

CHAPTER 68

MISCELLANEOUS PROCEEDINGS

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68.01 Declaring tax assessment invalid.—When an assessment is made against any person, body politic or corporate and payment is refused on an allegation of illegality of the assessment, the person, body politic or corporate may file an action in chancery setting forth the alleged illegality. The court has jurisdiction to decide the matter and if the assessment is illegal, shall declare the assessment not lawfully made.

History.—s. 4, ch. 151, 1848; RS 1542; GS 2006; RGS 3274; CGL 5082; s. 22, ch. 67-254.

Note.—Former s. 69.01.

68.02 Ne exeat.—

(1) **WHEN TO ISSUE.**—No writ of ne exeat shall be granted until a verified complaint is filed demanding the writ. It may issue in any case in equity, including support as defined in s. 409.2554, when the issuance is just.

(2) **JUDGE TO FIX PENALTY OF BOND.**—In granting the writ the court shall fix the penalty and conditions of the bond with surety to be approved by the clerk to be required of plaintiff in favor of defendant. The writ shall not issue until the bond is given.

(3) **ABSENCE FROM STATE UNDER CERTAIN CONDITIONS PERMITTED.**—An absence of the defendant from the state from which he or she returns before a personal appearance is necessary or before it is necessary to perform any order of the court is not a breach of the condition of the bond.

(4) **SURRENDER OF DEFENDANT BY SURETIES.**—The surety of defendant has the right personally or by attorney at any time before the bond is forfeited to take the body of the principal and surrender him or her in open court or deliver him or her to the executive officer of the court, who shall detain the principal as in cases of the surrender of the principal by special bail. At the

time of delivery to the officer, the surety shall take a receipt for the body and file it with the clerk. If done before the bond is forfeited, the surrender or delivery discharges the surety from his or her undertaking.

History.—ss. 1, 2, 3, 4, Nov. 7, 1828; RS 1473-1476; GS 1921-1924; RGS 3184-3187; CGL 4976-4979; s. 2, ch. 29737, 1955; s. 22, ch. 67-254; s. 12, ch. 92-138; s. 354, ch. 95-147.

Note.—Former ss. 62.18-62.21.

68.03 Sequestration; proceedings prescribed.—

(1) If any action is commenced in chancery against any defendant residing out of this state and any other defendant within the state has in his or her hands effects of, or is otherwise indebted to, the absent defendant and the absentee does not appear in the action and give security to the satisfaction of the court for performing the judgment and on affidavit that the absentee is out of the state, or that on inquiry at the absentee's usual place of abode he or she cannot be found to be served with process, the court may restrain the defendant in this state from paying or conveying or secreting the debts owing by him or her to, or the effects in his or her hands of, the absentee or restrain the absentee from conveying or secreting or removing the property in litigation, or may sequester the property which may be necessary to secure plaintiff if he or she prevails, and may order such debts to be paid and effects to be delivered to plaintiff on his or her giving bond with surety for the return thereof.

(2) The court shall require the plaintiff to give bond with surety to be approved by the clerk, to abide the future orders made for restoring the estate or effects to the absent defendant on his or her appearance in the action. If the plaintiff does not furnish the bond, the effects shall remain under the direction of the court or in the hands of a receiver or otherwise for so long a time and shall be disposed of in such manner as the court deems fit.

History.—ss. 1, 2, Feb. 12, 1832; RS 1499; GS 1948; RGS 3211; CGL 5003; s. 10, ch. 29737, 1955; s. 22, ch. 67-254; s. 355, ch. 95-147.

Note.—Former s. 62.22.

68.04 Chancery jurisdiction over liens.—All liens of any kind, whether created by statute or the common law, and whether heretofore regarded as merely possessory or not, may be enforced in chancery.

History.—RS 1510; GS 1960; RGS 3228; CGL 5034; s. 22, ch. 67-254.

Note.—Former s. 62.36.

68.05 Creditors' bills.—Creditors' bills may be filed in chancery before the claims of indebtedness of the persons filing them have been reduced to judgment, but no such action shall be entertained unless plaintiff has first commenced a separate action at law for the collection of the claims. No final judgment shall be entered on a creditor's bill until such claims have been reduced to judgment at law.

History.—s. 1, ch. 5137, 1903; GS 1961; RGS 3229; CGL 5035; s. 1, ch. 21976, 1943; s. 22, ch. 67-254.

Note.—Former s. 62.37.

