



January 24, 2014

SENATE BILL No. 406

DIGEST OF SB 406 (Updated January 22, 2014 11:38 am - DI 84)

Citations Affected: IC 5-11.

Synopsis: Medicaid false claims. Makes certain procedural changes to the false claims act and Medicaid false claims act to remove inconsistencies and comply with federal law.

Effective: July 1, 2014.

Mishler, Charbonneau, Mrvan

January 14, 2014, read first time and referred to Committee on Health and Provider Services.
January 23, 2014, reported favorably — Do Pass.

SB 406—LS 6935/DI 106



January 24, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 406

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-11-5.5-2, AS ADDED BY P.L.222-2005,
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 2. (a) This section does not apply to:

4 (1) a claim, record, or statement concerning income tax (IC 6-3);

5 or

6 (2) a claim, request, demand, statement, record, act, or
7 omission made or submitted after June 30, 2014, in relation to
8 the Medicaid program described in IC 12-15.

9 (b) A person who knowingly or intentionally:

10 (1) presents a false claim to the state for payment or approval;

11 (2) makes or uses a false record or statement to obtain payment or
12 approval of a false claim from the state;

13 (3) with intent to defraud the state, delivers less money or
14 property to the state than the amount recorded on the certificate
15 or receipt the person receives from the state;

16 (4) with intent to defraud the state, authorizes issuance of a

SB 406—LS 6935/DI 106



1 receipt without knowing that the information on the receipt is
 2 true;
 3 (5) receives public property as a pledge of an obligation on a debt
 4 from an employee who is not lawfully authorized to sell or pledge
 5 the property;
 6 (6) makes or uses a false record or statement to avoid an
 7 obligation to pay or transmit property to the state;
 8 (7) conspires with another person to perform an act described in
 9 subdivisions (1) through (6); or
 10 (8) causes or induces another person to perform an act described
 11 in subdivisions (1) through (6);
 12 is, except as provided in subsection (c), liable to the state for a civil
 13 penalty of at least five thousand dollars (\$5,000) and for up to three (3)
 14 times the amount of damages sustained by the state. In addition, a
 15 person who violates this section is liable to the state for the costs of a
 16 civil action brought to recover a penalty or damages.

17 (c) If the factfinder determines that the person who violated this
 18 section:

19 (1) furnished state officials with all information known to the
 20 person about the violation not later than thirty (30) days after the
 21 date on which the person obtained the information;
 22 (2) fully cooperated with the investigation of the violation; and
 23 (3) did not have knowledge of the existence of an investigation,
 24 a criminal prosecution, a civil action, or an administrative action
 25 concerning the violation at the time the person provided
 26 information to state officials;

27 the person is liable for a penalty of not less than two (2) times the
 28 amount of damages that the state sustained because of the violation. A
 29 person who violates this section is also liable to the state for the costs
 30 of a civil action brought to recover a penalty or damages.

31 SECTION 2. IC 5-11-5.7-1, AS ADDED BY P.L.197-2013,
 32 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2014]: Sec. 1. (a) This chapter applies only to claims,
 34 requests, demands, statements, records, acts, and omissions made or
 35 submitted in relation to the Medicaid program described in IC 12-15.
 36 **Sections 3 through 18 of this chapter apply to claims, requests,**
 37 **demands, statements, records, acts, and omissions made or**
 38 **submitted in relation to the Medicaid program described in**
 39 **IC 12-15 in violation of IC 5-11-5.5-2 or IC 5-11-5.7-2.**

40 (b) The following definitions apply throughout this chapter:

41 (1) "Claim" means a request or demand for money or property,
 42 whether under a contract or otherwise, and whether or not the



