

Rhode Island False Claims Act

§ 9-1.1-1. Name of act. [Effective until February 15, 2008.]

This chapter may be cited as the State False Claims Act.

§ 9-1.1-2. Definitions. [Effective until February 15, 2008.]

As used in this chapter:

(a) "State" means the state of Rhode Island; any agency of state government; and any political subdivision meaning any city, town, county or other governmental entity authorized or created by state law, including public corporations and authorities.

(b) "Guard" means the Rhode Island National Guard.

(c) "Investigation" means any inquiry conducted by any investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this chapter.

(d) "Investigator" means a person who is charged by the Rhode Island attorney general, or his or her designee with the duty of conducting any investigation under this act, or any officer or employee of the state acting under the direction and supervision of the department of attorney General.

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

(f) "Custodian" means the custodian, or any deputy custodian, designated by the attorney general under § 9-1.1-6 of the Rhode Island general laws.

(g) "Product of discovery" includes:

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

(2) Any digest, analysis, selection, compilation, or derivation of any item listed in paragraph (1); and

(3) Any index or other manner of access to any item listed in paragraph (1).

§ 9-1.1-3. Liability for certain acts. [Effective until February 15, 2008.]

(a) Any person who:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the state or a member of the guard a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state;

(3) Conspires to defraud the state by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used, or to be used, by the state and, intending to defraud the state or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

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

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

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state, is liable to the state for a civil penalty of not less than five thousand dollars (\$ 5,000) and not more than ten thousand dollars (\$ 10,000), unless such a penalty has been or will be imposed for that claim or violation under the federal false claims act (31 U.S.C. § 3729 et seq.) in the same or prior action, plus three (3) times the amount of damages which the state sustains because of the act of that person except that if the court finds that:

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

(b) Such person fully cooperated with any state investigation of such violation; and

(c) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation; the court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person. A person violating this subsection (a) shall also be liable to the state for the costs of a civil action brought to recover any such penalty or damages.

(b) *Knowing and knowingly defined.* As used in this section, the terms "knowing" and "knowingly" mean that a person, with respect to information:

(1) Has actual knowledge of the information;

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

(3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) *Claim defined.* As used in this Section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the State provides any portion of the money or property which is requested or demanded, or if the State will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) *Exclusion.* This section does not apply to claims, records, or statements made under the Rhode Island Personal Income Tax Law contained in RIGL Chapter 44-30.

§ 9-1.1-4. Civil actions for false claims. [Effective until February 15, 2008.]

(a) *Responsibilities of the Attorney General.* The Attorney General diligently shall investigate a violation under § 9-1.1-3 of this section. If under this section the Attorney General finds that a person has violated or is violating § 9-1.1-3 the Attorney General may bring a civil action under this section against the person.

(b) *Actions by private persons.*

(1) A person may bring a civil action for a violation of § 9-1.1-3 for the person and for the State. The action shall be brought in the name of the state. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state upon the Attorney General. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state

may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

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

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

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

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

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

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

(2) (A) The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

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

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

(i) Limiting the number of witnesses the person may call:

(ii) Limiting the length of the testimony of such witnesses;

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

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

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

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

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty (60) day period upon a further showing in

camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

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

(d) *Award to Qui Tam plaintiff.*

(1) If the State proceeds with an action brought by a person under subsection 9-1.1-4(b), such person shall, subject to the second sentence of this paragraph, receive at least fifteen percent (15%) but not more than twenty-five (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph (1) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

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

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or participated in the violation of § 9-1.1-3 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection (d) to no more than ten percent (10%), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of § 9-1.1-3, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

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

(e) *Certain actions barred.*

(1) No court shall have jurisdiction over an action brought by a former or present member of the Guard under § 9-1.1-4(b) (Actions by private persons) against a member of the Guard arising out of such person's service in the Guard.

(2) No court shall have jurisdiction over an action brought pursuant to subsection 9-1.1-4(b).

(Actions by private persons) against the Governor, Lieutenant Governor, the Attorney General, members of the General Assembly, a member of the Judiciary, the Treasurer, Secretary of State, the Auditor General, any director of a state agency, and any other individual appointed to office by the Governor if the action is based on evidence or information known to the state when the action was brought.