68.06 Actions upon negotiable and other instruments; consideration, etc.—All bonds, notes, cove-

nants, deeds, bills of exchange, and other written instruments not under seal have the same force and effect (so far as the rules of pleading and evidence are concerned) as bonds and instruments under seal. The assignment or endorsement of any instrument vests the assignee or endorsee with the same rights, powers, and capacities as were possessed by the assignor or endorser. The assignee or endorsee may bring action thereon. It is not necessary for the plaintiff in any action on an instrument assignable by law to allege the consideration on which the instrument was given or on which the assignment or endorsement was made nor to prove the consideration or the execution of the instrument, unless it is denied by the defendant under oath. An executor or administrator may deny the execution or consideration by answer not under oath.

History.—ss. 24, 33, 36, Nov. 23, 1828, RS 1073; GS 1465; RGS 2664; CGL 4330; s. 2, ch. 29737, 1955; s. 22, ch. 67-254.

Note.—Former s. 52.08.

68.065 Actions to collect worthless checks, drafts, or orders of payment; attorney's fees and collection costs.—

(1) In any civil action brought for the purpose of collecting a check, draft, or order of payment, the payment of which was refused by the drawee because of the lack of funds, credit, or an account, and where the maker or drawer fails to pay the amount owing, in cash, to the payee within 30 days following a written demand therefor, as provided in subsection (3), the maker or drawer shall be liable to the payee, in addition to the amount owing upon such check, draft, or order, for damages of triple the amount so owing. However, in no case shall the liability for damages be less than \$50. The maker or drawer shall also be liable for any court costs and reasonable attorney fees incurred by the payee in taking the action. Criminal sanctions, as provided in s. 832.07, may be applicable.

(2) The payee may also charge the maker or drawer of the check, draft, or order of payment a service charge not to exceed \$20 or 5 percent of the face amount of the instrument, whichever is greater, when making written demand for payment. In the event that a judgment or decree is rendered, interest at the rate and in the manner described in s. 55.03 may be added toward the total amount due. Any bank fees incurred by the payee may be charged to the maker or drawer of the check, draft, or order of payment.

(3) Before recovery under subsection (1) or subsection (2) may be claimed, a written demand shall be delivered by certified or registered mail, evidenced by return receipt, to the maker or drawer of the check, draft, or order of payment. The form of such notice shall be substantially as follows:

"You are hereby notified that a check numbered _____ issued by you on (date), drawn upon (name of bank), and payable to _____, has been dishonored. Pursuant to Florida law, you have 30 days from receipt of this notice to tender payment in cash of the full amount of the check plus a service charge of \$20 or 5 percent of the face amount of the check, whichever is greater, the total amount due being \$_____ and _____ cents. Unless this amount is paid in full within the 30-day period, the

holder of the check or instrument may file a civil action against you for three times the amount of the check, but in no case less than \$50, in addition to the payment of the check plus any court costs, reasonable attorney fees, and any bank fees incurred by the payee in taking the action."

(4) A subsequent person receiving a check, draft, or order, from the original payee or a successor endorsee has the same rights that the original payee has against the maker of the instrument, provided such subsequent person gives notice in a substantially similar form to that provided above. A subsequent person providing such notice shall be immune from civil liability for the giving of such notice and for proceeding under the forms of such notice, so long as the maker of the instrument has the same defenses against the subsequent person as against the original payee. However, the remedies available under this section may be exercised only by one party in interest.

(5) Subsequent to the commencement of the action but prior to the hearing, the maker or drawer may tender to the payee, as satisfaction of the claim, an amount of money equal to the sum of the check, the service charge, court costs, and incurred bank fees. Other provisions notwithstanding, the maker or drawer is liable to the payee for all attorney fees and collection costs incurred by payee as a result of the payee's claim.

(6) If the court or jury determines that the failure of the maker or drawer to satisfy the dishonored check was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages.

History.—s. 2, ch. 79-345; s. 1, ch. 86-89; s. 41, ch. 88-381; s. 1, ch. 89-303; s. 1, ch. 91-211.

68.07 Change of name.—

(1) Chancery courts have jurisdiction to change the name of any person residing in this state on petition of the person filed in the county in which he or she resides.

(2) The petition shall be verified and show:

(a) That petitioner is a bona fide resident of and domiciled in the county where the change of name is sought.

(b) If known, the date and place of birth of petitioner, petitioner's father's name, mother's maiden name, and where petitioner has resided since birth.

(c) If petitioner is married, the name of petitioner's spouse and if petitioner has children, the names and ages of each and where they reside.

(d) If petitioner's name has previously been changed and when and where and by what court.