- 1 state has title to the money or property, that:
 2 (A) is presented to an officer, employee, or agent of the state;
 3 or
 4 (B) is made to a contractor, grantee, or other recipient, if the
 5 money or property is to be spent or used on the state's behalf
 6 or to advance a state program or interest, and if the state:
 7 (i) provides or has provided any part of the money or
 8 property that is requested or demanded; or
 9 (ii) will reimburse the contractor, grantee, or other recipient
 10 for any part of the money or property that is requested or
 11 demanded.
- 12 (2) ~~"Documentary material"~~ **"Document"**, **"electronically**
 13 **stored information"**, or **"tangible thing"** ~~includes:~~ **means:**
 14 (A) the original or a copy of a book, record, report,
 15 memorandum, paper, communication, tabulation, chart, or
 16 other document; **a writing, a drawing, a graph, a chart, a**
 17 **photograph, a sound recording, or an image;**
 18 (B) **other data or** a data compilation stored in **any medium**
 19 **from which information can be obtained either directly or**
 20 **accessible through computer or other information retrieval**
 21 **systems; together with instructions and all other materials**
 22 **necessary to use or interpret the data compilations; after**
 23 **translation by the responding party into a reasonably**
 24 **usable form; and**
 25 **(C) any tangible thing; and**
 26 ~~(D)~~ **(D)** a product of discovery.
- 27 (3) "Investigation" means an inquiry conducted by an investigator
 28 to ascertain whether a person is or has been engaged in a violation
 29 of this chapter.
- 30 (4) "Knowing", "knowingly", or "known" means that a person,
 31 regarding information:
 32 (A) has actual knowledge of the information;
 33 (B) acts in deliberate ignorance of the truth or falsity of the
 34 information; or
 35 (C) acts in reckless disregard of the truth or falsity of the
 36 information;
 37 and requires no proof of specific intent to defraud.
- 38 (5) "Material" means having a natural tendency to influence, or be
 39 capable of influencing, the payment or receipt of money or
 40 property.
- 41 (6) "Obligation" means an established duty, whether or not the
 42 duty is fixed, arising from:



- 1 (A) an express or implied contractual relationship;
 2 (B) a grantor-grantee relationship;
 3 (C) a licensor-licensee relationship;
 4 (D) a fee-based or similar relationship;
 5 (E) a statute;
 6 (F) a rule or regulation; or
 7 (G) the retention of an overpayment.
- 8 (7) "Person" includes a natural person, a corporation, a firm, an
 9 association, an organization, a partnership, a limited liability
 10 company, a business, or a trust.
- 11 (8) "Product of discovery" means the original or duplicate of:
 12 (A) a deposition;
 13 (B) an interrogatory;
 14 (C) a document;
 15 (D) a thing;
 16 (E) a result of the inspection of land or other property; or
 17 (F) an examination or admission;
 18 that is obtained by any method of discovery in a judicial or an
 19 administrative proceeding of an adversarial nature. The term
 20 includes a digest, an analysis, a selection, a compilation, a
 21 derivation, an index, or another method of accessing an item
 22 listed in this subdivision. **The term also includes electronically**
 23 **stored information.**
- 24 (9) "State" means Indiana or any agency of state government. The
 25 term does not include a political subdivision.
- 26 SECTION 3. IC 5-11-5.7-2, AS ADDED BY P.L.197-2013,
 27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2014]: Sec. 2. (a) ~~This section does not apply to a claim;~~
 29 ~~record; or statement concerning income tax (IC 6-3):~~
 30 (b) (a) A person who:
 31 (1) knowingly presents, or causes to be presented, a false or
 32 fraudulent claim for payment or approval;
 33 (2) knowingly makes, uses, or causes to be made or used, a false
 34 record or statement that is material to a false or fraudulent claim;
 35 (3) has possession, custody, or control of property or money used,
 36 or to be used, by the state, and knowingly delivers, or causes to be
 37 delivered, less than all of the money or property;
 38 (4) is authorized to make or deliver a document certifying receipt
 39 of property used, or to be used, by the state and, with intent to
 40 defraud the state, authorizes issuance of a receipt without
 41 knowing that the information on the receipt is true;
 42 (5) knowingly buys or receives, as a pledge of an obligation or



1 debt, public property from an employee who is not lawfully
2 authorized to sell or pledge the property;

