

AN ACT concerning civil liabilities.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Whistleblower Reward and Protection Act is amended by changing Section 6 as follows:

(740 ILCS 175/6) (from Ch. 127, par. 4106)

Sec. 6. Subpoenas.

(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 Department of 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.

(1.5) 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.

(2) 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 10 days from the date of service of the subpoena. Compliance with the subpoena shall be at the Office of the Attorney General in either the Springfield or Chicago location or at other location by agreement.

(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 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 Code 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 Illinois, through any method prescribed in the Code of Civil Procedure or as otherwise set forth in this Act.

(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 Code 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 circuit 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 Article 106 of the Code of Criminal Procedure of 1963.

(6) Witness fees and allowances. Any person appearing for oral testimony under a subpoena issued under subsection (a) shall be entitled to the same fees and allowances which

are paid to witnesses in the circuit court.

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

(1) 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.

(2) 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.

(3) 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:

(A) 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

(B) 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 circuit court of any county in which such person resides, is found, or transacts business, or the circuit court of the county in which an action filed pursuant to Section 4 of this Act 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 circuit 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 circuit 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 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 circuit 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 circuit 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 Illinois Administrative Procedure Act.

(Source: P.A. 92-651, eff. 7-11-02; 93-579, eff. 1-1-04.)