(3) In no event may a person bring an action under subsection 9-1.1-4(b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(4) (A) No court shall have jurisdiction over an action under this Section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this exclusion, "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 the state before filing an action under this section which is based on the information.

(5) In no event may a person bring an action under subsection 9-1.1-4(b) that is based on allegations or transactions that the person knew or had reason to know were known to the attorney general or the state's other law enforcement officials prior to that person filing the action or serving the disclosure of material evidence.

(6) If: (a) an action brought under subsection 9-1.1-4(b) is based upon allegations or transactions of which the person bringing the action became aware while employed by, or under contract to, or serving as an agent for a defendant; and (b) the person bringing the action failed to make an effective disclosure of those allegations or transactions under that defendant's corporate compliance plan, the court shall reduce the share of the proceeds of the action which the person would otherwise receive to no more than ten percent (10%) of the proceeds of the action.

(f) *State not liable for certain expenses.* The state is not liable for expenses which a person incurs in bringing an action under this section.

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate Superior Court for the relief provided in this § 9-1.1-4(g).

§ 9-1.1-5. False claims procedure. [Effective until February 15, 2008.]

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 9-1.1-4, may be served at any place in the State.

(b) A civil action under § 9-1.1-4 may not be brought:

(1) More than 6 years after the date on which the violation of § 9-1.1-3 is committed, or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under § 9-1.1-4, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsections 9-1.1-4(a) or 9-1.1-4(b).

§ 9-1.1-6. Subpoenas. [Effective until February 15, 2008.]

(a) In general.

(1) *Issuance and service.* Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation, the attorney general may, before commencing a civil proceeding under this act, issue in writing and cause to be served upon such person, a subpoena requiring such person:

- (A) To produce such documentary material for inspection and copying.
- (B) To answer, in writing, written interrogatories with respect to such documentary material or information.
- (C) To give oral testimony concerning such documentary material or information; or
- (D) To furnish any combination of such material, answers, or testimony.

The attorney general may delegate the authority to issue subpoenas under this subsection (a) to the state police subject to conditions as the attorney general deems appropriate. Whenever a subpoena is an express demand for any product of discovery, the attorney general or his or her delegate shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(2) Where a subpoena requires the production of documentary material, the respondent shall produce the original of the documentary material, provided, however, that the attorney general may agree that copies may be substituted for the originals. All documentary material kept or stored in electronic form, including electronic mail, shall be produced in hard copy, unless the attorney general agrees that electronic versions may be substituted for the hard copy. The production of documentary material shall be made at the respondent's expense.

(3) *Contents and deadlines.* Each subpoena issued under paragraph (1):

(A) Shall state the nature of the conduct constituting an alleged violation that is under investigation and the applicable provision of law alleged to be violated.

(B) Shall identify the individual causing the subpoena to be served and to whom communications regarding the subpoena should be directed.

(C) Shall state the date, place, and time at which the person is required to appear, produce written answers to interrogatories, produce documentary material or give oral testimony. The date shall not be less than ten (10) days from the date of service of the subpoena. Compliance with the subpoena shall be at the office of the attorney general.

(D) If the subpoena is for documentary material or interrogatories, shall describe the documents or information requested with specificity.

(E) Shall notify the person of the right to be assisted by counsel.

(F) Shall advise that the person has twenty (20) days from the date of service or up until the return date specified in the demand, whichever date is earlier, to move, modify, or set aside the subpoena pursuant to subparagraph (j)(2)(A) of this section.

(b) Protected material or information.

(1) *In general.* A subpoena issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(A) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or

(B) The standards applicable to discovery requests under the Rhode Island superior court rules of civil procedure, to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this section.

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

(c) *Service in general.* Any subpoena issued under subsection (a) may be served by any person so authorized by the Attorney General or by any person authorized to serve process on individuals within Rhode Island, through any method prescribed in the Rhode Island superior court rules of civil procedure or as otherwise set forth in this chapter.

(d) Service upon legal entities and natural persons.

