432 Whenever a civil investigative demand is an express demand for any product of
 433 discovery, the Attorney General, the deputy attorney general, or an assistant attorney
 434 general shall cause to be served, in any manner authorized by this Code section, a copy
 435 of such demand upon the person from whom the discovery was obtained and shall notify
 436 the person to whom such demand is issued of the date on which such copy was served.

437 Any information obtained by the Attorney General or a designee of the Attorney General
 438 under this Code section may be shared with any qui tam relator if the Attorney General
 439 or such designee determine it is necessary as part of any false claims law investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

528 (B) Depositing an executed copy of such demand or petition via the United States
 529 Postal Service by registered or certified mail or statutory overnight delivery, return

530 receipt requested, addressed to the person at the person's residence or principal office
531 or place of business.

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

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

541 (A) In the case of a natural person, the person to whom the demand is directed; or
542 (B) In the case of a person other than a natural person, a person having knowledge of
543 the facts and circumstances relating to such production and authorized to act on behalf
544 of such person.

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

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

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

563 (1) In the case of a natural person, the person to whom the demand is directed; or
564 (2) In the case of a person other than a natural person, the person or persons responsible
565 for answering each interrogatory.

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

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

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

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

593 (4) When the testimony is fully transcribed, the false claims law investigator or the
594 officer before whom the testimony is taken shall afford the witness, who may be
595 accompanied by counsel, a reasonable opportunity to examine and read the transcript,
596 unless such examination and reading are waived by the witness. Any changes in form or
597 substance which the witness desires to make shall be entered and identified upon the
598 transcript by the officer or the false claims law investigator, with a statement of the
599 reasons given by the witness for making such changes. The transcript shall then be
600 signed by the witness, unless the witness in writing waives the signing, is ill, cannot be
601 found, or refuses to sign. If the transcript is not signed by the witness within 30 days
602 after being afforded a reasonable opportunity to examine it, the officer or the false claims

603 law investigator shall sign it and state on the record the fact of the waiver, illness,
604 absence, or the refusal to sign of the witness, together with the reasons, if any, given
605 therefor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

712 (B) Transmit in writing to the person who produced such documentary material,
713 answers, or testimony notice of the identity and address of the successor so designated.
714 Any person who is designated to be a successor under this paragraph shall have, with
715 regard to such documentary material, answers, or transcripts, the same duties and
716 responsibilities as were imposed by this Code section upon that person's predecessor in
717 office, except that the successor shall not be held responsible for any default or
718 dereliction which occurred before that designation.

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

726 (2)(A) Any person who has received a civil investigative demand issued under
727 subsection (b) of this Code section may file in the appropriate court and serve upon the
728 false claims law investigator identified in such demand a petition for an order of the
729 court to modify or set aside such demand. In the case of a petition addressed to an
730 express demand for any product of discovery, a petition to modify or set aside such
731 demand may be brought only in the superior court for any county in which the
732 proceeding in which such discovery was obtained is or was last pending. Any petition
733 under this subparagraph shall be filed:

734 (i) Within 20 days after the date of service of the civil investigative demand, or at any
735 time before the return date specified in the demand, whichever date is earlier; or
736 (ii) Within such longer period as may be prescribed in writing by any false claims
737 law investigator identified in the demand.

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

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

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

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

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

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

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

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

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

786 23-3-126.

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

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

792 23-3-127.

793 If a civil action can be commenced pursuant to Article 7B of Chapter 4 of Title 49, the
 794 'State False Medicaid Claims Act,' the claimant shall proceed under Article 7B of Chapter
 795 4 of Title 49."

796 **PART II**

797 **SECTION 2-1.**

798 Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance,
 799 is amended by revising Article 7B, the "State False Medicaid Claims Act," as follows:

800 "ARTICLE 7B

801 49-4-168.

802 As used in this article, the term:

803 (1) 'Claim' includes any request or demand, whether under a contract or otherwise, for
 804 ~~money, property, or services~~ money or property, whether or not the Georgia Medicaid
 805 program or this state has title to such money or property, which is made to the Georgia
 806 Medicaid program, or to any officer, employee, fiscal intermediary, grantee, agent, or
 807 contractor of the Georgia Medicaid program, or to other persons or entities if it results in
 808 payments by the Georgia Medicaid program, if the Georgia Medicaid program provides,
 809 has provided, or will provide any portion of the money or property requested or
 810 demand; or if the Georgia Medicaid program will reimburse the contractor, grantee,
 811 or other recipient for any portion of the money or property requested or demanded; or if
 812 the money or property is to be spent or used on behalf of or to advance the Georgia

