

As Reported by the Senate Judiciary--Civil Justice Committee

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Senator Seitz

**Cosponsors: Senators Wagoner, Gibbs, Coughlin, Miller, D., Stewart,
Hughes, Schuring, Patton, Widener, Schaffer, Turner, Kearney**

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A B I L L

To amend section 2317.02 of the Revised Code to 1
create an accountant-client testimonial privilege. 2

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

Section 1. That section 2317.02 of the Revised Code be 3
amended to read as follows: 4

Sec. 2317.02. The following persons shall not testify in 5
certain respects: 6

(A)(1) An attorney, concerning a communication made to the 7
attorney by a client in that relation or the attorney's advice to 8
a client, except that the attorney may testify by express consent 9
of the client or, if the client is deceased, by the express 10
consent of the surviving spouse or the executor or administrator 11
of the estate of the deceased client. However, if the client 12
voluntarily testifies or is deemed by section 2151.421 of the 13
Revised Code to have waived any testimonial privilege under this 14
division, the attorney may be compelled to testify on the same 15
subject. 16

The testimonial privilege established under this division 17
does not apply concerning a communication between a client who has 18

since died and the deceased client's attorney if the communication 19
is relevant to a dispute between parties who claim through that 20
deceased client, regardless of whether the claims are by testate 21
or intestate succession or by inter vivos transaction, and the 22
dispute addresses the competency of the deceased client when the 23
deceased client executed a document that is the basis of the 24
dispute or whether the deceased client was a victim of fraud, 25
undue influence, or duress when the deceased client executed a 26
document that is the basis of the dispute. 27

(2) An attorney, concerning a communication made to the 28
attorney by a client in that relationship or the attorney's advice 29
to a client, except that if the client is an insurance company, 30
the attorney may be compelled to testify, subject to an in camera 31
inspection by a court, about communications made by the client to 32
the attorney or by the attorney to the client that are related to 33
the attorney's aiding or furthering an ongoing or future 34
commission of bad faith by the client, if the party seeking 35
disclosure of the communications has made a prima facie showing of 36
bad faith, fraud, or criminal misconduct by the client. 37

(B)(1) A physician or a dentist concerning a communication 38
made to the physician or dentist by a patient in that relation or 39
the physician's or dentist's advice to a patient, except as 40
otherwise provided in this division, division (B)(2), and division 41
(B)(3) of this section, and except that, if the patient is deemed 42
by section 2151.421 of the Revised Code to have waived any 43
testimonial privilege under this division, the physician may be 44
compelled to testify on the same subject. 45

The testimonial privilege established under this division 46
does not apply, and a physician or dentist may testify or may be 47
compelled to testify, in any of the following circumstances: 48

(a) In any civil action, in accordance with the discovery 49
provisions of the Rules of Civil Procedure in connection with a 50

civil action, or in connection with a claim under Chapter 4123. of 51
the Revised Code, under any of the following circumstances: 52

(i) If the patient or the guardian or other legal 53
representative of the patient gives express consent; 54

(ii) If the patient is deceased, the spouse of the patient or 55
the executor or administrator of the patient's estate gives 56
express consent; 57

(iii) If a medical claim, dental claim, chiropractic claim, 58
or optometric claim, as defined in section 2305.113 of the Revised 59
Code, an action for wrongful death, any other type of civil 60
action, or a claim under Chapter 4123. of the Revised Code is 61
filed by the patient, the personal representative of the estate of 62
the patient if deceased, or the patient's guardian or other legal 63
representative. 64

(b) In any civil action concerning court-ordered treatment or 65
services received by a patient, if the court-ordered treatment or 66
services were ordered as part of a case plan journalized under 67
section 2151.412 of the Revised Code or the court-ordered 68
treatment or services are necessary or relevant to dependency, 69
neglect, or abuse or temporary or permanent custody proceedings 70
under Chapter 2151. of the Revised Code. 71

(c) In any criminal action concerning any test or the results 72
of any test that determines the presence or concentration of 73
alcohol, a drug of abuse, a combination of them, a controlled 74
substance, or a metabolite of a controlled substance in the 75
patient's whole blood, blood serum or plasma, breath, urine, or 76
other bodily substance at any time relevant to the criminal 77
offense in question. 78