(1) *Legal entities.* Service of any subpoena issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by:

(A) Delivering an executed copy of such subpoena or petition to any partner, executive officer, managing agent, general agent, or registered agent of the partnership, corporation, association or entity;

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

(C) Depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity as its principal office or place of business.

(2) *Natural person.* Service of any such subpoena or petition may be made upon any natural person by:

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

(B) Depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) *Proof of service.* A verified return by the individual serving any subpoena issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(f) Documentary material.

(1) *Sworn certificates.* The production of documentary material in response to a subpoena served under this Section shall be made under a sworn certificate, in such form as the subpoena designates, by:

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

(B) In the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the subpoena is directed has been produced and made available to the attorney general.

(2) *Production of materials.* Any person upon whom any subpoena for the production of documentary material has been served under this section shall make such material available for inspection and copying to the attorney general

at the place designated in the subpoena, or at such other place as the attorney general and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such subpoena, or on such later date as the attorney general may prescribe in writing. Such person may, upon written agreement between the person and the attorney general, substitute copies for originals of all or any part of such material.

(g) *Interrogatories.* Each interrogatory in a subpoena served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the subpoena designates by:

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

(2) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory. If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the subpoena and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) *Procedures.* The examination of any person pursuant to a subpoena for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this state or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a certified copy of the transcript of the testimony in accordance with the instructions of the attorney general. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Rhode Island superior court rules of civil procedure.

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

(3) *Where testimony taken.* The oral testimony of any person taken pursuant to a subpoena served under this section shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the attorney general and such person.

(4) *Transcript of testimony.* When the testimony is fully transcribed, the attorney general or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to review and correct the transcript, in accordance with the rules applicable to deposition witnesses in civil cases. Upon payment of reasonable charges, the attorney general shall furnish a copy of the transcript to the witness, except that the attorney general may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(5) *Conduct of oral testimony.*

(A) Any person compelled to appear for oral testimony under a subpoena issued under subsection (a) may be accompanied, represented, and advised by counsel, who may raise objections based on matters of privilege in accordance with the rules applicable to depositions in civil cases. If such person refuses to answer any question, a petition may be filed in superior court under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with rules of criminal procedure.

(6) *Witness fees and allowances.* Any person appearing for oral testimony under a subpoena issued under subsection 9-1.1-6(a) shall be entitled to the same fees and allowances which are paid to witnesses in the superior court.

(7) *Custodians of documents, answers, and transcripts.*

(A) *Designation.* The attorney general or his or her delegate shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section.

(B) Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual, except as determined necessary by the attorney general and subject to the conditions imposed by him or her for effective enforcement of the laws of this state, or as otherwise provided by court order.

(C) *Conditions for return of material.* If any documentary material has been produced by any person in the course of any investigation pursuant to a subpoena under this section and:

(i) Any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed, or

(ii) No case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(j) *Judicial proceedings.*

(1) *Petition for enforcement.* Whenever any person fails to comply with any subpoena issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the attorney general may file, in the superior court of the county in which such person resides, is found, or transacts business, or the superior court in the county in which an action filed pursuant to § 9-1.1-4 is pending if the action relates to the subject matter of the subpoena and serve upon such person a petition for an order of such court for the enforcement of the subpoena.

(2) *Petition to modify or set aside subpoena.*

(A) Any person who has received a subpoena issued under subsection (a) may file, in the superior court of any county within which such person resides, is found, or transacts business, and serve upon the attorney general a petition for an order of the court to modify or set aside such subpoena. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the superior court of the county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph (A) must be filed:

(i) Within twenty (20) days after the date of service of the subpoena, or at any time before the return date specified in the subpoena, whichever date is earlier, or

(ii) Within such longer period as may be prescribed in writing by the attorney general.

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

(3) *Petition to modify or set aside demand for product of discovery.* In the case of any subpoena issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the superior court of the county in which the proceeding in which such discovery was obtained is or was last pending, a petition for an order of such court to modify or set aside those portions of the subpoena requiring production of any such product of discovery, subject to the same terms, conditions, and limitations set forth in subparagraph (j)(2) of this section.