(e) Petitioner's occupation and where petitioner is employed and has been employed for 5 years next preceding filing of the petition. If petitioner owns and operates a business, the name and place of it shall be stated and petitioner's connection therewith and how long petitioner has been identified with said business. If petitioner is in a profession, the profession shall be stated, where the petitioner has practiced the profession and if a graduate of a school or schools, the name or names thereof, time of graduation, and degrees received.

(f) Whether the petitioner has been generally known or called by any other names and if so, by what names and where.

(g) Whether petitioner has ever been adjudicated a bankrupt and if so, where and when.

(h) Whether petitioner has ever been convicted of a felony and if so, when and where.

(i) Whether any money judgment has ever been entered against petitioner and if so, the name of the judgment creditor, the amount and date thereof, the court by which entered, and whether the judgment has been satisfied.

(j) That the petition is filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark, or otherwise.

(k) That the petitioner's civil rights have never been suspended, or if the petitioner's civil rights have been suspended, that full restoration of civil rights has occurred.

(3) The hearing on the petition may be immediately after it is filed.

(4) On filing the final judgment, the clerk shall send a report of the judgment to the Department of Health and Rehabilitative Services on a form to be furnished by that department. The form shall contain sufficient information to identify the original birth certificate of the person, the new name, and the file number of the judgment. This report shall be filed by the state registrar with respect to a person born in this state and shall become a part of the vital statistics of this state. With respect to a person born in another state, the Department of Health and Rehabilitative Services shall send the report to the office of vital statistics of the state in which the person's birth occurred.

(5) If the petitioner is a convicted felon, the clerk must, upon the filing of the final judgment, send a report of the judgment to the Florida Department of Law Enforcement on a form to be furnished by that department. The report must contain sufficient information to identify the original criminal record of the petitioner, the new name of the petitioner, and the file number of the judgment. With respect to a person convicted of a felony in another state or of a federal offense, the Florida Department of Law Enforcement must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation.

(6) A husband and wife and minor children may join in one petition for change of name and the petition shall show the facts required of a petitioner as to the husband and wife and the names of the minor children may be changed at the discretion of the court.

(7) When only one parent petitions for a change of name of a minor child, process shall be served on the other parent and proof of such service shall be filed in the cause; provided, however, that where the other parent is a nonresident, constructive notice of the petition may be given pursuant to chapter 49, and proof of publication shall be filed in the cause without the necessity of recordation.

(8) Nothing herein applies to any change of name in proceedings for dissolution of marriage or for adoption of children.

History.—s. 1, ch. 1324, 1862; RS 1543; GS 2007; RGS 3275; CGL 5083; s. 1, ch. 28159, 1953; s. 1, ch. 29921, 1955; s. 1, ch. 61-152; s. 17, ch. 67-254; s. 1, ch. 67-475; s. 1, ch. 73-300; s. 26, ch. 87-387; s. 1, ch. 94-304; s. 1369, ch. 95-147; s. 1, ch. 95-283.

Note.—Former ss. 69.02, 62.031.

168.081 Short title; purpose.—

(1) Sections 68.081-68.09 may be cited as the "Florida False Claims Act."

(2) The purpose of the Florida False Claims Act is to deter persons from knowingly causing or assisting in causing state government to pay claims that are false, and to provide remedies for obtaining treble damages and civil penalties for state government when money is obtained from state government by reason of a false claim.

History.—s. 1, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.082 False claims against the state; definitions; liability.—

(1) As used in this section, the term:

(a) "Agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(b) "Claim" includes any request or demand, under a contract or otherwise, for money, property, or services, which is made to any employee, officer, or agent of an agency, or to any contractor, grantee, or other recipient if the agency provides any portion of the money or property requested or demanded, or if the agency will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded.

(c) "Knowing" or "knowingly" means, with respect to information, that a person:

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.

No proof of specific intent to defraud is required. Innocent mistake shall be a defense to an action under this act.

(d) "State government" means the government of the state or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of the state.

(e) "Department" means the Department of Legal Affairs, except as specifically provided in ss. 68.083 and 68.084.

(2) Any person who:

(a) Knowingly presents or causes to be presented to an officer or employee of an agency a false claim for payment or approval;

(b) 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 an agency;

(c) Conspires to submit a false claim to an agency or to deceive an agency for the purpose of getting a false or fraudulent claim allowed or paid;

(d) Has possession, custody, or control of property or money used or to be used by an agency and, intending to deceive the agency or knowingly conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(e) Is authorized to make or deliver a document certifying receipt of property used or to be used by an agency and, intending to deceive the agency, makes or delivers the receipt without knowing that the information on the receipt is true;

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

(g) 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 an agency,

is liable to the state for a civil penalty of not less than \$5,000 and not more than \$10,000 and for treble the amount of damages the agency sustains because of the act or omission of that person.