(d) In any criminal action against a physician or dentist. In 79
such an action, the testimonial privilege established under this 80
division does not prohibit the admission into evidence, in 81

accordance with the Rules of Evidence, of a patient's medical or 82
dental records or other communications between a patient and the 83
physician or dentist that are related to the action and obtained 84
by subpoena, search warrant, or other lawful means. A court that 85
permits or compels a physician or dentist to testify in such an 86
action or permits the introduction into evidence of patient 87
records or other communications in such an action shall require 88
that appropriate measures be taken to ensure that the 89
confidentiality of any patient named or otherwise identified in 90
the records is maintained. Measures to ensure confidentiality that 91
may be taken by the court include sealing its records or deleting 92
specific information from its records. 93

(e)(i) If the communication was between a patient who has 94
since died and the deceased patient's physician or dentist, the 95
communication is relevant to a dispute between parties who claim 96
through that deceased patient, regardless of whether the claims 97
are by testate or intestate succession or by inter vivos 98
transaction, and the dispute addresses the competency of the 99
deceased patient when the deceased patient executed a document 100
that is the basis of the dispute or whether the deceased patient 101
was a victim of fraud, undue influence, or duress when the 102
deceased patient executed a document that is the basis of the 103
dispute. 104

(ii) If neither the spouse of a patient nor the executor or 105
administrator of that patient's estate gives consent under 106
division (B)(1)(a)(ii) of this section, testimony or the 107
disclosure of the patient's medical records by a physician, 108
dentist, or other health care provider under division (B)(1)(e)(i) 109
of this section is a permitted use or disclosure of protected 110
health information, as defined in 45 C.F.R. 160.103, and an 111
authorization or opportunity to be heard shall not be required. 112

(iii) Division (B)(1)(e)(i) of this section does not require 113

a mental health professional to disclose psychotherapy notes, as 114
defined in 45 C.F.R. 164.501. 115

(iv) An interested person who objects to testimony or 116
disclosure under division (B)(1)(e)(i) of this section may seek a 117
protective order pursuant to Civil Rule 26. 118

(v) A person to whom protected health information is 119
disclosed under division (B)(1)(e)(i) of this section shall not 120
use or disclose the protected health information for any purpose 121
other than the litigation or proceeding for which the information 122
was requested and shall return the protected health information to 123
the covered entity or destroy the protected health information, 124
including all copies made, at the conclusion of the litigation or 125
proceeding. 126

(2)(a) If any law enforcement officer submits a written 127
statement to a health care provider that states that an official 128
criminal investigation has begun regarding a specified person or 129
that a criminal action or proceeding has been commenced against a 130
specified person, that requests the provider to supply to the 131
officer copies of any records the provider possesses that pertain 132
to any test or the results of any test administered to the 133
specified person to determine the presence or concentration of 134
alcohol, a drug of abuse, a combination of them, a controlled 135
substance, or a metabolite of a controlled substance in the 136
person's whole blood, blood serum or plasma, breath, or urine at 137
any time relevant to the criminal offense in question, and that 138
conforms to section 2317.022 of the Revised Code, the provider, 139
except to the extent specifically prohibited by any law of this 140
state or of the United States, shall supply to the officer a copy 141
of any of the requested records the provider possesses. If the 142
health care provider does not possess any of the requested 143
records, the provider shall give the officer a written statement 144
that indicates that the provider does not possess any of the 145

requested records. 146

(b) If a health care provider possesses any records of the 147
type described in division (B)(2)(a) of this section regarding the 148
person in question at any time relevant to the criminal offense in 149
question, in lieu of personally testifying as to the results of 150
the test in question, the custodian of the records may submit a 151
certified copy of the records, and, upon its submission, the 152
certified copy is qualified as authentic evidence and may be 153
admitted as evidence in accordance with the Rules of Evidence. 154
Division (A) of section 2317.422 of the Revised Code does not 155
apply to any certified copy of records submitted in accordance 156
with this division. Nothing in this division shall be construed to 157
limit the right of any party to call as a witness the person who 158
administered the test to which the records pertain, the person 159
under whose supervision the test was administered, the custodian 160
of the records, the person who made the records, or the person 161
under whose supervision the records were made. 162

(3)(a) If the testimonial privilege described in division 163
(B)(1) of this section does not apply as provided in division 164
(B)(1)(a)(iii) of this section, a physician or dentist may be 165
compelled to testify or to submit to discovery under the Rules of 166
Civil Procedure only as to a communication made to the physician 167
or dentist by the patient in question in that relation, or the 168
physician's or dentist's advice to the patient in question, that 169
related causally or historically to physical or mental injuries 170
that are relevant to issues in the medical claim, dental claim, 171
chiropractic claim, or optometric claim, action for wrongful 172
death, other civil action, or claim under Chapter 4123. of the 173
Revised Code. 174

