CHAPTER 166
FORMERLY
SENATE BILL NO. 115
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE FALSE CLAIMS AND REPORTING ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend section 1201(a)(1) of Title 6 of the Delaware Code by striking the phrase ", directly or indirectly," as it appears in that section.

Section 2. Amend section 1201(a)(2) of Title 6 of the Delaware Code by striking the phrase ", directly or indirectly," and by inserting the words "by the Government" at the end of said subsection.

Section 3. Amend section 1201(a)(6) of Title 6 of the Delaware Code by striking the phrase "the person knows" as it appears in said paragraph.

Section 4. Amend section 1201(a)(7) of Title 6 of the Delaware Code by striking the word "increase" after the word "avoid," striking the phrase "or from" after the phrase "property to," and striking the word "actual" before the word "damages."

Section 5. Amend section 1202(1) of Title 6 of the Delaware Code by striking it in its entirety and renumbering the remaining subsections accordingly.

Section 6. Amend section 1202(2) of Title 6 of the Delaware Code by striking the phrase ",directly or indirectly," both times it appears in said paragraph.

Section 7. Amend section 1203(b)(1) of Title 6 of the Delaware Code by striking said paragraph in its entirety and substituting in lieu thereof the following: "(1) A private civil action may be brought by any person or labor organization as defined by section 1107A(d) of Title 19 of the Delaware Code (hereinafter 'private party' or 'party') for a violation of this chapter on behalf of the party bringing suit and for the Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Department of Justice give written consent to the dismissal and their reasons for consenting."

Section 8. Amend section 1203(b)(2) of Title 6 of the Delaware Code by striking said paragraph in its entirety and substituting in lieu thereof the following: "(2) A copy of the complaint and written disclosure of substantially all material evidence and information the private party possesses shall be served on the Department of Justice pursuant to Rules 4 and 5 of the Superior Court Civil Rules. The complaint shall be filed *in camera* and shall remain under seal for at least 60 days. The complaint shall not be served on the defendant until the expiration of 60 days or any extension approved under paragraph (3) of this subsection. Within 60 days after receiving a copy of the complaint, the Department of Justice shall conduct an investigation of the factual allegations and legal contentions made in the complaint.   The Department of Justice may elect to intervene and proceed with the action within 60 days after it receives the complaint, the material evidence and information."

Section 9. Amend section 1203(b)(3) of Title 6 of the Delaware Code by striking the words "Government or the Attorney General" as they appear in the first sentence of said paragraph and substituting in lieu thereof the words "Department of Justice" . Further amend

Section 1203(b)(3) by striking the sentence "The complaint shall be deemed unsealed at the expiration of the 60-day period in the absence of a court approved extension of the time frame." as it appears in said paragraph.

Section 10. Amend section 1203(b)(4) of Title 6 of the Delaware Code by striking said paragraph in its entirety and substituting in lieu thereof the following: "(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3) of this subsection, or within 20 days of being notified by the court that the seal has expired, the Department of Justice shall:

a. Proceed with the action, in which case the action shall be conducted by the Department of Justice; or

b. Notify the court that it declines to take over the action, in which case the private party bringing the action shall have the right to conduct the action."

Section 11. Amend section 1203(b)(5) of Title 6 of the Delaware Code by striking the word "Government" as it appears in said paragraph and substituting in lieu thereof the words "Department of Justice" .

Section 12. Amend Section 1203(b)(5) of Title 6 of the Delaware Code by inserting the words "under the federal False Claims Act (31 U.S.C. § 3729 et seq.), or under any similar provision of the law of any other state," after the word "subsection," as it appears in said paragraph.

Section 13. Amend section 1204(a) of Title 6 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following: "(a) If the Department of Justice proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the party bringing the action. Such party shall have the right to continue as a party to the action, subject to the limitations set forth in subsections (b), (c) and (e) of this section."

Section 14. Amend section 1204(b) of Title 6 of the Delaware Code by striking the word "Government" wherever it appears in said subsection and substituting in lieu thereof the words "Department of Justice" .

Section 15. Amend section 1204(c) of Title 6 of the Delaware Code by striking the word "Government" as it appears in said subsection and substituting in lieu thereof the words "Department of Justice" .

Section 16. Amend section 1204(d) of Title 6 of the Delaware Code by striking "Government" or "Government's" wherever it appears in said subsection and substituting in lieu thereof the words "Department of Justice" or "Department of Justices", wherever appropriate.

