

As Introduced

**127th General Assembly
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H. B. No. 355

Representative Hughes

**Cosponsors: Representatives Stewart, J., McGregor, J., Mallory, Fende,
Oelslager, DeGeeter, Webster, Stebelton, Fessler, Huffman, Flowers, Foley**

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A B I L L

To enact sections 2747.01 to 2747.06 of the Revised Code to provide for the recovery of damages and civil penalties for defrauding the state of money, property, or services in relation to the Medicaid Program and to authorize private persons to bring qui tam civil actions to remedy the frauds.

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

Section 1. That sections 2747.01, 2747.02, 2747.03, 2747.04, 2747.05, and 2747.06 of the Revised Code be enacted to read as follows:

Sec. 2747.01. As used in sections 2747.01 to 2747.06 of the Revised Code:

(A) "Claim" means any request or demand for money, property, or services in context of the medicaid program.

(B) "Employer" includes any person.

(C) "Knowingly" means that a person, with respect to information:

<u>(1) Has actual knowledge of the information;</u>	18
<u>(2) Acts in deliberate ignorance of the truth or falsity of the information; or</u>	19 20
<u>(3) Acts in reckless disregard of the truth or falsity of the information.</u>	21 22
<u>(D) "Person" includes any natural person, any partnership or corporation, any business trust, any business firm or entity, any organization or association, any estate, and any trust.</u>	23 24 25
Sec. 2747.02. <u>(A) Any person who commits any of the following acts in context of the medicaid program is liable to the state as provided in division (B) of this section:</u>	26 27 28
<u>(1) Knowingly presents or causes to be presented to any officer, employee, or agent of the state, or to any contractor, grantee, or other recipient of state funds, a false or fraudulent claim for payment or approval;</u>	29 30 31 32
<u>(2) 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;</u>	33 34 35
<u>(3) Has possession, custody, or control of public property or money used or to be used by the state and knowingly delivers or causes to be delivered less property or money than the amount for which the person receives a certificate or receipt;</u>	36 37 38 39
<u>(4) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and knowingly makes or delivers a receipt that falsely represents the property used or to be used;</u>	40 41 42 43
<u>(5) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who is not lawfully authorized to sell or pledge the property;</u>	44 45 46

(6) 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 the state; 47
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(7) Is a beneficiary of an inadvertent submission of a false claim to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient of state funds, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state within a reasonable period of time after the discovery of the false claim; or 50
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(8) Conspires with one or more others to violate any element of divisions (A)(1) to (7) of this section. 56
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(B)(1) Except as otherwise provided in division (B)(2) of this section, a person who violates division (A) of this section is liable to the state for three times the amount of damages that the state sustains because of the violation, is liable to the state for a civil penalty of not less than five thousand nor more than ten thousand dollars for each violation, and is liable to the state for the costs of a civil action brought to recover any of those damages or civil penalties. 58
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(2) A person who violates division (A) of this section is liable to the state for not less than two times the amount of damages that the state sustains because of the violation, and the costs of a civil action brought to recover the damages but no civil penalties, if the court finds all of the following: 66
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(a) The person committing the violation provided the attorney general with all information known to the person about the violation within thirty days after the date on which the person first obtained the information; 71
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(b) The person fully cooperated with any state investigation of the violation; and 75
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(c) At the time the person provided the attorney general with 77

information about the violation, no criminal prosecution, civil 78
action, or administrative action had been commenced with respect 79
to the violation, and the person did not have actual knowledge of 80
the existence of an investigation into the violation. 81

(C) Proof of intent to defraud is not required in any case 82
brought under this chapter. 83

Sec. 2747.03. (A) The attorney general shall investigate 84
violations of section 2747.02 of the Revised Code. If the attorney 85
general finds that a person has violated or is violating division 86
(A) of section 2747.02 of the Revised Code, the attorney general 87
may bring a civil action under this section against the person. 88

(B)(1) Any person may bring a civil action for a violation of 90
division (A) of section 2747.02 of the Revised Code for the person 91
and for the state in the name of the state. The complaint shall be 92
filed in camera, shall remain under seal for at least sixty days, 93
and shall not be served on the defendant until the court so 94
orders. 95

(2) A copy of the complaint and written disclosure of 96
substantially all material evidence and information the person 97
possesses shall be served on the attorney general. 98

(3) The state, for good cause shown, may move the court for 99
extensions of the time during which the complaint remains under 100
seal. The motion may be supported by affidavits or other 101
submissions in camera. 102