(b) If the testimonial privilege described in division (B)(1) 175
of this section does not apply to a physician or dentist as 176
provided in division (B)(1)(c) of this section, the physician or 177

dentist, in lieu of personally testifying as to the results of the 178
test in question, may submit a certified copy of those results, 179
and, upon its submission, the certified copy is qualified as 180
authentic evidence and may be admitted as evidence in accordance 181
with the Rules of Evidence. Division (A) of section 2317.422 of 182
the Revised Code does not apply to any certified copy of results 183
submitted in accordance with this division. Nothing in this 184
division shall be construed to limit the right of any party to 185
call as a witness the person who administered the test in 186
question, the person under whose supervision the test was 187
administered, the custodian of the results of the test, the person 188
who compiled the results, or the person under whose supervision 189
the results were compiled. 190

(4) The testimonial privilege described in division (B)(1) of 191
this section is not waived when a communication is made by a 192
physician to a pharmacist or when there is communication between a 193
patient and a pharmacist in furtherance of the physician-patient 194
relation. 195

(5)(a) As used in divisions (B)(1) to (4) of this section, 196
"communication" means acquiring, recording, or transmitting any 197
information, in any manner, concerning any facts, opinions, or 198
statements necessary to enable a physician or dentist to diagnose, 199
treat, prescribe, or act for a patient. A "communication" may 200
include, but is not limited to, any medical or dental, office, or 201
hospital communication such as a record, chart, letter, 202
memorandum, laboratory test and results, x-ray, photograph, 203
financial statement, diagnosis, or prognosis. 204

(b) As used in division (B)(2) of this section, "health care 205
provider" means a hospital, ambulatory care facility, long-term 206
care facility, pharmacy, emergency facility, or health care 207
practitioner. 208

(c) As used in division (B)(5)(b) of this section: 209

(i) "Ambulatory care facility" means a facility that provides 210
medical, diagnostic, or surgical treatment to patients who do not 211
require hospitalization, including a dialysis center, ambulatory 212
surgical facility, cardiac catheterization facility, diagnostic 213
imaging center, extracorporeal shock wave lithotripsy center, home 214
health agency, inpatient hospice, birthing center, radiation 215
therapy center, emergency facility, and an urgent care center. 216
"Ambulatory health care facility" does not include the private 217
office of a physician or dentist, whether the office is for an 218
individual or group practice. 219

(ii) "Emergency facility" means a hospital emergency 220
department or any other facility that provides emergency medical 221
services. 222

(iii) "Health care practitioner" has the same meaning as in 223
section 4769.01 of the Revised Code. 224

(iv) "Hospital" has the same meaning as in section 3727.01 of 225
the Revised Code. 226

(v) "Long-term care facility" means a nursing home, 227
residential care facility, or home for the aging, as those terms 228
are defined in section 3721.01 of the Revised Code; an adult care 229
facility, as defined in section 3722.01 of the Revised Code; a 230
nursing facility or intermediate care facility for the mentally 231
retarded, as those terms are defined in section 5111.20 of the 232
Revised Code; a facility or portion of a facility certified as a 233
skilled nursing facility under Title XVIII of the "Social Security 234
Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended. 235

(vi) "Pharmacy" has the same meaning as in section 4729.01 of 236
the Revised Code. 237

(d) As used in divisions (B)(1) and (2) of this section, 238
"drug of abuse" has the same meaning as in section 4506.01 of the 239
Revised Code. 240

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section 241
apply to doctors of medicine, doctors of osteopathic medicine, 242
doctors of podiatry, and dentists. 243

(7) Nothing in divisions (B)(1) to (6) of this section 244
affects, or shall be construed as affecting, the immunity from 245
civil liability conferred by section 307.628 of the Revised Code 246
or the immunity from civil liability conferred by section 2305.33 247
of the Revised Code upon physicians who report an employee's use 248
of a drug of abuse, or a condition of an employee other than one 249
involving the use of a drug of abuse, to the employer of the 250
employee in accordance with division (B) of that section. As used 251
in division (B)(7) of this section, "employee," "employer," and 252
"physician" have the same meanings as in section 2305.33 of the 253
Revised Code. 254