- 813 Medicaid program. A claim includes a request or demand made orally, in writing,
 814 electronically, or magnetically. Each claim may be treated as a separate claim.
- 815 (2) 'Knowing' and 'knowingly' ~~mean~~ requires no proof of specific intent to defraud and
 816 means that a person, with respect to information:
- 817 (A) Has actual knowledge of the information;
 818 (B) Acts in deliberate ignorance of the truth or falsity of the information; or
 819 (C) Acts in reckless disregard of the truth or falsity of the information. ~~No proof of~~
 820 ~~specific intent to defraud is required.~~
- 821 (3) 'Material' means having a natural tendency to influence, or be capable of influencing,
 822 the payment or receipt of money or property.
- 823 (4) 'Obligation' means an established duty, whether or not fixed, arising from an express
 824 or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee based
 825 or similar relationship, from statute or regulation, or from retention of any overpayment.
- 826 (5) 'Person' means any natural person, corporation, company, association, firm,
 827 partnership, society, joint-stock company, or any other entity with capacity to sue or be
 828 sued.

829 49-4-168.1.

- 830 (a) Any person who:
- 831 (1) Knowingly presents or causes to be presented to the Georgia Medicaid program a
 832 false or fraudulent claim for payment or approval;
- 833 (2) Knowingly makes, uses, or causes to be made or used a false record or statement ~~to~~
 834 ~~get a false or fraudulent claim paid or approved by the Georgia Medicaid program~~
 835 material to a false or fraudulent claim;
- 836 (3) Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent
 837 claim allowed or paid;
- 838 (4) Has possession, custody, or control of property or money used or to be used by the
 839 Georgia Medicaid program and, ~~intending to defraud the Georgia Medicaid program or~~
 840 ~~willfully to conceal the property, delivers, or causes to be delivered, less property than~~
 841 ~~the amount for which the person receives a certificate of receipt~~ knowingly delivers, or
 842 causes to be delivered, less than all of such property or money;
- 843 (5) ~~Being~~ Is authorized to make or deliver a document certifying receipt of property
 844 used, or to be used, by the Georgia Medicaid program and, intending to defraud the
 845 Georgia Medicaid program, makes or delivers the receipt without completely knowing
 846 that the information on the receipt is true;

847 (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property
 848 from an officer or employee of the Georgia Medicaid program who lawfully may not sell
 849 or pledge the property; or

850 (7) Knowingly makes, uses, or causes to be made or used a false record or statement to
 851 ~~conceal, avoid, or decrease an obligation to pay, repay, or transmit money or property to~~
 852 ~~the State of Georgia material to an obligation to pay or transmit property or money to the~~
 853 ~~Georgia Medicaid program, or knowingly conceals or knowingly and improperly avoids~~
 854 ~~or decreases an obligation to pay or transmit property or money to the Georgia Medicaid~~
 855 ~~program.~~

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

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

861 (1) The person committing the violation of this subsection furnished officials of the
 862 Georgia Medicaid program with all information known to such person about the violation
 863 within 30 days after the date on which the defendant first obtained the information;

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

866 (3) At the time such person furnished the Georgia Medicaid program with the
 867 information about the violation, no criminal prosecution, civil action, or administrative
 868 action had commenced under this article with respect to such violation, and the person
 869 did not have actual knowledge of the existence of an investigation into such violation,
 870 the court may assess not more than two times the amount of the actual damages which the
 871 Georgia Medicaid program sustained because of the act of such person.

872 (c) A person violating any provision of subsection (a) of this Code section shall also be
 873 liable to this state for all costs of any civil action brought to recover the damages and
 874 penalties provided under this article.

875 49-4-168.2.

876 (a) The Attorney General shall be authorized to investigate suspected, alleged, and
 877 reported violations of this article. If the Attorney General finds that a person has violated
 878 or is violating this article, then the Attorney General may bring a civil action against such
 879 person under this article.

880 (b) Subject to the exclusions set forth in this Code section, a civil action under this article
 881 may also be brought by a private person. A civil action shall be brought in the name of the
 882 State of Georgia. The civil action may be dismissed only if the court and the Attorney

883 General give written consent to the dismissal and state the reasons for consenting to such
884 dismissal.

885 (c) Where a private person brings a civil action under this article, such person shall follow
886 the following special procedures:

887 (1) A copy of the complaint and written disclosure of substantially all material evidence
888 and information the person possesses shall be served on the Attorney General;

889 (2) The complaint shall be filed in camera, shall remain under seal for at least 60 days,
890 and shall not be served on the defendant until the court so orders. The purpose of the
891 period under seal shall be to allow the Attorney General to investigate the allegations of
892 the complaint. The Attorney General may elect to intervene and proceed with the civil
893 action within 60 days after it receives both the complaint and the material evidence and
894 information;