(4) The defendant shall not be required to respond to any 103
complaint filed under this section until twenty-eight days after 104
the complaint is unsealed and served upon the defendant pursuant 105
to Civil Rule 4. 106

(5) Before the expiration of the sixty-day period under 107

division (B)(2) of this section or any extensions obtained under 108
division (B)(3) of this section, the state shall either proceed 109
with the action or notify the court that it declines to proceed 110
with the action. If the state proceeds with the action, the state 111
shall conduct the action. If the state declines to proceed with 112
the action, the person bringing the action shall have the right to 113
conduct the action. 114

(6) When a person brings an action under division (B)(1) of 115
this section, no person other than the state may intervene or 116
bring a related action based on the facts underlying that pending 117
action. 118

(C)(1) If the state proceeds with an action under division 119
(B) of this section, it has the primary responsibility for 120
prosecuting the action and is not bound by an action of the person 121
bringing the action. The person bringing the action has the right 122
to continue as a party to the action, subject to the limitations 123
set forth in division (C)(2) of this section. 124

(2)(a) Whether or not the state intervenes in the action, the 125
state may move to dismiss an action brought under division (B) of 126
this section upon a showing of good cause notwithstanding the 127
objections of the person bringing the action if the person has 128
been notified by the state of the filing of the motion to dismiss 129
and the court has provided the person with an opportunity to 130
oppose the motion and to present evidence at a hearing. 131

(b) The state may settle an action brought under division (B) 132
of this section with the defendant notwithstanding the objections 133
of the person bringing the action if the court determines, after a 134
hearing providing the person who brought the action an opportunity 135
to present evidence, that the proposed settlement is fair, 136
adequate, and reasonable under all the circumstances. Upon a 137
showing of good cause, the court may hold the hearing in camera. 138

(c) Upon a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court, in its discretion, may impose limitations on the person's participation, such as: 140
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(i) Limiting the number of witnesses the person may call; 147

(ii) Limiting the length of the testimony of the person's witnesses; 148
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(iii) Limiting the person's cross-examination of witnesses; 150

(iv) Otherwise limiting the participation by the person in the litigation. 151
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(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit participation by the person bringing the action in the litigation. 153
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(3) If the state elects not to proceed with an action brought by a person under division (B) of this section, the person has the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts. 159
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(4) When the person proceeds with the action, the court may permit the state to intervene at a later date upon a showing of good cause. 164
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(5) Whether or not the state proceeds with the action, upon a showing by the state that certain discovery by the person bringing the action would interfere with the state's investigation or 167
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prosecution of a criminal or civil matter arising out of the same 170
facts, the court may stay that discovery for a period of not more 171
than sixty days. The showing shall be conducted in camera. The 172
court may extend the sixty-day period upon a further showing in 173
camera that the state has pursued the criminal or civil 174
investigation or proceedings with reasonable diligence and any 175
proposed discovery in the civil action will interfere with the 176
ongoing criminal or civil investigation or proceedings. 177

(6) The state may elect to pursue its claim through any 178
alternate remedy available to the state, including any 179
administrative proceeding to determine a civil monetary penalty. 180
If any such alternate remedy is pursued in another proceeding, the 181
person bringing the action has the same rights in that proceeding 182
as the person would have had if the action had continued under 183
this section. Any finding of fact or conclusion of law made in the 184
other proceeding that has become final shall be conclusive on all 185
parties to an action under this section. A finding or conclusion 186
is final if it has been finally determined on appeal to the 187
appropriate court, if all time for filing an appeal with respect 188
to the finding or conclusion has expired, or if the finding or 189
conclusion is not subject to judicial review. 190

(D)(1) If the state proceeds with an action brought by a 191
person under division (B) of this section, the person shall 192
receive at least fifteen per cent but not more than twenty-five 193
per cent of the proceeds of the action or settlement of the claim, 194
depending upon the extent to which the person substantially 195
contributed to the prosecution of the action. If the action is one 196
that the court finds to be based primarily on disclosures of 197
specific information, other than information provided by the 198
person bringing the action, relating to allegations or 199
transactions specifically in a criminal, civil, or administrative 200
hearing, in a legislative or administrative report, hearing, 201

audit, or investigation, or from the news media, the court may 202
award the sums that it considers appropriate, but in no case more 203
than ten per cent of the proceeds, taking into account the 204
significance of the information and the role of the person 205
bringing the action in advancing the case to litigation. Any 206
payment to a person under division (D)(1) of this section shall be 207
made from the proceeds. The person shall also receive an amount 208
for reasonable expenses that the court finds to have been 209
necessarily incurred, plus reasonable attorney's fees and costs. 210
All expenses, fees, and costs shall be awarded against the 211
defendant. 212