3 (6) knowingly:

4 (A) makes, uses, or causes to be made or used, a false record
5 or statement concerning an obligation to pay or transmit
6 money or property to the state; or

7 (B) conceals or knowingly and improperly avoids or decreases
8 an obligation to pay or transmit money or property to the state;

9 (7) conspires with another person to perform an act described in
10 subdivisions (1) through (6); or

11 (8) causes or induces another person to perform an act described
12 in subdivisions (1) through (6);

13 is, except as provided in subsection ~~(c)~~ **(b)**, liable to the state for a civil
14 penalty of at least five thousand five hundred dollars (\$5,500) and not
15 more than eleven thousand dollars (\$11,000), as adjusted by the federal
16 Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note,
17 Public Law 101-410), and for up to three (3) times the amount of
18 damages sustained by the state. In addition, a person who violates this
19 section is liable to the state for the costs of a civil action brought to
20 recover a penalty or damages.

21 ~~(c)~~ **(b)** If the factfinder determines that the person who violated this
22 section:

23 (1) furnished state officials with all information known to the
24 person about the violation not later than thirty (30) days after the
25 date on which the person obtained the information;

26 (2) fully cooperated with the investigation of the violation; and

27 (3) did not have knowledge of the existence of an investigation,
28 a criminal prosecution, a civil action, or an administrative action
29 concerning the violation at the time the person provided
30 information to state officials;

31 the person is liable for a penalty of not less than two (2) times the
32 amount of damages that the state sustained because of the violation. A
33 person who violates this section is also liable to the state for the costs
34 of a civil action brought to recover a penalty or damages.

35 SECTION 4. IC 5-11-5.7-3, AS ADDED BY P.L.197-2013,
36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2014]: Sec. 3. (a) The:

38 (1) attorney general; and

39 (2) inspector general;

40 have concurrent jurisdiction to investigate a violation of section 2 of
41 this chapter.

42 (b) If the attorney general discovers a violation of section 2 of this



1 chapter, the attorney general may bring a civil action under this chapter
2 against a person who may be liable for the violation.

3 (c) If the inspector general discovers a violation of section 2 of this
4 chapter, the inspector general shall certify this finding to the attorney
5 general. The attorney general may bring a civil action under this
6 chapter against a person who may be liable for the violation.

7 (d) If the attorney general or the inspector general is served by a
8 person who has filed a civil action under section 4 of this chapter, the
9 attorney general has the authority to intervene in that action as set forth
10 in section 4 of this chapter.

11 (e) If the attorney general:

12 (1) is disqualified from investigating a possible violation of
13 section 2 of this chapter;

14 (2) is disqualified from bringing a civil action concerning a
15 possible violation of section 2 of this chapter;

16 (3) is disqualified from intervening in a civil action brought under
17 section 4 of this chapter concerning a possible violation of section
18 2 of this chapter;

19 (4) elects not to bring a civil action concerning a possible
20 violation of section 2 of this chapter; or

21 (5) elects not to intervene under section 4 of this chapter;

22 the attorney general shall certify the attorney general's disqualification
23 or election to the inspector general.

24 (f) If the attorney general has certified the attorney general's
25 disqualification or election not to bring a civil action or intervene in a
26 case under subsection (e), the inspector general has authority to:

27 (1) bring a civil action concerning a possible violation of section
28 2 of this chapter; or

29 (2) intervene in a case under section 4 of this chapter.

30 (g) The attorney general shall certify to the inspector general the
31 attorney general's disqualification or election under subsection (e) in a
32 timely fashion, and in any event not later than:

33 (1) sixty (60) days after being served, if the attorney general has
34 been served by a person who has filed a civil action under section
35 4 of this chapter; or

36 (2) one hundred eighty (180) days before the expiration of the
37 statute of limitations, if the attorney general has not been served
38 by a person who has filed a civil action under section 4 of this
39 chapter.