(3) The court may reduce the treble damages authorized under subsection (2) if the court finds one or more of the following specific extenuating circumstances:

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

(b) The person fully cooperated with any official investigation of the violation;

(c) At the time the person furnished the agency with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this section with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation;

in which case the court shall award no less than 2 times the amount of damages sustained by the agency because of the act of the person. The court shall set forth in a written order its findings and basis for reducing the treble damages award.

History.—s. 2, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.083 Civil actions for false claims.—

(1) The department may diligently investigate a violation under s. 68.082. If the department finds that a person has violated or is violating s. 68.082, the department may bring a civil action under the Florida False Claims Act against the person. The Department of Banking and Finance may bring a civil action under this section if the action arises from an investigation by that department and the Department of Legal Affairs has not filed an action under this act.

(2) A person may bring a civil action for a violation of s. 68.082 for the person and for the affected agency.

Civil actions instituted under this act shall be governed by the Florida Rules of Civil Procedure and shall be brought in the name of the State of Florida. Prior to the court unsealing the complaint under subsection (3), the action may be voluntarily dismissed by the person bringing the action only if the department gives written consent to the dismissal and its reasons for such consent.

(3) The complaint shall be identified on its face as a qui tam action and shall be filed in the circuit court of the Second Judicial Circuit, in and for Leon County. Immediately upon the filing of the complaint, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General, as head of the department, and on the Comptroller, as head of the Department of Banking and Finance, by registered mail, return receipt requested. The department, or the Department of Banking and Finance under the circumstances specified in subsection (4), may elect to intervene and proceed with the action, on behalf of the state, within 90 days after it receives both the complaint and the material evidence and information.

(4) If a person brings an action under subsection (2) and the action is based upon the facts underlying a pending investigation by the Department of Banking and Finance, the Department of Banking and Finance, instead of the department, may take over the action on behalf of the state. In order to take over the action, the Department of Banking and Finance must give the department written notification within 20 days after the action is filed that the Department of Banking and Finance is conducting an investigation of the facts of the action and that the Department of Banking and Finance, instead of the department, will take over the action filed under subsection (2). If the Department of Banking and Finance takes over the action under this subsection, the word "department" as used in this act means the Department of Banking and Finance, and that department, for purposes of that action, shall have all rights and standing granted the department under this act.

(5) The department may, for good cause shown, request the court to extend the time during which the complaint remains under seal under subsection (2). Any such motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant in accordance with law.

(6) Before the expiration of the 90-day period or any extensions obtained under subsection (5), the department shall:

(a) Proceed with the action, in which case the action is conducted by the department on behalf of the state; or

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

(7) When a person files an action under this section, no person other than the department on behalf of the state may intervene or bring an action under this act based on the facts underlying the pending action.

History.—s. 3, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that “[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date.”

168.084 Rights of the parties in civil actions.—

(1) If the department, on behalf of the state, proceeds with the action, it has the primary responsibility for prosecuting the action, and is not bound by any act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations specified in subsection (2).

(2)(a) The department may voluntarily dismiss the action notwithstanding the objections of the person initiating the action.

(b) Subject to s. 17.04, nothing in this act shall be construed to limit the authority of the department or the qui tam plaintiff to compromise a claim brought in a complaint filed under this act if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

(c) Upon a showing by the department that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the department'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, including, but not limited to:

1. Limiting the number of witnesses the person may call;
2. Limiting the length of the testimony of the person's witnesses;
3. Limiting the person's cross-examination of witnesses; or
4. 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 department elects not to proceed with the action, the person who initiated the action has the right to conduct the action. If the Attorney General, as head of the department, or the Comptroller, as head of the Department of Banking and Finance, so requests, it shall be served, at the requesting department's expense, with copies of all pleadings and motions filed in the action and copies of all deposition transcripts. When a person proceeds with the action, the court, without limiting the rights of the person initiating the action, may nevertheless permit the department to intervene and take over the action on behalf of the state at a later date upon showing of good cause.

(4) Whether or not the department proceeds with the action, upon a showing by the department that certain actions of discovery by the person initiating the action would interfere with an investigation by state government or the 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 90 days. Such

a showing shall be conducted in camera. The court may extend the 90-day period upon a further showing in camera by the department that the criminal or civil investigation or proceeding has been pursued with reasonable diligence and any proposed discovery in the civil action will interfere with an ongoing criminal or civil investigation or proceeding.