(2) If the state does not proceed with an action brought by a 213
person under division (B) of this section, the person bringing the 214
action or settling the claim shall receive an amount that the 215
court decides is reasonable for collecting the civil penalty and 216
damages. The amount shall be not less than twenty-five per cent 217
and not more than thirty per cent of the proceeds of the action or 218
settlement and shall be paid out of the proceeds. The person shall 219
also receive an amount for reasonable expenses that the court 220
finds to have been necessarily incurred, plus reasonable 221
attorney's fees and costs. All expenses, fees, and costs shall be 222
awarded against the defendant. 223

(3) Whether or not the state proceeds with the action, if the 224
court finds that the action was brought by a person who planned 225
and initiated the violation of section 2747.02 of the Revised Code 226
upon which the action was brought, then the court may, to the 227
extent the court considers appropriate, reduce the share of the 228
proceeds of the action that the person would otherwise receive 229
under division (D)(1) or (2) of this section, taking into account 230
the role of that person in advancing the case to litigation and 231
any relevant circumstances pertaining to the violation. If the 232
person bringing the action is convicted of criminal conduct 233

arising from the person's role in the violation of section 2747.02 234
of the Revised Code, the person shall be dismissed from the civil 235
action and shall not receive any share of the proceeds of the 236
action. The dismissal shall not prejudice the right of the state 237
to continue the action. 238

(4) If the state does not proceed with the action and the 239
person bringing the action conducts the action, the court may 240
award to the defendant its reasonable attorney's fees and expenses 241
if the defendant prevails in the action and the court finds that 242
the claim of the person bringing the action was clearly frivolous, 243
clearly vexatious, or brought primarily for purposes of 244
harassment. 245

(E)(1) No person may bring an action under division (B) of 246
this section against a member of the general assembly, a judge or 247
other judicial officer, the governor, the lieutenant governor, the 248
secretary of state, the treasurer of state, the auditor of state, 249
or the attorney general if the action is based on evidence or 250
information that is known to the state when the action is brought. 251

(2) No person may bring an action under division (B) of this 252
section that is based upon allegations or transactions that are 253
the subject of a civil suit or an administrative civil money 254
penalty proceeding in which the state is already a party. 255

(3) Upon timely motion of the state, a court shall dismiss an 256
action brought under division (B) of this section if the 257
allegations relating to all essential elements of liability on the 258
claim alleged in the action are based on the public disclosure of 259
allegations in a state criminal, civil, or administrative hearing; 260
in a state legislative or administrative report, hearing, audit, 261
or investigation; or from the news media. A "public disclosure" 262
includes only disclosures made on the public record or that 263
otherwise have been disseminated to the general public. An action 264
or claim is "based on" a public disclosure only if the person 265

bringing the action derived the person's knowledge of all 266
essential elements of liability on the claim alleged in the action 267
from the public disclosure. The person bringing the action does 268
not create a public disclosure by obtaining information pursuant 269
to a federal or state public records request or from information 270
exchanges with law enforcement and other state officers, 271
employees, or agents if the information does not otherwise qualify 272
as publicly disclosed. 273

(F) The state is not liable for expenses that a person incurs 274
in bringing an action under this section. 275

(G) Any employee who is discharged, demoted, suspended, 276
threatened, harassed, or in any other manner discriminated against 277
in the terms and conditions of employment by the employee's 278
employer because of lawful acts done by the employee on behalf of 279
the employee or others in furtherance of an action under this 280
section, including investigation for, initiation of, testimony 281
for, or assistance in an action filed or to be filed under this 282
section, shall be entitled to all relief necessary to make the 283
employee whole. The relief shall include reinstatement with the 284
same seniority status the employee would have had but for the 285
discrimination, two times the amount of back pay, interest on the 286
back pay, and compensation for any special damages sustained as a 287
result of the discrimination, including litigation costs and 288
reasonable attorney's fees. An employee may bring an action in the 289
appropriate court of common pleas for the relief provided in this 290
division. 291

