

AN ACT concerning whistleblower protection.

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. ~~Civil-investigative-demands.~~

(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 ~~civil
investigative-demand~~ 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~~ shall delegate the authority to
issue subpoenas ~~civil-investigative--demands~~ under this
subsection (a) to the Department of State Police subject
to conditions as the Attorney General deems appropriate.

Whenever a subpoena ~~civil--investigative--demand~~ is an
express demand for any product of discovery, the Attorney

~~General or his or her delegate, an Assistant-Attorney General or the delegate of the Department of State Police~~ 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) Contents and deadlines. ~~(A)~~ Each subpoena ~~civil-investigative-demand~~ 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. shall state the nature of the conduct constituting and alleged violation which is under investigation, and the applicable provision of law alleged to be violated.

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

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

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

(iii) identify the investigator to whom such material shall be made available.

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

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

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the investigator to whom such answers shall be submitted.

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

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

(ii) identify an investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall

be-submitted;

(iii)--specify--that--such--attendance-and
testimony-are-necessary-to-the-conduct--of--the
investigation;

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

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

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

(F)--The-date-prescribed-for--the--commencement
of--oral-testimony-pursuant-to-a-civil-investigative
demand-issued-under-this-Section--shall--be--a--date
which--is--not--less--than--7-days-after-the-date-on
which--demand--is--received, unless--the--Attorney
General--or-an-Assistant-Attorney-General-designated
by-the-Attorney--General--or--the--delegate--of--the
Department--of--State--Police--determines--that
exceptional--circumstances-are-present-which-warrant
the-commencement-of-such-testimony-within--a--lesser
period-of-time.

(G)--The--Attorney--General--or-the-delegate-of
the-Department-of-State-Police-shall--not--authorize
the--issuance--under--this--Section-of-more-than-one
civil-investigative-demand-for-oral-testimony-by-the
same-person-unless-the-person-requests-otherwise--or

unless--the--Attorney-General-or-the-delegate-of-the
Department-of--State--Police,--after--investigation,
notifies--that--person-in-writing-that-an-additional
demand--for--oral--testimony--is---necessary.---The
Attorney--General-shall-authorize-the-performance-by
the-delegate-of-the-Department-of--State--Police--of
any--function--vested--in-the-Attorney-General-under
this-subparagraph-(G)-.

(b) Protected material or information.

(1) In general. A subpoena civil--investigative
demand 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 demand is appropriate and consistent
with the provisions and purposes of this Section.

(2) Effect on other orders, rules, and laws. Any
such subpoena demand 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 express--demand
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;--jurisdiction. (1)--By--whom served. Any subpoena civil-investigative-demand issued under subsection (a) may be served by any person so authorized by the Attorney General an--investigator, 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.

(2)--Service-in-foreign-countries. Any--such--demand or--any-petition-filed-under-subsection-(j)--may-be-served upon-any-person-who-is-not-found-within-Illinois-in--such manner--as--the--Code--of--Civil-Procedure-prescribes-for service-of-process-outside-Illinois. To-the--extent--that the-courts-of-this-State-can-assert-jurisdiction-over-any such--person--consistent-with-due-process, the-courts-of this-State-shall-have-the-same-jurisdiction-to--take--any action--respecting--compliance--with--this-Section-by-any such-person-that-such-court-would--have--if--such--person were-personally-within-the-jurisdiction-of-such-court.

(d) Service upon legal entities and natural persons.

(1) Legal entities. Service of any subpoena civil investigative-demand 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 demand 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 demand 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 demand 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 demand or petition may be made upon any natural person by:

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

(B) depositing an executed copy of such subpoena demand 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 ~~civil-investigative-demand~~ 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 demand.

(f) Documentary material.

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

(A) in the case of a natural person, the person to whom the subpoena demand 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 demand is directed has been produced and made available to the Attorney General investigator-identified-in-the demand.

(2) Production of materials. Any person upon whom any subpoena ~~civil---~~investigative---demand 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 investigator--identified--in--such--demand at the place designated in the subpoena ~~principal-place-of-business-of~~ such person, or at such other place as the Attorney General investigator 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 demand, or on such later date as the Attorney General investigator may prescribe in writing. Such person may, upon written agreement between the person and the Attorney General investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories. Each interrogatory in a subpoena ~~civil-investigative-demand~~ 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 demand designates by:

(1) in the case of a natural person, the person to whom the subpoena demand 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 demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that 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 ~~civil--investigative--demand~~ 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 ~~to the custodian~~. 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 civil investigative-demand 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 investigator conducting-the-examination and such person.

(4) Transcript of testimony. When the testimony is fully transcribed, the Attorney General investigator 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 examine-and read 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. unless-such-examination-and-reading are-waived-by--the--witness.---Any--changes--in--form--or substance--which--the--witness--desires--to-make--shall--be entered-and-identified-upon-the-transcript-by-the-officer or-the-investigator,--with--a--statement--of--the--reasons given--by--the--witness--for--making--such--changes.--The transcript-shall-then-be-signed-by--the--witness,--unless the-witness-in-writing-waives-the-signing,--is-ill,--cannot be--found,--or-refuses-to-sign.--If-the-transcript-is-not signed-by-the-witness-within-30-days-after-being-afforded a-reasonable-opportunity-to-examine-it,--the--officer--of

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

(5)--Certification--and--delivery--to--custodian.---The
officer--before--whom--the--testimony--is--taken--shall--certify
on--the--transcript--that--the--witness--was--sworn--by--the
officer--and--that--the--transcript--is--a--true--record--of--the
testimony--given--by--the--witness,--and--the--officer--or
investigator--shall--promptly--deliver--the--transcript,--or
send--the--transcript--by--registered--or--certified--mail,--to
the--custodian.