(4) *Petition to require performance by custodian of duties.* At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by

any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file in the superior court of the county in which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) *Jurisdiction.* Whenever any petition is filed in any superior court under this subsection (j), such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(k) *Disclosure exemption.* Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under subsection (a) shall be exempt from disclosure under the Rhode Island access to public records law, § 38-2-2.

§ 9-1.1-7. Procedure. [Effective until February 15, 2008.]

The Rhode Island superior court rules of civil procedure shall apply to all proceedings under this chapter, except when those rules are inconsistent with this chapter.

§ 9-1.1-8. Funds. [Effective until February 15, 2008.]

There is hereby created a separate fund entitled the false claims Act Fund. All proceeds of an action or settlement of a claim brought under this chapter shall be deposited in the Fund.

§ 9-1.1-1. Name of act. [Effective February 15, 2008.]

This chapter may be cited as the State False Claims Act

§ 9-1.1-2. Definitions. [Effective February 15, 2008.]

As used in this chapter:

(a) "State" means the state of Rhode Island; any agency of state government; and any political subdivision meaning any city, town, county or other governmental entity authorized or created by state law, including public corporations and authorities.

(b) "Guard" means the Rhode Island National Guard.

(c) "Investigation" means any inquiry conducted by any investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this chapter.

(d) "Investigator" means a person who is charged by the Rhode Island attorney general, or his or her designee with the duty of conducting any investigation under this act, or any officer or employee of the State acting under the direction and supervision of the department of attorney general.

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

(f) "Custodian" means the custodian, or any deputy custodian, designated by the attorney general under § 9-1.1-6 of the Rhode Island general laws.

(g) "Product of discovery" includes:

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

(2) Any digest, analysis, selection, compilation, or derivation of any item listed in paragraph (1); and

(3) Any index or other manner of access to any item listed in paragraph (1).

§ 9-1.1-3. Liability for certain acts. [Effective February 15, 2008.]

(a) Any person who:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the state or a member of the guard a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state;

(3) Conspires to defraud the state by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used, or to be used, by the state and, intending to defraud the state or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

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

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

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state, is liable to the state for a civil penalty of not less than five thousand dollars (\$ 5,000) and not more than ten thousand dollars (\$ 10,000), plus three (3) times the amount of damages which the state sustains because of the act of that person. A person violating this subsection (a) shall also be liable to the state for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and knowingly defined. As used in this section, the terms "knowing" and "knowingly" mean that a person, with respect to information:

(1) Has actual knowledge of the information;

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

(3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) *Claim defined.* As used in this section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the state provides any portion of the money or property which is requested or demanded, or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) *Exclusion.* This section does not apply to claims, records, or statements made under the Rhode Island personal income tax law contained in Rhode Island general laws chapter 44-30.

§ 9-1.1-4. Civil actions for false claims. [Effective February 15, 2008.]

(a) *Responsibilities of the attorney general.* The attorney general diligently shall investigate a violation under § 9-1.1-3 of this section. If under this section the attorney general finds that a person has violated or is violating *section 9-1.1-3* the attorney general may bring a civil action under this section against the person.

(b) *Actions by private persons.*

(1) A person may bring a civil action for a violation of § 9-1.1-3 for the person and for the state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state upon the attorney general. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

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

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

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

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

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

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

(2) (A) The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

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

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

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

(ii) Limiting the length of the testimony of such witnesses;

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

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

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

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

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty (60) day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

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

(d) Award to Qui Tam plaintiff.

(1) If the State proceeds with an action brought by a person under *subsection 9-1.1-4(b)*, such person shall, subject to the second sentence of this paragraph, receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph (1) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. The state shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the attorney general, including reasonable attorneys' fees and costs, and the amount received shall be deposited in the false claims act fund created under this chapter. All such expenses, fees, and costs shall be awarded against the defendant.

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

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 9-1.1-3 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection (d), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of § 9-1.1-3, that person shall be dismissed

from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

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

(e) Certain actions barred.

(1) No court shall have jurisdiction over an action brought by a former or present member of the guard under subsection 9-1.1-4(b) (actions by private persons) against a member of the guard arising out of such person's service in the guard.