Sec. 2747.04. (A)(1) A civil action under division (A) or (B) 292
of section 2747.03 of the Revised Code may not be brought after 293
the date that is six years after the date on which the violation 294
of section 2747.02 is committed or three years after the date when 295
facts material to the right of action are known or reasonably 296

should have been known by the attorney general but in no event 297
more than ten years after the date on which the violation is 298
committed, whichever occurs last. 299

(2) A civil action under division (G) of section 2747.03 of 300
the Revised Code may not be brought more than three years after 301
the last act of the employer that is alleged to violate that 302
division. 303

(B) In any action brought under section 2747.03 of the 304
Revised Code, the state or the person bringing the action shall 305
prove all essential elements of the cause of action, including 306
damages, by a preponderance of the evidence. 307

(C) A final judgment rendered in favor of the state in any 308
criminal proceeding charging fraud or false statements, whether 309
upon a verdict after trial or upon a plea of guilty or nolo 310
contendere, shall estop the defendant from denying the essential 311
elements of the offense in any action that involves the same 312
transaction as in the criminal proceeding and that is brought 313
under division (A) or (B) of section 2747.03 of the Revised Code. 314

Sec. 2747.05. (A) The remedies provided in section 2747.03 of 315
the Revised Code are not exclusive, and are in addition to any 316
other remedies provided for in any other statute or available 317
under common law. 318

(B) An action under section 2747.03 of the Revised Code may 319
be brought in the court of common pleas of Franklin county, in the 320
court of common pleas of any county in which the defendant or any 321
one of multiple defendants can be found, resides, or transacts 322
business, or in the court of common pleas of any county in which 323
any act prohibited by section 2747.02 of the Revised Code 324
occurred. 325

Sec. 2747.06. (A)(1) Whenever the attorney general has reason 326

to believe that a person may be in possession, custody, or control 327
of any documentary material or information relevant to an 328
investigation conducted under section 2747.03 of the Revised Code, 329
before commencing a civil action under that section, the attorney 330
general may issue in writing and cause to be served upon the 331
person a civil investigative demand requiring the person to do any 332
of the following: 333

(a) Produce the documentary material for inspection and 334
copying; 335

(b) Answer in writing written interrogatories with respect to 336
the documentary material or information; 337

(c) Give oral testimony concerning the documentary material 338
or information; 339

(d) Furnish any combination of the material, answers, or 340
testimony. 341

(2)(a) Each civil investigative demand issued under division 342
(A)(1) of this section shall state the nature of the conduct 343
constituting the alleged violation of section 2747.02 of the 344
Revised Code that is under investigation. 345

(b) If the demand is for the production of documentary 346
material, the demand shall do both of the following: 347

(i) Describe each class of documentary material to be 348
produced with such definiteness and certainty as to permit the 349
material to be fairly identified; 350

(ii) Prescribe a return date for each class of documentary 351
material that will provide a reasonable period of time within 352
which the material may be assembled and made available for 353
inspection and copying. 354

(c) If the demand is for answers to written interrogatories, 355
the demand shall do both of the following: 356

(i) Set forth with specificity the written interrogatories to be answered; 357
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(ii) Prescribe dates at which time answers to written interrogatories shall be submitted. 359
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(d) If the demand is for the giving of oral testimony, the demand shall do all of the following: 361
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(i) Prescribe a date, time, and place at which oral testimony shall be commenced; 363
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(ii) Specify that the attendance and testimony are necessary to the conduct of the investigation; 365
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(iii) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; 367
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(iv) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, that will be taken pursuant to the demand. 369
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(e) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date that is not less than seven days after the date on which the demand is received, unless the attorney general determines that exceptional circumstances are present that warrant the commencement of the testimony within a lesser period of time. 373
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(f) The attorney general shall not issue more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the attorney general, after investigation, notifies the person in writing that an additional demand for oral testimony is necessary. 380
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(B) A civil investigative demand issued under division (A) of this section may not require the production of any documentary 385
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material, the submission of any answers to written 387
interrogatories, or the giving of any oral testimony if the 388
material, answers, or testimony would be protected from disclosure 389
under either of the following: 390

(1) The standards applicable to subpoenas or subpoenas duces 391
tecum issued by a court to aid in a grand jury investigation; 392

(2) The standards applicable to discovery requests under the 393
Rules of Civil Procedure, to the extent that the application of 394
the standards to the demand is appropriate and consistent with the 395
provisions and purposes of this section. 396

(C) Any civil investigative demand issued under division (A) 397
of this section or petition filed under division (I) of this 398
section may be served in the same manner as a summons under Civil 399
Rules 4 to 4.3 and 4.5. 400