40 (h) A civil action brought under section 4 of this chapter may be
41 filed in:

42 (1) a circuit or superior court in Marion County; or



- 1 (2) a circuit or superior court in the county in which a defendant
2 or plaintiff resides.
- 3 (†) (h) The state is not required to file a bond under this chapter.
- 4 SECTION 5. IC 5-11-5.7-4, AS ADDED BY P.L.197-2013,
5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2014]: Sec. 4. (a) A person may bring a civil action for a
7 violation of section 2 of this chapter on behalf of the person and on
8 behalf of the state. The action:
- 9 (1) must be brought in the name of the state; and
10 (2) may be filed in **any court with jurisdiction. a circuit or**
11 **superior court in:**
- 12 (A) the county in which the person resides;
13 (B) the county in which a defendant resides; or
14 (C) Marion County.
- 15 (b) ~~Except as provided in section 5 of this chapter,~~ An action
16 brought under this section may be dismissed **voluntarily by the**
17 **person bringing the action** only if:
- 18 (1) **the person obtains the prior written consent of** the attorney
19 general or the inspector general, if applicable; **files a written**
20 **motion to dismiss explaining why dismissal is appropriate;** and
21 (2) the court issues an order:
- 22 (A) granting the motion; and
23 (B) explaining the court's reasons for granting the motion.
- 24 (c) A person who brings an action under this section shall serve:
- 25 (1) a copy of the complaint; and
26 (2) a written disclosure that describes all relevant material
27 evidence and information the person possesses;
28 on both the attorney general and the inspector general. The person shall
29 file the complaint under seal, and the complaint shall remain under seal
30 for at least sixty (60) days. The complaint shall not be served on the
31 defendant until the court orders the complaint served on the defendant
32 following the intervention or the election not to intervene of the
33 attorney general or the inspector general. The state may elect to
34 intervene and proceed with the action not later than sixty (60) days
35 after it receives both the complaint and the written disclosure.
- 36 (d) For good cause shown, the attorney general or the inspector
37 general may move the court to extend the time during which the
38 complaint must remain under seal. A motion for extension may be
39 supported by an affidavit or other evidence. The affidavit or other
40 evidence may be submitted in camera.
- 41 (e) Before the expiration of the time during which the complaint is
42 sealed, the attorney general or the inspector general may:



- 1 (1) intervene in the case and proceed with the action, in which
 2 case the attorney general or the inspector general shall conduct
 3 the action; or
 4 (2) elect not to proceed with the action, in which case the person
 5 who initially filed the complaint may proceed with the action.
- 6 (f) The defendant in an action filed under this section is not required
 7 to answer the complaint until twenty-one (21) days after the complaint
 8 has been unsealed and served on the defendant.
- 9 (g) After a person has filed a complaint under this section, no person
 10 other than the attorney general or the inspector general may:
 11 (1) intervene; or
 12 (2) bring another action based on the same facts.
- 13 (h) If the person who initially filed the complaint:
 14 (1) planned and initiated the violation of section 2 of this chapter;
 15 or
 16 (2) has been convicted of a crime related to the person's violation
 17 of section 2 of this chapter;
 18 upon motion of the attorney general or the inspector general, the court
 19 shall dismiss the person as a plaintiff.
- 20 SECTION 6. IC 5-11-5.7-5, AS ADDED BY P.L.197-2013,
 21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2014]: Sec. 5. (a) If the attorney general or the inspector
 23 general intervenes in an action under section 4 of this chapter, the
 24 attorney general or the inspector general is responsible for prosecuting
 25 the action and is not bound by an act of the person who initially filed
 26 the complaint. The attorney general or the inspector general may do the
 27 following:
 28 (1) File a complaint.
 29 (2) Amend the complaint of a person who has brought an action
 30 under section 4 of this chapter, to:
 31 (A) clarify or add detail to the claims in which the state is
 32 intervening; or
 33 (B) add additional claims to which the state contends the state
 34 is entitled to relief.
 35 (3) Move for a change of venue to Marion County if the attorney
 36 general or the inspector general files a motion for change of venue
 37 not later than ten (10) days after the attorney general or the
 38 inspector general intervenes.
- 39 For statute of limitation purposes, a pleading filed by the attorney
 40 general or the inspector general relates back to the filing date of the
 41 complaint of the person who originally brought the action, to the extent
 42 that the claim of the state arises out of the conduct, transactions, or



1 occurrences set forth, or attempted to be set forth, in the original filed
 2 complaint. Except as provided in this section, the person who initially
 3 filed the complaint may continue as a party to the action.