895 (3) The Attorney General may, for good cause shown, move the court for extensions of
896 the time during which the complaint remains under seal under paragraph (2) of this
897 subsection. Any such motions may be supported by affidavits or other submissions in
898 camera;

899 (4) Before the expiration of the 60 day period or any extensions obtained under
900 paragraph (3) of this subsection, the Attorney General shall:

901 (A) Proceed with the civil action, in which case the civil action shall be conducted by
902 the Attorney General; or

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

905 (5) The defendant shall not be required to respond to any complaint filed under this Code
906 section until 30 days after the complaint is unsealed and served upon the defendant; and

907 (6) When a person brings a civil action under this subsection, no person other than the
908 Attorney General may intervene or bring a related civil action based on the facts
909 underlying the pending civil action.

910 (d)(1) If the Attorney General elects to intervene and proceed with the civil action, he
911 or she shall have the primary responsibility for prosecuting the civil action and shall not
912 be bound by an act of the person bringing such civil action. Such person shall have the
913 right to continue as a party to the civil action, subject to the limitations set forth in this
914 subsection.

915 (2) The Attorney General may dismiss the civil action, notwithstanding the objections
916 of the person initiating the civil action, if the person has been notified by the Attorney
917 General of the filing of the motion and the court has provided the person with an
918 opportunity for a hearing on the motion.

- 919 (3) The Attorney General may settle the civil action with the defendant notwithstanding
920 the objections of the person initiating the civil action if the court determines, after a
921 hearing, that the proposed settlement is fair, adequate, and reasonable under all the
922 circumstances. Upon a showing of good cause, such hearing may be held in camera.
- 923 (4) Upon a showing by the Attorney General that unrestricted participation during the
924 course of the litigation by the person initiating the civil action would interfere with or
925 unduly delay the Attorney General's litigation of the case, or would be repetitious,
926 irrelevant, or for purposes of harassment, the court may, in its discretion, impose
927 limitations on the person's participation, such as:
- 928 (A) Limiting the number of witnesses the person may call;
 - 929 (B) Limiting the length of the testimony of such witnesses;
 - 930 (C) Limiting the person's cross-examination of witnesses; or
 - 931 (D) Otherwise limiting the participation by the person in the litigation.
- 932 (e) Upon a showing by the defendant that unrestricted participation during the course of
933 the litigation by the person initiating the civil action would be for purposes of harassment
934 or would cause the defendant undue burden or unnecessary expense, the court may limit
935 the participation by the person in the litigation.
- 936 (f) If the Attorney General elects not to proceed with the civil action, the person who
937 initiated the civil action shall have the right to conduct the civil action. If the Attorney
938 General so requests, he or she shall be served with copies of all pleadings filed in the civil
939 action and shall be supplied with copies of all deposition transcripts. When a person
940 proceeds with the civil action, the court may nevertheless permit the Attorney General to
941 intervene at a later date for any purpose, including, but not limited to, dismissal of the civil
942 action notwithstanding the objections of the person initiating the civil action if such person
943 has been notified by the Attorney General of the filing of such motion and the court has
944 provided such person with an opportunity for a hearing on such motion.
- 945 (g) Whether or not the Attorney General proceeds with the civil action, upon a showing
946 by the Attorney General that certain actions of discovery by the person initiating the civil
947 action would interfere with the Attorney General's investigation or prosecution of a
948 criminal or civil matter arising out of the same facts, the court may stay such discovery for
949 a period of not more than 60 days. Such a showing shall be conducted in camera. The
950 court may extend the 60 day period upon a further showing in camera that the Attorney
951 General has pursued the criminal or civil investigation or proceedings with reasonable
952 diligence and any proposed discovery in the civil action will interfere with the ongoing
953 criminal or civil investigation or proceedings.
- 954 (h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General
955 may elect to pursue this state's claim through any alternate remedy available to the

956 Attorney General, including any administrative proceeding to determine a civil money
 957 penalty. If any such alternate remedy is pursued in another proceeding, the person
 958 initiating the civil action shall have the same rights in such proceeding as such person
 959 would have had if the civil action had continued under this Code section. Any finding of
 960 fact or conclusion of law made in such other proceeding that has become final shall be
 961 conclusive on all parties to a civil action under this Code section. For purposes of this
 962 subsection, a finding or conclusion is final if it has been finally determined on appeal to the
 963 appropriate court of the State of Georgia, if all time for filing such an appeal with respect
 964 to the finding or conclusion has expired, or if the finding or conclusion is not subject to
 965 judicial review.