(D) A verified return by the individual serving a civil 401
investigative demand issued under division (A) of this section or 402
a petition filed under division (I) of this section setting forth 403
the manner of the service shall be proof of the service. In the 404
case of service by registered or certified mail, the return shall 405
be accompanied by the return post office receipt of delivery of 406
the demand. 407

(E)(1) The production of documentary material in response to 408
a civil investigative demand served under this section shall be 409
made under a sworn certificate, in any form that the demand 410
designates, by the following methods: 411

(a) In the case of a natural person, the person to whom the 412
demand is directed; 413

(b) In the case of a person other than a natural person, a 414
person having knowledge of the facts and circumstances relating to 415
the production and authorized to act on behalf of the person. 416

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 demand is directed has been produced and made available to the attorney general. 417
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(2) Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make the material available for inspection and copying to the attorney general at the principal place of business of the person or at any other place that the attorney general and the person after service of the demand may agree and prescribe in writing. The person shall make the material available on the return date specified in the demand, or on any later date that the attorney general may prescribe in writing. The person may, upon written agreement between the person and the attorney general, substitute copies for originals of all or any part of the material. 421
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(F) Each interrogatory in a 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 the form that the demand designates, by the following persons: 433
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(1) In the case of a natural person, the person to whom the demand is directed; 438
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(2) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory. 440
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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 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 442
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shall be identified and reasons set forth with particularity 448
regarding the reasons why the information was not furnished. 449

(G)(1) The examination of any person pursuant to a civil 450
investigative demand for oral testimony served under this section 451
shall be taken before an officer authorized by law to administer 452
oaths and affirmations. The officer before whom the testimony is 453
to be taken shall put the witness on oath or affirmation and 454
shall, personally or by someone acting under the direction of the 455
officer and in the officer's presence, record the testimony of the 456
witness. The testimony shall be taken stenographically and shall 457
be transcribed. When the testimony is fully transcribed, the 458
officer before whom the testimony is taken shall promptly transmit 459
a copy of the transcript of the testimony to the attorney general. 460
Division (G)(1) of this section shall not preclude the taking of 461
testimony by any means authorized by, and in a manner consistent 462
with, the Rules of Civil Procedure. 463

(2) The attorney general shall exclude from the place where 464
the examination is held all persons except the person giving the 465
testimony, the attorney for and any other representative of the 466
person giving the testimony, any person who may be agreed upon by 467
the attorney general and the person giving the testimony, the 468
officer before whom the testimony is to be taken, and any 469
stenographer taking the testimony. 470

(3) The oral testimony of any person taken pursuant to a 471
civil investigative demand served under this section shall be 472
taken in Franklin county or in the county within which the person 473
resides, is found, or transacts business, or in any other place 474
that may be agreed upon by the attorney general and the person. 475

(4) When the testimony is fully transcribed, the attorney 476
general or the officer before whom the testimony is taken shall 477
afford the witness, who may be accompanied by counsel, a 478
reasonable opportunity to examine and read the transcript, unless 479

examination and reading are waived by the witness. Any changes in 480
form or substance that the witness desires to make shall be 481
entered and identified upon the transcript by the officer or the 482
attorney general, with a statement of the reasons given by the 483
witness for making the changes. The transcript shall then be 484
signed by the witness, unless the witness waives the signing in 485
writing, is ill, cannot be found, or refuses to sign. If the 486
transcript is not signed by the witness within thirty days after 487
being afforded a reasonable opportunity to examine it, the officer 488
or the attorney general shall sign it and state on the record the 489
fact of the waiver, illness, absence of the witness, or the 490
refusal to sign, together with the reasons, if any, given 491
therefor. 492

(5) The officer before whom the testimony is taken shall 493
certify on the transcript that the witness was sworn by the 494
officer and that the transcript is a true record of the testimony 495
given by the witness, and the officer or attorney general shall 496
take custody of the transcript. 497

(6)(a) Any person compelled to appear for oral testimony 498
under a civil investigative demand issued under division (A) of 499
this section may be accompanied, represented, and advised by 500
counsel. Counsel may advise the person, in confidence, with 501
respect to any question asked of the person. The person or counsel 502
may object on the record to any question, in whole or in part, and 503
shall briefly state for the record the reason for the objection. 504
An objection may be made, received, and entered upon the record 505
when it is claimed that the person is entitled to refuse to answer 506
the question on the grounds of any constitutional or other legal 507
right or privilege, including the privilege against 508
self-incrimination. The person may not otherwise object to or 509
refuse to answer any question, and may not directly or through 510
counsel otherwise interrupt the oral examination. If the person 511

refuses to answer any question, a petition may be filed in the 512
court of common pleas in Franklin county or in the county in which 513
the examination takes place for an order compelling the person to 514
answer the question. 515