4 (b) With the approval of the court, the attorney general or the
 5 inspector general may dismiss the action after:

- 6 (1) notifying the person who initially filed the complaint; and
- 7 (2) the court has conducted a hearing at which the person who
- 8 initially filed the complaint was provided the opportunity to be
- 9 heard on the motion.

10 The court may consider a request by the attorney general or the
 11 inspector general to dismiss the action but is not bound by the request.
 12 Additionally, the court may permit the attorney general or inspector
 13 general to ~~be dismissed from~~ **withdraw his or her appearance in** the
 14 case and may permit the person who initially filed the complaint to
 15 continue to prosecute the action **in the name of the state.**

16 (c) The attorney general or the inspector general may settle the
 17 action if a court determines, after a hearing, that the proposed
 18 settlement is fair, adequate, and reasonable in light of the
 19 circumstances. Upon a showing of good cause, the court may:

- 20 (1) conduct the settlement hearing in camera; or
- 21 (2) lift all or part of the seal to facilitate the investigative process
- 22 or settlement.

23 The court may consider an objection to the settlement brought by the
 24 person who initially filed the complaint, but is not bound by this
 25 objection.

26 (d) Upon a showing by the attorney general, the inspector general,
 27 or the defendant that unrestricted participation by the person who
 28 initially filed the complaint:

- 29 (1) will interfere with or unduly delay the prosecution of the case
- 30 by the attorney general or the inspector general;
- 31 (2) will involve the presentation of repetitious or irrelevant
- 32 evidence, or evidence introduced for purposes of harassment; or
- 33 (3) will cause the defendant to suffer undue burden or
- 34 unnecessary expense;

35 the court may impose reasonable limitations on the person's
 36 participation, including a limit on the number of witnesses that the
 37 person may call, a limit to the length of testimony that the person's
 38 witness may present, a limit to the person's cross-examination of a
 39 witness, or otherwise limit the participation by the person in the
 40 litigation.

41 (e) If the attorney general or the inspector general elects not to
 42 intervene in the action, the person who initially filed the complaint has



1 the right to prosecute the action. Upon request, the attorney general or
2 the inspector general shall be served with copies of all documents filed
3 in the action and may obtain a copy of depositions and other transcripts
4 at the state's expense.

5 (f) If the attorney general and the inspector general have elected not
6 to intervene in an action in accordance with section 4 of this chapter,
7 upon a showing of good cause, a court may permit either the attorney
8 general or the inspector general to intervene at a later time. The
9 attorney general may move to intervene at any time. If the attorney
10 general has not moved to intervene, the inspector general may move to
11 intervene by providing written notice to the attorney general of the
12 inspector general's intent to intervene. If the attorney general does not
13 move to intervene earlier than fifteen (15) days after receipt of the
14 notice of intent to intervene, the inspector general may move to
15 intervene. If the attorney general or the inspector general intervenes
16 under this subsection, the attorney general or the inspector general is
17 responsible for prosecuting the action as if the attorney general or the
18 inspector general had intervened in accordance with section 4 of this
19 chapter.

20 (g) If the attorney general or inspector general shows that a specific
21 discovery action by the person who initially filed the complaint will
22 interfere with the investigation or prosecution of a civil or criminal
23 matter arising out of the same facts, the court may, following a hearing
24 in camera, stay discovery for not more than sixty (60) days. After the
25 court has granted a sixty (60) day stay, the court may extend the stay,
26 following a hearing in camera, if it determines that the state has
27 pursued the civil or criminal investigation with reasonable diligence
28 and that a specific discovery action by the person who initially filed the
29 complaint will interfere with the state's investigation or prosecution of
30 the civil or criminal matter.