(C)(1) A cleric, when the cleric remains accountable to the 255
authority of that cleric's church, denomination, or sect, 256
concerning a confession made, or any information confidentially 257
communicated, to the cleric for a religious counseling purpose in 258
the cleric's professional character. The cleric may testify by 259
express consent of the person making the communication, except 260
when the disclosure of the information is in violation of a sacred 261
trust and except that, if the person voluntarily testifies or is 262
deemed by division (A)(4)(c) of section 2151.421 of the Revised 263
Code to have waived any testimonial privilege under this division, 264
the cleric may be compelled to testify on the same subject except 265
when disclosure of the information is in violation of a sacred 266
trust. 267

(2) As used in division (C) of this section: 268

(a) "Cleric" means a member of the clergy, rabbi, priest, 269
Christian Science practitioner, or regularly ordained, accredited, 270
or licensed minister of an established and legally cognizable 271
church, denomination, or sect. 272

(b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:

(i) The confession or confidential communication was made directly to the cleric.

(ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;

(E) A person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;

(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.

(G)(1) A school guidance counselor who holds a valid educator license from the state board of education as provided for in section 3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a professional clinical counselor, professional counselor, social worker, independent

social worker, marriage and family therapist or independent 304
marriage and family therapist, or registered under Chapter 4757. 305
of the Revised Code as a social work assistant concerning a 306
confidential communication received from a client in that relation 307
or the person's advice to a client unless any of the following 308
applies: 309

(a) The communication or advice indicates clear and present 310
danger to the client or other persons. For the purposes of this 311
division, cases in which there are indications of present or past 312
child abuse or neglect of the client constitute a clear and 313
present danger. 314

(b) The client gives express consent to the testimony. 315

(c) If the client is deceased, the surviving spouse or the 316
executor or administrator of the estate of the deceased client 317
gives express consent. 318

(d) The client voluntarily testifies, in which case the 319
school guidance counselor or person licensed or registered under 320
Chapter 4757. of the Revised Code may be compelled to testify on 321
the same subject. 322

(e) The court in camera determines that the information 323
communicated by the client is not germane to the counselor-client, 324
marriage and family therapist-client, or social worker-client 325
relationship. 326

(f) A court, in an action brought against a school, its 327
administration, or any of its personnel by the client, rules after 328
an in-camera inspection that the testimony of the school guidance 329
counselor is relevant to that action. 330

(g) The testimony is sought in a civil action and concerns 331
court-ordered treatment or services received by a patient as part 332
of a case plan journalized under section 2151.412 of the Revised 333
Code or the court-ordered treatment or services are necessary or 334

relevant to dependency, neglect, or abuse or temporary or 335
permanent custody proceedings under Chapter 2151. of the Revised 336
Code. 337

(2) Nothing in division (G)(1) of this section shall relieve 338
a school guidance counselor or a person licensed or registered 339
under Chapter 4757. of the Revised Code from the requirement to 340
report information concerning child abuse or neglect under section 341
2151.421 of the Revised Code. 342

(H) A mediator acting under a mediation order issued under 343
division (A) of section 3109.052 of the Revised Code or otherwise 344
issued in any proceeding for divorce, dissolution, legal 345
separation, annulment, or the allocation of parental rights and 346
responsibilities for the care of children, in any action or 347
proceeding, other than a criminal, delinquency, child abuse, child 348
neglect, or dependent child action or proceeding, that is brought 349
by or against either parent who takes part in mediation in 350
accordance with the order and that pertains to the mediation 351
process, to any information discussed or presented in the 352
mediation process, to the allocation of parental rights and 353
responsibilities for the care of the parents' children, or to the 354
awarding of parenting time rights in relation to their children; 355

(I) A communications assistant, acting within the scope of 356
the communication assistant's authority, when providing 357
telecommunications relay service pursuant to section 4931.35 of 358
the Revised Code or Title II of the "Communications Act of 1934," 359
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 360
made through a telecommunications relay service. Nothing in this 361
section shall limit the obligation of a communications assistant 362
to divulge information or testify when mandated by federal law or 363
regulation or pursuant to subpoena in a criminal proceeding. 364

Nothing in this section shall limit any immunity or privilege 365
granted under federal law or regulation. 366

(J)(1) A chiropractor in a civil proceeding concerning a 367
communication made to the chiropractor by a patient in that 368
relation or the chiropractor's advice to a patient, except as 369
otherwise provided in this division. The testimonial privilege 370
established under this division does not apply, and a chiropractor 371
may testify or may be compelled to testify, in any civil action, 372
in accordance with the discovery provisions of the Rules of Civil 373
Procedure in connection with a civil action, or in connection with 374
a claim under Chapter 4123. of the Revised Code, under any of the 375
following circumstances: 376