(b) If the person refuses to answer any question on the 516
grounds of the privilege against self-incrimination, the testimony 517
of the person may be compelled in the manner provided in section 518
2945.44 of the Revised Code. 519

(7) Any person appearing for oral testimony under a civil 520
investigative demand issued under division (A) of this section 521
shall be entitled to the same fees and allowances that are paid to 522
witnesses in the court of common pleas. 523

(H)(1)(a) Except as otherwise provided in division (H) of 524
this section, no documentary material, answers to interrogatories, 525
or transcripts of oral testimony received under this section, or 526
copies of documentary material, answers to interrogatories, or 527
transcripts of oral testimony so received, while in the possession 528
of the attorney general, shall be available for examination by any 529
individual other than an employee of the attorney general. This 530
prohibition on the availability of material, answers, or 531
transcripts shall not apply if consent is given by the person who 532
produced the material, answers, or transcripts. Nothing in 533
division (H)(1)(a) of this section is intended to prevent 534
disclosure to the general assembly, including any committee or 535
subcommittee of the general assembly, to any other state agency 536
for use by the agency in furtherance of its statutory 537
responsibilities, or to any law enforcement officer for use in the 538
furtherance of the law enforcement officer's duties. Disclosure of 539
information to any agency other than those specified in this 540
division shall be allowed only upon application, made by the 541
attorney general to a court of common pleas showing substantial 542
need for the use of the information by the agency in furtherance 543

of its statutory responsibilities. 544

(b) While in the possession of the attorney general and under 545
any reasonable terms and conditions that the attorney general 546
prescribes, documentary material and answers to interrogatories 547
received under this section shall be available for examination by 548
the person who produced the material or answers, or by a 549
representative of that person authorized by that person to examine 550
the material and answers. 551

(2) The attorney general may use any documentary material, 552
answers to interrogatories, or transcripts of oral testimony 553
received under this section in connection with any case or 554
proceeding before a court, grand jury, or state agency. 555

(3) If any documentary material has been produced by any 556
person in the course of any investigation pursuant to a civil 557
investigative demand under this section, the attorney general 558
shall, upon written request of the person who produced the 559
material, return to the person the documentary material, other 560
than copies furnished to the attorney general under division 561
(E)(2) of this section or made for the attorney general under 562
division (H)(1)(b) of this section, that has not passed into the 563
control of any court, grand jury, or agency through introduction 564
into the record of the case or proceeding, or into the control of 565
any law enforcement officer, if either of the following applies: 566

(a) Any case or proceeding before the court or grand jury 567
arising out of the investigation, or any proceeding before any 568
state agency involving the material, has been completed. 569

(b) No case or proceeding in which the material may be used 570
has been commenced within a reasonable time after completion of 571
the examination and analysis of all documentary material and other 572
information assembled in the course of the investigation. 573

(I) Whenever any person fails to comply with any civil 574

investigative demand issued under division (A) of this section, or 575
whenever satisfactory copying or reproduction of any material 576
requested in the demand cannot be done and the person refuses to 577
surrender the material, the attorney general may file in the court 578
of common pleas in Franklin county or in the county in which the 579
person resides, is found, or transacts business, and serve upon 580
the person, a petition for an order of the court for the 581
enforcement of the civil investigative demand. 582

(J) Documentary material, answers to written interrogatories, 583
and oral testimony provided under a civil investigative demand 584
issued under division (A) of this section are not public records, 585
and are exempt from disclosure under section 149.43 of the Revised 586
Code. 587

(K) As used in this section, "documentary material" includes 588
the original or any copy of any book, record, report, memorandum, 589
paper, communication, tabulation, chart, or other document, or 590
data compilations stored in or accessible through computer or 591
other information retrieval systems, together with instructions 592
and all other materials necessary to use or interpret the data 593
compilations, and any product of discovery. 594

Section 2. An action may be commenced under section 2747.03 595
of the Revised Code to remedy a violation that occurred before the 596
effective date of this section unless the limitations period fixed 597
in division (A) of section 2747.04 of the Revised Code has 598
elapsed. 599