(2) No court shall have jurisdiction over an action brought pursuant to subsection 9-1.1-4(b) (actions by private persons) against the governor, lieutenant governor, the attorney general, members of the general assembly, a member of the judiciary, the treasurer, secretary of state, the auditor general, any director of a state agency, and any other individual appointed to office by the governor if the action is based on evidence or information known to the state when the action was brought.

(3) In no event may a person bring an action under subsection 9-1.1-4(b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(4) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or auditor general's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information.

(B) For purposes of this exclusion, "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 the state before filing an action under this section which is based on the information.

(f) *State not liable for certain expenses.* The state is not liable for expenses which a person incurs in bringing an action under this section.

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate superior court for the relief provided in this subsection 9-1.1-4(g).

§ 9-1.1-5. False claims procedure. [Effective February 15, 2008.]

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 9-1.1-4, may be served at any place in the state.

(b) A civil action under § 9-1.1-4 may not be brought:

(1) More than 6 years after the date on which the violation of § 9-1.1-3 is committed, or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under § 9-1.1-4, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsections 9-1.1-4(a) or 9-1.1-4(b).

§ 9-1.1-6. Subpoenas. [Effective February 15, 2008.]

(a) In general:

(1) *Issuance and service.* Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation, the attorney general may, before commencing a civil proceeding under this act, issue in writing and cause to be served upon such person, a subpoena requiring such person:

- (A) To produce such documentary material for inspection and copying,
- (B) To answer, in writing, written interrogatories with respect to such documentary material or information,
- (C) To give oral testimony concerning such documentary material or information, or
- (D) To furnish any combination of such material, answers, or testimony.

The attorney general may delegate the authority to issue subpoenas under this subsection (a) to the state police subject to conditions as the attorney general deems appropriate. Whenever a subpoena is an express demand for any product of discovery, the attorney general or his or her delegate shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(2) Where a subpoena requires the production of documentary material, the respondent shall produce the original of the documentary material, provided, however, that the attorney general may agree that copies may be substituted for the originals. All documentary material kept or stored in electronic form, including electronic mail, shall be produced in hard copy, unless the attorney general agrees that electronic versions may be substituted for the hard copy. The production of documentary material shall be made at the respondent's expense.

(3) *Contents and deadlines.* Each subpoena issued under paragraph (1):

(A) Shall state the nature of the conduct constituting an alleged violation that is under investigation and the applicable provision of law alleged to be violated.

(B) Shall identify the individual causing the subpoena to be served and to whom communications regarding the subpoena should be directed.

(C) Shall state the date, place, and time at which the person is required to appear, produce written answers to interrogatories, produce documentary material or give oral testimony. The date shall not be less than ten (10) days from the date of service of the subpoena. Compliance with the subpoena shall be at the office of the attorney general.

(D) If the subpoena is for documentary material or interrogatories, shall describe the documents or information requested with specificity.

(E) Shall notify the person of the right to be assisted by counsel.

(F) Shall advise that the person has twenty (20) days from the date of service or up until the return date specified in the demand, whichever date is earlier, to move, modify, or set aside the subpoena pursuant to subparagraph (j)(2)(A) of this section.

(b) Protected material or information.

(1) *In general.* A subpoena issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(A) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or

(B) The standards applicable to discovery requests under the Rhode Island superior court rules of civil procedure, to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this section.

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

(c) *Service in general.* Any subpoena issued under subsection (a) may be served by any person so authorized by the attorney general or by any person authorized to serve process on individuals within Rhode Island, through any method prescribed in the Rhode Island superior court rules of civil procedure or as otherwise set forth in this chapter.

(d) Service upon legal entities and natural persons.

(1) *Legal entities.* Service of any subpoena issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by:

(A) Delivering an executed copy of such subpoena or petition to any partner, executive officer, managing agent, general agent, or registered agent of the partnership, corporation, association or entity;

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

(C) Depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity as its principal office or place of business.

(2) *Natural person.* Service of any such subpoena or petition may be made upon any natural person by:

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

(B) Depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) *Proof of service.* A verified return by the individual serving any subpoena issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(f) Documentary material.

(1) *Sworn certificates.* The production of documentary material in response to a subpoena served under this Section shall be made under a sworn certificate, in such form as the subpoena designates, by:

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

(B) In the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the subpoena is directed has been produced and made available to the attorney general.