(a) If the patient or the guardian or other legal 377
representative of the patient gives express consent. 378

(b) If the patient is deceased, the spouse of the patient or 379
the executor or administrator of the patient's estate gives 380
express consent. 381

(c) If a medical claim, dental claim, chiropractic claim, or 382
optometric claim, as defined in section 2305.113 of the Revised 383
Code, an action for wrongful death, any other type of civil 384
action, or a claim under Chapter 4123. of the Revised Code is 385
filed by the patient, the personal representative of the estate of 386
the patient if deceased, or the patient's guardian or other legal 387
representative. 388

(2) If the testimonial privilege described in division (J)(1) 389
of this section does not apply as provided in division (J)(1)(c) 390
of this section, a chiropractor may be compelled to testify or to 391
submit to discovery under the Rules of Civil Procedure only as to 392
a communication made to the chiropractor by the patient in 393
question in that relation, or the chiropractor's advice to the 394
patient in question, that related causally or historically to 395
physical or mental injuries that are relevant to issues in the 396
medical claim, dental claim, chiropractic claim, or optometric 397
claim, action for wrongful death, other civil action, or claim 398

under Chapter 4123. of the Revised Code. 399

(3) The testimonial privilege established under this division 400
does not apply, and a chiropractor may testify or be compelled to 401
testify, in any criminal action or administrative proceeding. 402

(4) As used in this division, "communication" means 403
acquiring, recording, or transmitting any information, in any 404
manner, concerning any facts, opinions, or statements necessary to 405
enable a chiropractor to diagnose, treat, or act for a patient. A 406
communication may include, but is not limited to, any 407
chiropractic, office, or hospital communication such as a record, 408
chart, letter, memorandum, laboratory test and results, x-ray, 409
photograph, financial statement, diagnosis, or prognosis. 410

(K)(1) Except as provided under division (K)(2) of this 411
section, a critical incident stress management team member 412
concerning a communication received from an individual who 413
receives crisis response services from the team member, or the 414
team member's advice to the individual, during a debriefing 415
session. 416

(2) The testimonial privilege established under division 417
(K)(1) of this section does not apply if any of the following are 418
true: 419

(a) The communication or advice indicates clear and present 420
danger to the individual who receives crisis response services or 421
to other persons. For purposes of this division, cases in which 422
there are indications of present or past child abuse or neglect of 423
the individual constitute a clear and present danger. 424

(b) The individual who received crisis response services 425
gives express consent to the testimony. 426

(c) If the individual who received crisis response services 427
is deceased, the surviving spouse or the executor or administrator 428
of the estate of the deceased individual gives express consent. 429

(d) The individual who received crisis response services 430
voluntarily testifies, in which case the team member may be 431
compelled to testify on the same subject. 432

(e) The court in camera determines that the information 433
communicated by the individual who received crisis response 434
services is not germane to the relationship between the individual 435
and the team member. 436

(f) The communication or advice pertains or is related to any 437
criminal act. 438

(3) As used in division (K) of this section: 439

(a) "Crisis response services" means consultation, risk 440
assessment, referral, and on-site crisis intervention services 441
provided by a critical incident stress management team to 442
individuals affected by crisis or disaster. 443

(b) "Critical incident stress management team member" or 444
"team member" means an individual specially trained to provide 445
crisis response services as a member of an organized community or 446
local crisis response team that holds membership in the Ohio 447
critical incident stress management network. 448

(c) "Debriefing session" means a session at which crisis 449
response services are rendered by a critical incident stress 450
management team member during or after a crisis or disaster. 451

(L)(1) Subject to division (L)(2) of this section and except 452
as provided in division (L)(3) of this section, an employee 453
assistance professional, concerning a communication made to the 454
employee assistance professional by a client in the employee 455
assistance professional's official capacity as an employee 456
assistance professional. 457