(5) The application of one civil remedy under this act does not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental, not mutually exclusive. 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. As used in this subsection, the term “final” means not subject to judicial review.

(6) The Department of Banking and Finance, or the department, may intervene on its own behalf as a matter of right.

History.—s. 4, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that “[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date.”

168.085 Awards to plaintiffs bringing action.—

(1) If the department proceeds with and prevails in an action brought by a person under this act, except as provided in subsection (2), the court shall order the distribution to the person of at least 15 percent but not more than 25 percent of the proceeds recovered under any judgment obtained by the department in an action under s. 68.082 or of the proceeds of any settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(2) If the department proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing; a legislative, administrative, inspector general, or auditor general 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 10 percent of the proceeds recovered under a judgment or received in settlement of a claim under this act, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) If the department 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 25 percent and not more than 30 percent of the proceeds recovered under a judgment rendered in an action under this act or in settlement of a claim under this act.

(4) Following any distributions under subsection (1), subsection (2), or subsection (3), the agency injured by the submission of a false claim shall be awarded an amount not to exceed its compensatory damages. Any remaining proceeds, including civil penalties awarded under s. 68.082, shall be deposited in the General Revenue Fund.

(5) Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

(6) Whether or not the department proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of s. 68.082 upon which the action was brought, 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 this section, taking into account the role of the 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 s. 68.082, the 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 department to continue the action.

History.—s. 5, ch. 94-316; s. 11, ch. 95-153.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.086 Expenses; attorney's fees and costs.—

(1) If the department initiates an action under this act or assumes control of an action brought by a person under this act, the department shall be awarded its reasonable attorney's fees, expenses, and costs.

(2) If the court awards the person bringing the action proceeds under this act, the person shall also be awarded an amount for reasonable attorney's fees and costs. Payment for reasonable attorney's fees and costs shall be made from the recovered proceeds before the distribution of any award.

(3) If the department does not proceed with an action under this act and the defendant is the prevailing party, the court shall award the defendant reasonable attorney's fees and costs against the person bringing the action.

(4) No liability shall be incurred by the state government, the affected agency, or the department for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this act.

History.—s. 6, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.087 Exemptions to civil actions.—

(1) No court shall have jurisdiction over an action brought under this act against a member of the Legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state government when the action was brought. For purposes of this subsection, the term "senior executive branch official" means any person employed in the executive branch of government holding a position in the Senior Management Service as defined in s. 110.402.

(2) In no event may a person bring an action under s. 68.083(2) based upon allegations or transactions that are the subject of a civil action or an administrative proceeding in which the agency is already a party.

(3) No court shall have jurisdiction over an action brought under this act based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, inspector general, or Auditor General, Comptroller, or Department of Banking and Finance report, hearing, audit, or investigation; or from the news media, unless the action is brought by the department, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "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 department before filing an action under this act based on the information.

(4) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) is:

- (a) Acting as an attorney for state government; or
- (b) An employee or former employee of state government,

and the action is based, in whole or in part, upon information obtained in the course or scope of government employment.

(5) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) obtained the information from an employee or former employee of state government who was not acting in the course or scope of government employment.

(6) No court shall have jurisdiction over an action brought under this act against a local government. For the purposes of this subsection, the term "local government" means any county or municipality.

History.—s. 7, ch. 94-316; s. 12, ch. 95-153.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.088 Protection for participating employees.—

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 act, including investigation for initiation of, testimony for, or assistance in an action filed or to be filed under this act, shall have a cause of action under s. 112.3187.

History.—s. 8, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.089 Limitation of actions.—A civil action under this act may not be brought:

(1) More than 5 years after the date on which the violation of s. 68.082 is committed; or

(2) More than 2 years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, but in no event more than 7 years after the date on which the violation is committed, whichever occurs last.

History.—s. 9, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.09 Burden of proof.—In any action brought under this act, the State of Florida or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

History.—s. 10, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.091 Construction and severability of provisions.

(1) This act shall be liberally construed to effectuate its remedial and deterrent purposes.

(2) If any provision of this act or its application to any particular person or circumstance is held invalid, that

provision or its application is severable and does not affect the validity of other provisions or applications of this act.

History.—s. 11, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

168.092 Deposit of recovered moneys.—All moneys recovered by the Comptroller, as head of the Department of Banking and Finance, under s. 68.086(1) in any civil action for violation of the Florida False Claims Act shall be deposited in the Administrative Trust Fund of the Department of Banking and Finance.

History.—s. 13, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."