31 (h) A court may dismiss an action brought under this chapter to
32 permit the attorney general or the inspector general to pursue its claim
33 through an alternative proceeding, including an administrative
34 proceeding or a proceeding brought in another jurisdiction. The person
35 who initially filed the complaint has the same rights in the alternative
36 proceedings as the person would have had in the original proceedings.
37 A finding of fact or conclusion of law made in the alternative
38 proceeding is binding on all parties to an action under this section once
39 the determination made in the alternative proceeding is final under the
40 rules, regulations, statutes, or law governing the alternative proceeding,
41 or if the time for seeking an appeal or review of the determination
42 made in the alternative proceeding has elapsed.



1 SECTION 7. IC 5-11-5.7-6, AS ADDED BY P.L.197-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 6. (a) The person who initially filed the complaint
4 is entitled to the following amounts if the state prevails in the action:

5 (1) Except as provided in subdivision (2), if the attorney general
6 or the inspector general intervened in the action, the person is
7 entitled to receive at least fifteen percent (15%) and not more than
8 twenty-five percent (25%) of the proceeds of the action or
9 settlement, plus reasonable attorney's fees and an amount to cover
10 the expenses and costs of bringing the action.

11 (2) If the attorney general or the inspector general intervened in
12 the action and the court finds that the evidence used to prosecute
13 the action consisted primarily of specific information, other than
14 information provided by the person bringing the action, contained
15 in:

- 16 (A) a transcript of a criminal, a civil, or an administrative
17 hearing;
- 18 (B) a legislative, an administrative, or another public **state**
19 report, hearing, audit, or investigation; or
- 20 (C) a news media report;

21 the person is entitled to receive not more than ten percent (10%)
22 of the proceeds of the action or settlement, taking into account the
23 significance of the information and the role of the person bringing
24 the action in advancing the case to litigation, plus reasonable
25 attorney's fees and an amount to cover the expenses and costs of
26 bringing the action.

27 (3) If the attorney general or the inspector general did not
28 intervene in the action, the person is entitled to receive at least
29 twenty-five percent (25%) and not more than thirty percent (30%)
30 of the proceeds of the action or settlement, plus reasonable
31 attorney's fees and an amount to cover the expenses and costs of
32 bringing the action.

33 (4) If the person who initially filed the complaint:

- 34 (A) planned and initiated the violation of section 2 of this
35 chapter; or
- 36 (B) has been convicted of a crime related to the person's
37 violation of section 2 of this chapter;

38 the person is not entitled to an amount under this section.

39 After conducting a hearing at which the attorney general or the
40 inspector general and the person who initially filed the complaint may
41 be heard, the court shall determine the specific amount to be awarded
42 under this section to the person who initially filed the complaint. The



1 award of reasonable attorney's fees plus an amount to cover the
 2 expenses and costs of bringing the action is an additional cost assessed
 3 against the defendant and may not be paid from the proceeds of the
 4 civil action.

5 (b) If:

6 (1) the attorney general or the inspector general did not intervene
 7 in the action; and

8 (2) the defendant prevails;

9 the court may award the defendant reasonable attorney's fees plus an
 10 amount to cover the expenses and costs of defending the action, if the
 11 court finds that the action is frivolous, vexatious, or brought primarily
 12 for purposes of harassment.

13 (c) The state is not liable for the expenses, costs, or attorney's fees
 14 of a party to an action brought under this chapter.

15 SECTION 8. IC 5-11-5.7-7, AS ADDED BY P.L.197-2013,
 16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2014]: Sec. 7. (a) This section does not apply to an action
 18 brought by:

19 (1) the attorney general;

20 (2) the inspector general;

21 (3) a prosecuting attorney; or

22 (4) a state employee in the employee's official capacity.