(6)--Furnishing--or--inspection--of--transcript--by
witness.---Upon--payment--of--reasonable--charges--therefor,--the
investigator--shall--furnish--a--copy--of--the--transcript--to
the--witness--only,--except--that--the--Attorney--General,--an
Assistant--Attorney--General--or--employee--of--the--Department
of--State--Police--may,--for--good--cause,--limit--such--witness
to--inspection--of--the--official--transcript--of--the--witness'
testimony.

(5) (7) Conduct of oral testimony.

(A) Any person compelled to appear for oral
testimony under a subpoena civil---investigative
demand 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. Counsel--may--advise--such
person,--in--confidence,--with--respect--to--any--question
asked--of--such--person.---Such--person--or--counsel--may
object--on--the--record--to--any--question,--in--whole--or--in
part,--and--shall--briefly--state--for--the--record--the
reason--for--the--objection.---An--objection--may--be--made,
received,--and--entered--upon--the--record--when--it--is

~~claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination.~~
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)~~ (8) Witness fees and allowances. Any person appearing for oral testimony under a subpoena ~~civil investigative demand~~ 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 designate the Department of State Police to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this Section, and shall designate additional employees of the Department of State Police as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.~~

~~(2) Responsibility for materials; disclosure.~~

~~(A) An investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this Section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for~~

the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any investigator, or other officer or employee of the Attorney General or employee of the Department of State Police who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized investigator or other officer or employee in connection with the taking of oral testimony under this Section.

(2) (C) Except as otherwise provided in this Section subsection (i), 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. other than an investigator or other officer or employee of the Attorney General or employee of the Department of State Police authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the General Assembly,

including any committee or subcommittee of the General Assembly, or to any other State agency for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a circuit court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

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

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

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

(3) Use of material, answers, or transcripts in other proceedings. Whenever any attorney of the office of the Attorney General, or State's Attorney upon a referral, has been designated to appear before any court, grand jury, or State agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this Section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall

~~return-to-the-custodian-any-such-material, answers, or transcripts--so--delivered-which-have-not-passed-into-the control-of-such-court, grand-jury, or--agency--through introduction-into-the-record-of-such-case-or-proceeding.~~

(3) ~~(4)~~ 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 ~~civil-investigative-demand~~ 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 ~~(other--than--copies--furnished--to--the investigator--under--subsection--(f)(2)--or--made-for-the Attorney-General-or-employee-of-the-Department--of--State Police--under-paragraph-(2)(B))~~ which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

~~(5)--Appointment--of--successor--custodians,--In-the event--of--the--death,--disability,--or--separation--from service--in--the--Department--of--State--Police--of--the custodian--of--any--documentary--material, answers--to interrogatories,--or--transcripts--of--oral--testimony produced--pursuant--to-a-civil-investigative-demand-under this-Section,--or-in-the-event-of-the-official--relief--of such--custodian--from--responsibility-for-the-custody-and~~

control-of-such-material, answers, or transcripts, the
Attorney-General shall promptly:

(A) designate another employee of the
Department of State Police to serve as custodian of
such material, answers, or transcripts, and

(B) transmit in writing to the person who
produced such material, answers, or testimony notice
of the identity and address of the successor so
designated.

Any person who is designated to be a successor under this
paragraph (5) shall have, with regard to such material,
answers, or transcripts, the same duties and
responsibilities as were imposed by this Section upon
that person's predecessor in office, except that the
successor shall not be held responsible for any default
or dereliction which occurred before that designation.

(j) Judicial proceedings.

(1) Petition for enforcement. Whenever any person
fails to comply with any subpoena civil-investigative
demand 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 civil
investigative-demand.

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

(A) Any person who has received a subpoena

~~civil--investigative--demand~~ 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 ~~investigator--identified--in--such--demand~~ a petition for an order of the court to modify or set aside such subpoena demand. 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 ~~civil--investigative demand~~, or at any time before the return date specified in the subpoena demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by the Attorney General ~~any--investigator--identified--in--the--demand~~.

(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 demand 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 demand, in whole or in part, except that the person filing the petition shall comply with any portion of the subpoena demand not sought

to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery. (A) In the case of any subpoena civil--investigative--demand 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, and-serve-upon-any-investigator-identified-in-the-demand-and-upon-the-recipient--of--the--demand, a petition for an order of such court to modify or set aside those portions of the subpoena demand 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. Any-petition-under this-subparagraph-(A)-must-be-filed:

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

(ii)--within-such-longer-period-as-may--be prescribed---in--writing--by--any--investigator identified-in-the-demand.

(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--portions--of-the-demand-from-which relief-is-sought-to-comply-with--the--provisions--of this--Section, or--upon-any-constitutional-or-other legal-right-or-privilege-of-the--petitioner.--During the-pendency-of-the-petition, the-court-may-stay, as it--deems-proper, compliance-with-the-demand-and-the running-of-the-time-allowed-from-compliance-with-the demand.

~~(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 circuit court of the county within 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.~~

(4) (5) 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 civil-investigative-demand issued under subsection (a) shall be exempt from disclosure under the Illinois Administrative Procedure Act.

(Source: P.A. 92-651, eff. 7-11-02.)