(2) Division (L)(1) of this section applies to an employee 458
assistance professional who meets either or both of the following 459

requirements:	460
(a) Is certified by the employee assistance certification commission to engage in the employee assistance profession;	461 462
(b) Has education, training, and experience in all of the following:	463 464
(i) Providing workplace-based services designed to address employer and employee productivity issues;	465 466
(ii) Providing assistance to employees and employees' dependents in identifying and finding the means to resolve personal problems that affect the employees or the employees' performance;	467 468 469 470
(iii) Identifying and resolving productivity problems associated with an employee's concerns about any of the following matters: health, marriage, family, finances, substance abuse or other addiction, workplace, law, and emotional issues;	471 472 473 474
(iv) Selecting and evaluating available community resources;	475
(v) Making appropriate referrals;	476
(vi) Local and national employee assistance agreements;	477
(vii) Client confidentiality.	478
(3) Division (L)(1) of this section does not apply to any of the following:	479 480
(a) A criminal action or proceeding involving an offense under sections 2903.01 to 2903.06 of the Revised Code if the employee assistance professional's disclosure or testimony relates directly to the facts or immediate circumstances of the offense;	481 482 483 484
(b) A communication made by a client to an employee assistance professional that reveals the contemplation or commission of a crime or serious, harmful act;	485 486 487
(c) A communication that is made by a client who is an	488

unemancipated minor or an adult adjudicated to be incompetent and 489
indicates that the client was the victim of a crime or abuse; 490

(d) A civil proceeding to determine an individual's mental 491
competency or a criminal action in which a plea of not guilty by 492
reason of insanity is entered; 493

(e) A civil or criminal malpractice action brought against 494
the employee assistance professional; 495

(f) When the employee assistance professional has the express 496
consent of the client or, if the client is deceased or disabled, 497
the client's legal representative; 498

(g) When the testimonial privilege otherwise provided by 499
division (L)(1) of this section is abrogated under law. 500

(M)(1) Except as provided in divisions (M)(2) to (6) of this 501
section, an accountant, concerning a communication made to the 502
accountant by a client in that relation or the accountant's advice 503
to the client. 504

(2) Division (M)(1) of this section does not apply, and an 505
accountant may testify or may be compelled to testify concerning a 506
communication or advice described in that division, if the client 507
expressly consents to the accountant's testifying or if the client 508
is deceased and the client's surviving spouse or the executor or 509
administrator of the client's estate expressly consents to the 510
accountant's testifying. 511

(3) If the client voluntarily testifies or if the client is 512
deemed to have waived the accountant-client testimonial privilege 513
created by division (M)(1) of this section, that division does not 514
apply, and the accountant may testify or may be compelled to 515
testify on the same subject upon which the client voluntarily 516
testifies or on the same subject with respect to which the client 517
is deemed to have waived the accountant-client testimonial 518
privilege. 519

(4) Division (M)(1) of this section does not apply to work papers or other work product of an accountant. 520
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(5) The accountant-client testimonial privilege created by division (M)(1) of this section does not apply if the client sought or obtained the services of the accountant to enable or aid any person to commit or plan to commit what the client knew or reasonably should have known to be fraud or a crime. 522
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(6) The accountant-client testimonial privilege created by division (M)(1) of this section is not applicable to a client receiving an audit pursuant to sections 117.10 and 117.11 of the Revised Code. 527
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(7) The accountant-client testimonial privilege created by division (M)(1) of this section is not affected by an accountant's participation in a peer review conducted in accordance with section 4701.04 of the Revised Code. 531
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(8) The general assembly hereby declares its intent that, insofar as the provisions of division (M) of this section are similar to the provisions of division (A) of this section, the accountant-client testimonial privilege created by division (M)(1) of this section be construed, interpreted, and applied in a manner consistent with the attorney-client testimonial privilege created under division (A) of this section. 535
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(9) As used in division (M) of this section: 542

(a) "Public record" has the same meaning as in section 149.43 of the Revised Code. 543
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(b) "Work papers or other work product" means any of the following: 545
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(i) Federal, state, or local tax returns; 547

(ii) Audit, review, compilation, or other similar reports; 548

(iii) Financial reports that have been disclosed to third 549

parties, that are public records or otherwise are required by the 550
law of this state or the United States to be made public, or that 551
are mere data compilations; 552

(iv) Financial information that does not include deliberative 553
communications made to an accountant by a client in that relation 554
or the accountant's advice to the client in connection with those 555
deliberative communications and that is not covered by division 556
(M)(9)(b)(i), (ii), or (iii) of this section. 557

(c) "Accountant" means a person who holds a valid permit to 558
practice public accounting under Chapter 4701. of the Revised 559
Code. 560

Section 2. That existing section 2317.02 of the Revised Code 561
is hereby repealed. 562