23 (b) A court does not have jurisdiction over an action brought under
 24 section 4 of this chapter if the action is brought by an incarcerated
 25 offender, including an offender incarcerated in another jurisdiction.

26 (c) A court does not have jurisdiction over an action **or claim**
 27 brought under section 4 of this chapter against the state, a state officer,
 28 a judge (as defined in IC 33-23-11-7), a justice, a member of the
 29 general assembly, a state employee, or an employee of a political
 30 subdivision, if the action **or claim** is based on information known to
 31 the state at the time the action was brought.

32 (d) A court does not have jurisdiction over an action brought under
 33 section 4 of this chapter if the action is based upon an act that is the
 34 subject of a civil suit, a criminal prosecution, or an administrative
 35 proceeding in which the state is a party.

36 (e) A court does not have jurisdiction over an action brought under
 37 section 4 of this chapter if the action is based upon information
 38 contained in:

39 (1) a transcript of a criminal, a civil, or an administrative hearing
 40 in which the state or the state's agent is a party;

41 (2) a legislative, an administrative, or another public state report,
 42 hearing, audit, or investigation; or



1 (3) a news media report;
 2 unless the person bringing the action either, before a public disclosure
 3 under this section voluntarily discloses to the state the information on
 4 which the allegations or transactions in a claim are based, or has
 5 knowledge that is independent of and materially adds to the publicly
 6 disclosed allegations or transactions, and the person bringing the action
 7 has voluntarily provided this information to the state before an action
 8 is filed under section 4 of this chapter.

9 (f) In determining whether a prior public disclosure bars a court
 10 from exercising jurisdiction over an action brought under section 4 of
 11 this chapter, the court shall consider, but is not bound by, any objection
 12 brought by the attorney general or the inspector general.

13 SECTION 9. IC 5-11-5.7-8, AS ADDED BY P.L.197-2013,
 14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2014]: Sec. 8. (a) An employee, contractor, or agent who has
 16 been discharged, demoted, suspended, threatened, harassed, or
 17 otherwise discriminated against in the terms and conditions of
 18 employment because of lawful acts done by the employee, contractor,
 19 agent, or associated others to:

20 (1) object to or otherwise stop an act or omission described in
 21 section 2 of this chapter; ~~or~~

22 (2) initiate, testify, assist, or participate in an investigation, an
 23 action, or a hearing; ~~under this chapter; or~~

24 **(3) perform any other lawful act in furtherance of other**
 25 **efforts to stop one (1) or more violations under this chapter;**

26 is entitled to all relief necessary to make the employee, contractor, or
 27 agent whole.

28 (b) Relief under this section must include:

29 (1) reinstatement with the same seniority status the employee,
 30 contractor, or agent would have had but for the act described in
 31 subsection (a);

32 (2) two (2) times the amount of back pay;

33 (3) interest on the back pay; and

34 (4) compensation for any special damages sustained as a result of
 35 the act described in subsection (a), including costs and expenses
 36 of litigation and reasonable attorney's fees.

37 (c) An employee, **contractor, or agent** may bring an action for the
 38 relief provided in this section in any court with jurisdiction.

39 (d) A civil action under this section may not be brought more than
 40 three (3) years after the date the retaliation occurred.

41 SECTION 10. IC 5-11-5.7-9, AS ADDED BY P.L.197-2013,
 42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2014]: Sec. 9. (a) A subpoena requiring the attendance of a
 2 witness at a trial or hearing conducted under this chapter may be served
 3 at any place in Indiana.

4 (b) A civil action under section 4 of this chapter is barred unless it
 5 is commenced:

6 (1) not later than six (6) years after the date on which the violation
 7 is committed; or

8 (2) not later than three (3) years after the date when facts material
 9 to the cause of action are known or reasonably should have been
 10 known by a state officer or employee who is responsible for
 11 addressing the false claim, ~~However, an action is barred unless it~~
 12 ~~is commenced~~ **not but in no event** later than ten (10) years after
 13 the date on which the violation is committed, **whichever occurs**
 14 **later.**

15 (c) In a civil action brought under this chapter, the state is required
 16 to establish:

17 (1) the essential elements of the offense; and

18 (2) damages;

19 by a preponderance of the evidence.