Section 17. Amend section 1204(e) of Title 6 of the Delaware Code by striking the word "Government" or "Government's" wherever it appears in said subsection and substituting in lieu thereof the words "Department of Justice" or Department of Justice's" wherever appropriate.

Section 18. Amend section 1204 of Title 6 of the Delaware Code by adding a new subsection (f) to read as follows: "(f) Notwithstanding subsection 1203(b), the Department of Justice may elect to pursue its claim through any available alternate remedy, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the party initiating the action shall have the same rights in

such proceeding as such party would have had if the action had continued under this chapter; provided however, that no insurer subject to the insurance fraud provisions of Chapter 24 of Title 18 shall have a cause of action pursuant to this Act. 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 chapter. For purposes of the preceding sentence, a finding or conclusion is final if it has been fully determined on appeal to the appropriate court, if all time for filing such appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review."

Section 19. Amend section 1205(a) of Title 6 of the Delaware Code by striking the word "Government" wherever it appears in said subsection and substituting in lieu thereof the words "Department of Justice" .

Section 20. Amend section 1205(b) of Title 6 of the Delaware Code by striking the word "Government" as it appears in said subsection and substituting in lieu thereof the words "Department of Justice" .

Section 21. Amend section 1205(c) of Title 6 of the Delaware Code by striking the word "Government" as it appears in the first sentence of said subsection and substituting in lieu thereof the words "Department of Justice." Subsection (c) shall be further amended by striking the last sentence of said subsection and substituting in lieu thereof the following: "Such dismissal shall not prejudice the right of the Department of Justice to continue the action on behalf of the Government."

Section 22. Amend section 1205(d) of Title 6 of the Delaware Code by striking said subsection in its entirety and substituting a new subsection "(d)" in lieu thereof as follows:

"(d) If the Department of Justice 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."

Section 23. Amend section 1206(c) of Title 6 of the Delaware Code by striking the word "substantially" in the first sentence. Section 1206(c) shall be further amended by striking the second sentence in its entirety and substituting the following:

"For purposes of this subsection, "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 Attorney General before filing an action under this Chapter that is based on the information."

Section 24. Amend section 1208 of Title 6 of the Delaware Code by redesignating the existing section as

subsection "(a)" and by adding a new subsection "(b)" to read as follows: "(b) It shall be the duty of every employer of more than 15 employees to post and maintain in a place accessible to its employees and where they normally pass a summary of this chapter upon request and without charge. Such summaries shall be provided by the Delaware Department of Justice to the Delaware Department of Labor for distribution. As an alternative to posting, such employer may establish written policies for all employees that provide an explanation of state and federal False Claims Act provisions and a resource for obtaining additional information about the law."

Section 25. Amend section 1209(b) of Title 6 of the Delaware Code by striking the word "Government" as it appears in said subsection and substituting in lieu thereof the words "Department of Justice" .

Section 26. Amend section 1209 of Title 6 of the Delaware Code by adding a new subsection (d) to read as follows:

"(d) Upon motion of the Department of Justice, the court shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment or dissipation of the illegal proceeds, or to protect the public."

Section 27. Amend Chapter 12 of Title 6 of the Delaware Code by adding a new section 1210 to read as follows:

"§ 1210. Annual reporting requirement.

On the thirtieth day after the effective date of this section, and annually on the anniversary of the effective date of this section, the Department of Justice shall submit to the Delaware legislature a report containing the following information:

(a) The number of cases the Department of Justice has filed during the previous calendar year under this chapter;

(b) The number of cases private individuals filed under this chapter during the previous calendar year, including those cases that remain under seal, and specifying:

(1) the state or federal courts in which those cases were filed and the number of cases filed in each court;

(2) the state program or agency that is involved in each case; and

(3) the number of cases filed by private individuals who previously had filed an action based on the same or similar transactions or allegations under the federal False Claims Act or the false claims act of another state.

(4) The amount recovered by the state under this section in settlement, damages, penalties, and litigation costs.

Section 28. Amend Chapter 12 of Title 6 of the Delaware Code by adding a new section 1211 to read as follows:

"§ 1211. Severability of non-compliant provisions.

Any provision of this Chapter that the federal government determines does not comply with the requirements for state false claims acts set forth in the Deficit Reduction Act of 2005 (Pub.L. 109-171, 120 Stat. 4) shall be repealed to the extent that this Chapter is inconsistent with the Deficit Reduction Act."

Approved July 16, 2009