

DeWine and Lawmakers Introduce Ohio False Claims Act Legislation

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[D. Michael Crites](#), [Laura A. Hartnett](#)

Yesterday, two members of the Ohio General Assembly introduced a bill to create the Ohio False Claims Act. The bill's sponsors, Senator Jim Hughes (R-Columbus) and Senator Scott Oelslager (R-North Canton), noted that the bill is a tool to recover fraudulent funds and stop waste, fraud, and abuse of Ohio's financial resources. The bill carries the full support of Ohio Attorney General Mike DeWine. In a press conference yesterday, Attorney General DeWine said, "We have to get Medicaid fraud under control. There is absolutely no reason why Ohio should not have a False Claims Act."

The bill, introduced as Senate Bill No. 143, would prohibit any person or entity from making false or fraudulent claims for payment to the state. Such a law would affect almost anyone doing business with the state, including health care professionals claiming reimbursement, government contractors, and grant recipients. The proposed legislation would allow the Attorney General's office to issue civil investigative demands to collect information about potential violations. The civil investigative demand may require one to produce documents, answer written interrogatories, and/or give oral testimony regarding potential violations.

The penalties for violating the law would include: triple damages, a civil penalty ranging from \$5,500 to \$11,000 for *each* violation, and all costs and attorney's fees for bringing an action to recover the funds. The bill includes, however, lesser penalties for those who fully cooperate with any state investigation of a potential violation. These lesser penalties include double damages as well as all costs and attorney's fees but do not include the heavy civil penalty. To receive the lesser penalty, a person or entity must voluntarily provide the Attorney General's office with all information within thirty days of learning about the violation and *before* the person or entity discovers that an investigation has begun or a civil or criminal lawsuit is filed. In other words, a person or entity must voluntarily provide the information on its own initiative and not on threat of litigation. Full cooperation and disclosure after the person or entity learns of the investigation will not provide for the statutory lesser penalties.

The proposed Ohio False Claims Act also contains provisions for whistleblower civil suits against violators. Whistleblowers stand to recover anywhere from 10 to 30% of the damages and penalties collected as well as their attorney's fees and costs from bringing suit. Whistleblowers

would be protected from retaliation or other discriminatory treatment by their employer under the proposed law.

A link to the proposed legislation can be found here:

http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_143.

A link to Attorney General DeWine's press release can be found here:

<http://www.ohioattorneygeneral.gov/Briefing-Room/News-Releases/April/DeWine-supports-creation-of--whistleblower-protec>.