20 (d) If a defendant has been convicted (including a plea of guilty or
 21 nolo contendere) of a crime involving fraud or a false statement, the
 22 defendant is estopped from denying the elements of the offense in a
 23 civil action brought under section 4 of this chapter that involves the
 24 same transaction as the criminal prosecution.

25 SECTION 11. IC 5-11-5.7-10, AS ADDED BY P.L.197-2013,
 26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2014]: Sec. 10. (a) Whenever the attorney general, the
 28 inspector general, or the designee of the attorney general or the
 29 inspector general has reason to believe that a person may be in
 30 possession, custody, or control of documentary material, **electronically**
 31 **stored information, a tangible thing**, or information relevant to an
 32 investigation under this chapter involving a false claim, the attorney
 33 general, the inspector general, or the designee of the attorney general
 34 or inspector general may, before commencing a civil proceeding under
 35 this chapter, issue and serve a civil investigative demand requiring the
 36 person to do one (1) or more of the following:

37 (1) Produce the documentary material, **electronically stored**
 38 **information, or tangible thing** for inspection and copying.

39 (2) Answer an interrogatory in writing concerning the
 40 documentary material, **electronically stored information,**
 41 **tangible thing**, or information.

42 (3) Give oral testimony concerning the documentary material,



1 **electronically stored information, tangible thing, or**
 2 information.

3 **(4) Furnish any combination of material, other evidence,**
 4 **answers, or testimony.**

5 (b) If a civil investigative demand is a specific demand for a product
 6 of discovery, the official issuing the civil investigative demand shall:

7 (1) serve a copy of the civil investigative demand on the person
 8 from whom the discovery was obtained; and

9 (2) notify the person to whom the civil investigative demand is
 10 issued of the date of service.

11 SECTION 12. IC 5-11-5.7-14, AS ADDED BY P.L.197-2013,
 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2014]: Sec. 14. (a) The production of documentary material
 14 in response to a civil investigative demand served under this chapter
 15 shall be made in accordance with ~~Trial Rule 34~~ **the rules of civil**
 16 **procedure concerning the production of documents, electronically**
 17 **stored information, and tangible things.**

18 (b) Each interrogatory in a civil investigative demand served under
 19 this chapter shall be answered in accordance with ~~Trial Rule 33:~~ **the**
 20 **rules of civil procedure concerning interrogatories.**

21 (c) The examination of a person under a civil investigative demand
 22 for oral testimony served under this chapter shall be conducted in
 23 accordance with ~~Trial Rule 30:~~ **the rules of civil procedure**
 24 **concerning oral depositions.**

25 SECTION 13. IC 5-11-5.7-16, AS ADDED BY P.L.197-2013,
 26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2014]: Sec. 16. (a) A person who has failed to comply with a
 28 civil investigative demand is subject to sanctions under ~~Trial Rule 37~~
 29 **the rules of civil procedure** to the same extent as a person who has
 30 failed to cooperate in discovery.

31 (b) A person who objects to a civil investigative demand issued
 32 under this chapter may seek a protective order in accordance with ~~Trial~~
 33 ~~Rule 26(C):~~ **the rules of civil procedure.**

34 SECTION 14. IC 5-11-5.7-18, AS ADDED BY P.L.197-2013,
 35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2014]: Sec. 18. Proceedings under this chapter are governed
 37 by the Indiana Rules of Trial Procedure **if the proceedings are held in**
 38 **state court, and by the Federal Rules of Civil Procedure if the**
 39 **proceedings are held in federal court.** ~~unless the Indiana Rules of~~
 40 ~~Trial Procedure are inconsistent with this chapter.~~



COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 406, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 406 as introduced.)

Committee Vote: Yeas 8, Nays 0

Senator Miller Patricia, Chairperson