966 (i)(1) If the Attorney General proceeds with a civil action brought by a private person
 967 under subsection (b) of this Code section, such person shall, subject to the second
 968 sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the
 969 proceeds of the civil action or settlement of the claim, depending upon the extent to
 970 which the person substantially contributed to the prosecution of the civil action. Where
 971 the civil action is one which the court finds to be based primarily on disclosures of
 972 specific information, other than information provided by the person bringing the civil
 973 action, relating to allegations or transactions in a criminal, civil, or administrative
 974 hearing, in a legislative, administrative, or Attorney General hearing, audit, or
 975 investigation, or from the news media, the court may award such sums as it considers
 976 appropriate, but in no case more than 10 percent of the proceeds, taking into account the
 977 significance of the information and the role of the person bringing such civil action in
 978 advancing the case to litigation. Any payment to a person under the first or second
 979 sentence of this paragraph shall be made from the proceeds. The remaining proceeds
 980 shall be payable to the ~~Indigent Care Trust Fund to be used for the purposes set forth in~~
 981 ~~Code Section 31-8-154~~ State of Georgia, by and through the Georgia Department of
 982 Community Health, for the purposes of operating, sustaining, protecting, and
 983 administering the Georgia Medicaid program. Any such person shall also receive an
 984 amount for reasonable expenses which the court finds to have been necessarily incurred,
 985 plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be
 986 awarded against the defendant.

987 (2) If the Attorney General does not proceed with a civil action under this Code section,
 988 the person bringing the civil action or settling the claim shall receive an amount which
 989 the court decides is reasonable for collecting the civil penalty and damages. Such amount
 990 shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil
 991 action or settlement and shall be paid out of such proceeds. The remaining proceeds shall
 992 be payable to the ~~Indigent Care Trust Fund to be used for the purposes set forth in Code~~

993 ~~Section 31-8-154~~ State of Georgia, by and through the Georgia Department of
 994 Community Health, for the purposes of operating, sustaining, protecting, and
 995 administering the Georgia Medicaid program. Such person shall also receive an amount
 996 for reasonable expenses which the court finds to have been necessarily incurred, plus
 997 reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded
 998 against the defendant.

999 (3) Whether or not the Attorney General proceeds with the civil action, if the court finds
 1000 that the civil action was brought by a person who planned and initiated the violation of
 1001 Code Section 49-4-168.1 upon which the civil action was brought, then the court may,
 1002 to the extent the court considers appropriate, reduce the share of the proceeds of the civil
 1003 action which the person would otherwise receive under paragraph (1) or (2) of this
 1004 subsection, taking into account the role of that person in advancing the case to litigation
 1005 and any relevant circumstances pertaining to the violation. If the person bringing the
 1006 civil action is convicted of criminal conduct arising from his or her role in the violation
 1007 of Code Section 49-4-168.1, such person shall be dismissed from the civil action and
 1008 shall not receive any share of the proceeds of the civil action. Such dismissal shall not
 1009 prejudice the right of the State of Georgia to continue the civil action, represented by the
 1010 Attorney General.

1011 (4) If the Attorney General does not proceed with the civil action and the person bringing
 1012 the civil action conducts the civil action, the court may award to the defendant its
 1013 reasonable attorney's fees and expenses against the person bringing the civil action if the
 1014 defendant prevails in the civil action and the court finds that the claim of the person
 1015 bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for
 1016 purposes of harassment.

1017 (5) The State of Georgia shall not be liable for expenses which a private person incurs
 1018 in bringing a civil action under this article.

1019 (j) ~~For purposes of this subsection, 'public employee,' 'public official,' and 'public~~
 1020 ~~employment' shall include federal, state, and local employees and officials.~~

1021 ~~(1) No civil action may be brought under this article by a person who is or was a public~~
 1022 ~~employee or public official if the allegations of such action are substantially based upon:~~

1023 ~~(A) Allegations of wrongdoing or misconduct which such person had a duty or~~
 1024 ~~obligation to report or investigate within the scope of his or her public employment or~~
 1025 ~~office; or~~

1026 ~~(B) Information or records to which such person had access as a result of his or her~~
 1027 ~~public employment or office.~~

1028 ~~(2) No court shall have jurisdiction over a civil action under this article based upon the~~
 1029 ~~public disclosure of allegations or transactions in a criminal, civil, or administrative~~

~~hearing, in a legislative, administrative, or Attorney General report, hearing, audit, or investigation, or from the news media, unless the civil action is brought by the Attorney General or unless the person bringing the civil action is an original source of the information. For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to this state before filing a civil action under this Code section based on such information.~~

(3) In no event may a person bring a civil action under this article 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.