(2) *Production of materials.* Any person upon whom any subpoena for the production of documentary material has been served under this section shall make such material available for inspection and copying to the attorney general

at the place designated in the subpoena, or at such other place as the attorney general and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such subpoena, or on such later date as the attorney general may prescribe in writing. Such person may, upon written agreement between the person and the attorney general, substitute copies for originals of all or any part of such material.

(g) *Interrogatories.* Each interrogatory in a subpoena served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the subpoena designates by:

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

(2) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory. If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the subpoena and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) *Procedures.* The examination of any person pursuant to a subpoena for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this state or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a certified copy of the transcript of the testimony in accordance with the instructions of the attorney general. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Rhode Island superior court rules of civil procedure.

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

(3) *Where testimony taken.* The oral testimony of any person taken pursuant to a subpoena served under this section shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the attorney general and such person.

(4) *Transcript of testimony.* When the testimony is fully transcribed, the attorney general or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to review and correct the transcript, in accordance with the rules applicable to deposition witnesses in civil cases. Upon payment of reasonable charges, the attorney general shall furnish a copy of the transcript to the witness, except that the attorney general may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(5) *Conduct of oral testimony.*

(A) Any person compelled to appear for oral testimony under a subpoena issued under subsection (a) may be accompanied, represented, and advised by counsel, who may raise objections based on matters of privilege in accordance with the rules applicable to depositions in civil cases. If such person refuses to answer any question, a petition may be filed in superior court under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with rules of criminal procedure.

(6) *Witness fees and allowances.* Any person appearing for oral testimony under a subpoena issued under subsection 9-1.1-6(a) shall be entitled to the same fees and allowances which are paid to witnesses in the superior court.

(7) Custodians of documents, answers, and transcripts.

(A) *Designation.* The attorney general or his or her delegate shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section.

(B) Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual, except as determined necessary by the attorney general and subject to the conditions imposed by him or her for effective enforcement of the laws of this state, or as otherwise provided by court order.

(C) *Conditions for return of material.* If any documentary material has been produced by any person in the course of any investigation pursuant to a subpoena under this section and:

(i) Any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed, or

(ii) No case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(j) Judicial proceedings.

(1) *Petition for enforcement.* Whenever any person fails to comply with any subpoena issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the attorney general may file, in the superior court of the county in which such person resides, is found, or transacts business, or the superior court in the county in which an action filed pursuant to § 9-1.1-4 is pending if the action relates to the subject matter of the subpoena and serve upon such person a petition for an order of such court for the enforcement of the subpoena.

(2) *Petition to modify or set aside subpoena.*

(A) Any person who has received a subpoena issued under subsection (a) may file, in the superior court of any county within which such person resides, is found, or transacts business, and serve upon the attorney general a petition for an order of the court to modify or set aside such subpoena. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the superior court of the county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph (a) must be filed:

(i) Within twenty (20) days after the date of service of the subpoena, or at any time before the return date specified in the subpoena, whichever date is earlier, or

(ii) Within such longer period as may be prescribed in writing by the attorney general.

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

(3) *Petition to modify or set aside demand for product of discovery.* In the case of any subpoena issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the superior court of the county in which the proceeding in which such discovery was obtained is or was last pending, a petition for an order of such court to modify or set aside those portions of the subpoena requiring production of any such product of discovery, subject to the same terms, conditions, and limitations set forth in subparagraph (j)(2) of this section.

(4) *Jurisdiction.* Whenever any petition is filed in any superior court under this subsection (j), such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be required to carry out

the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(k) *Disclosure exemption.* Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under subsection (a) shall be exempt from disclosure under the Rhode Island access to public records law, § 38-2-2.

§ 9-1.1-7. Procedure. [Effective February 15, 2008.]

The Rhode Island superior court rules of civil procedure shall apply to all proceedings under this chapter, except when those rules are inconsistent with this Chapter.

§ 9-1.1-8. Funds. [Effective February 15, 2008.]

There is hereby created a separate fund entitled the false claims act fund. All proceeds of an action or settlement of a claim brought under this chapter shall be deposited in the Fund.