(k)(4) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund, or collection of taxes pursuant to any provisions of Title 48.

(l)(1) As used in this subsection, the term 'original source' means an individual who:

(A) Prior to public disclosure, has voluntarily disclosed to the Attorney General the information on which allegations or transactions in a claim are based; or

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

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

(A) In any criminal, civil, or administrative hearing in which the State of Georgia or its employee, agent, or contractor is a party;

(B) In a congressional, legislative, or other state or federal report, hearing, audit, or investigation; or

(C) From the news media,

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

49-4-168.3.

(a) In any civil action brought under this article, the State of Georgia or person bringing the civil action shall be required to prove all essential elements of the cause of civil action, including damages, by a preponderance of the evidence.

(b) Except as otherwise provided in this article, all civil actions brought under this article shall be governed by the provisions of Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

1066 (c) If the Attorney General elects to intervene and proceed with a civil action brought
 1067 pursuant to this article, the Attorney General may file his or her own complaint or amend
 1068 the complaint of a person who has brought a civil action under this article to clarify or add
 1069 detail to the claims in which the Attorney General is intervening and to add any additional
 1070 claims with respect to which the State of Georgia contends it is entitled to relief. For
 1071 purposes of the statute of limitations, any such pleading by the Attorney General shall
 1072 relate back to the filing date of the complaint of the person who originally brought the civil
 1073 action, to the extent that the claim of the State of Georgia arises out of the conduct,
 1074 transactions, or occurrences set forth, or attempted to be set forth, in the original complaint
 1075 by such person.

1076 49-4-168.4.

1077 ~~Any employee who is discharged, demoted, suspended, threatened, harassed, or in any~~
 1078 ~~other manner discriminated against in the terms and conditions of employment by his or~~
 1079 ~~her employer because of lawful acts done by the employee, on behalf of the employee or~~
 1080 ~~others, in furtherance of a civil action under this article, including investigation for,~~
 1081 ~~initiation of, testimony for, or assistance in a civil action filed or to be filed under this~~
 1082 ~~article, shall be entitled to all relief necessary to make the employee whole. Such relief~~
 1083 ~~shall include reinstatement with the same seniority status such employee would have had~~
 1084 ~~but for the discrimination, two times the amount of back pay, interest on the back pay~~
 1085 ~~award, and compensation for any special damages sustained as a result of the~~
 1086 ~~discrimination, including litigation costs and reasonable attorney's fees. An employee may~~
 1087 ~~bring a civil action in an appropriate court of the State of Georgia for the relief provided~~
 1088 ~~in this Code section.~~

1089 (a) Any employee, contractor, or agent shall be entitled to all relief necessary to make such
 1090 employee, contractor, or agent whole, if that employee, contractor, or agent is discharged,
 1091 demoted, suspended, threatened, harassed, or in any other manner discriminated against in
 1092 the terms and conditions of employment because of lawful acts done by such employee,
 1093 contractor, agent or associated others in furtherance of a civil action under this Code
 1094 section or other efforts to stop one or more violations of this article.

1095 (b) Relief under subsection (a) of this Code section shall include reinstatement with the
 1096 same seniority status that such employee, contractor, or agent would have had but for the
 1097 discrimination, two times the amount of back pay, interest on the back pay, and
 1098 compensation for any special damages sustained as a result of the discrimination, including
 1099 litigation costs and reasonable attorney's fees. A civil action under this subsection may be
 1100 brought in an appropriate court of this state for the relief provided in this Code section.

1101 (c) Notwithstanding Code Section 49-4-168.5, a civil action under this Code section may
1102 not be brought more than three years after the date when the discrimination occurred.

1103 49-4-168.5.

1104 All civil actions under this article shall be filed pursuant to Code Section 49-4-168.2 within
1105 six years after the date the violation was committed, or ~~three~~ four years after the date when
1106 facts material to the right of civil action are known or reasonably should have been known
1107 by the state official charged with the responsibility to act in the circumstances, whichever
1108 occurs last; provided, however, that in no event shall any civil action be filed more than ten
1109 years after the date upon which the violation was committed.

1110 49-4-168.6.

1111 All civil actions brought against natural persons under this article shall be brought in the
1112 county where the defendant or, in the case of multiple defendants or of defendants who are
1113 not residents of the State of Georgia, in any county where any one defendant resides, can
1114 be found, transacts business, or commits an act in furtherance of the submittal of a false or
1115 fraudulent claim to the Georgia Medicaid program."

1116 **PART III**
1117 **SECTION 3-1.**

1118 All laws and parts of laws in conflict with this Act are repealed.