

I\_135\_0374-9

135th General Assembly  
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Sub. S. B. No. 91

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**A BILL**

To amend section 4113.52 of the Revised Code 1  
regarding fraud, waste, and abuse of public 2  
funds. 3

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

**Section 1.** That section 4113.52 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 4113.52.** (A) (1) (a) All state officials and employees 6  
employed by or appointed to a state agency as defined in 7  
division (D) of section 121.41 of the Revised Code shall report 8  
alleged fraud, theft in office, or the misuse or 9  
misappropriation of public money by a state official or employee 10  
to the inspector general. All other state employees and elected 11  
officials shall report fraud, theft in office, or the misuse or 12  
misappropriation of public money to the auditor of state's 13  
fraud-reporting system under section 117.103 of the Revised 14  
Code. 15

(b) A person is required to make a report under division 16  
(A) (1) (c) of this section if the person meets any of the 17



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<u>following:</u>	18
<u>(i) The person is elected to local public office.</u>	19
<u>(ii) The person is appointed to or within a local public office.</u>	20 21
<u>(iii) The person has a fiduciary duty to a local public office.</u>	22 23
<u>(iv) The person holds a supervisory position within a local public office.</u>	24 25
<u>(v) The person is employed in the department or office responsible for processing any revenue or expenses of the local public office.</u>	26 27 28
<u>(c) If a person identified in division (A) (1) (b) of this section, during the person's term of office or in the course of the person's employment, becomes aware of fraud, theft in office, or the misuse or misappropriation of public money, the person shall timely notify the auditor of state via the auditor of state's fraud-reporting system under section 117.103 of the Revised Code or via other means.</u>	29 30 31 32 33 34 35
<u>(d) A person who serves as legal counsel, or who is employed as legal counsel, for a local public office or a state official or employee employed by or appointed to a state agency is not required to make a report under division (A) (1) (a) or (c) of this section concerning any communication received from a client in an attorney-client relationship.</u>	36 37 38 39 40 41
<u>(e) Divisions (A) (1) (b) and (c) of this section do not apply to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, or to any employee of the prosecuting attorney,</u>	42 43 44 45

director of law, village solicitor, or similar chief legal 46  
officer of a municipal corporation. 47

(f) If an ~~employee~~ a person becomes aware in the course of 48  
the ~~employee's~~ person's employment of a violation of any state 49  
or federal statute or any ordinance or regulation of a political 50  
subdivision that the ~~employee's~~ person's employer has authority 51  
to correct, and the ~~employee~~ person reasonably believes that the 52  
violation is a criminal offense that is likely to cause an 53  
imminent risk of physical harm to persons or a hazard to public 54  
health or safety, a felony, or an improper solicitation for a 55  
contribution, the ~~employee~~ person orally shall notify the 56  
~~employee's~~ person's supervisor or other responsible officer of 57  
the ~~employee's~~ person's employer of the violation and 58  
subsequently shall file with that supervisor or officer a 59  
written report that provides sufficient detail to identify and 60  
describe the violation. If the employer does not correct the 61  
violation or make a reasonable and good faith effort to correct 62  
the violation within twenty-four hours after the oral 63  
notification or the receipt of the report, whichever is earlier, 64  
the ~~employee~~ person may file a written report that provides 65  
sufficient detail to identify and describe the violation with 66  
the prosecuting authority of the county or municipal corporation 67  
where the violation occurred, with a peace officer, with the 68  
inspector general if the violation is within the inspector 69  
general's jurisdiction, with the auditor of state's fraud- 70  
reporting system under section 117.103 of the Revised Code if 71  
applicable, or with any other appropriate public official or 72  
agency that has regulatory authority over the employer and the 73  
industry, trade, or business in which the employer is engaged. 74

~~(b)~~ (g) If an ~~employee~~ a person makes a report under 75  
division ~~(A) (1) (a)~~ (A) (1) (f) of this section, the employer, 76

within twenty-four hours after the oral notification was made or 77  
the report was received or by the close of business on the next 78  
regular business day following the day on which the oral 79  
notification was made or the report was received, whichever is 80  
later, shall notify the ~~employee~~person, in writing, of any 81  
effort of the employer to correct the alleged violation or 82  
hazard or of the absence of the alleged violation or hazard. 83

(2) If ~~an employee~~a person becomes aware in the course of 84  
the ~~employee's~~person's employment of a violation of ~~chapter~~ 85  
Chapter 3704., 3734., 6109., or 6111. of the Revised Code that 86  
is a criminal offense, the ~~employee~~person directly may notify, 87  
either orally or in writing, any appropriate public official or 88  
agency that has regulatory authority over the employer and the 89  
industry, trade, or business in which the employer is engaged. 90

(3) If ~~an employee~~a person becomes aware in the course of 91  
the ~~employee's~~person's employment of a violation by a fellow 92  
employee of any state or federal statute, any ordinance or 93  
regulation of a political subdivision, or any work rule or 94  
company policy of the ~~employee's~~person's employer and the 95  
~~employee~~person reasonably believes that the violation is a 96  
criminal offense that is likely to cause an imminent risk of 97  
physical harm to persons or a hazard to public health or safety, 98  
a felony, or an improper solicitation for a contribution, the 99  
~~employee~~person orally shall notify the ~~employee's~~person's 100  
supervisor or other responsible officer of the ~~employee's~~ 101  
person's employer of the violation and subsequently shall file 102  
with that supervisor or officer a written report that provides 103  
sufficient detail to identify and describe the violation. 104

(4) The reporting requirements under division (A) of this 105  
section are not intended to infringe, and should not be 106

interpreted as infringing on, the constitutional right against 107  
self-incrimination. 108

(B) Except as otherwise provided in division (C) of this 109  
section, no employer shall take any disciplinary or retaliatory 110  
action against an ~~employee-person~~ for making any report 111  
authorized by division (A) (1) or (2) of this section, or as a 112  
result of the ~~employee's-person's~~ having made any inquiry or 113  
taken any other action to ensure the accuracy of any information 114  
reported under either such division. No employer shall take any 115  
disciplinary or retaliatory action against ~~an employee-a person~~ 116  
for making any report authorized by division (A) (3) of this 117  
section if the ~~employee-person~~ made a reasonable and good faith 118  
effort to determine the accuracy of any information so reported, 119  
or as a result of the ~~employee's-person's~~ having made any 120  
inquiry or taken any other action to ensure the accuracy of any 121  
information reported under that division. For purposes of this 122  
division, disciplinary or retaliatory action by the employer 123  
includes, without limitation, doing any of the following: 124

(1) Removing or suspending the ~~employee-person~~ from 125  
employment; 126

(2) Withholding from the ~~employee-person~~ salary increases 127  
or employee benefits to which the ~~employee-person~~ is otherwise 128  
entitled; 129

(3) Transferring or reassigning the ~~employee-person~~; 130

(4) Denying the ~~employee-person~~ a promotion that otherwise 131  
would have been received; 132

(5) Reducing the ~~employee-person~~ in pay or position. 133

(C) ~~An employee-A person~~ shall make a reasonable and good 134  
faith effort to determine the accuracy of any information 135

reported under division (A) (1) or (2) of this section. If the 136  
~~employee-person~~ who makes a report under either division fails 137  
to make such an effort, the ~~employee-person~~ may be subject to 138  
disciplinary action by the ~~employee's-person's~~ employer, 139  
including suspension or removal, for reporting information 140  
without a reasonable basis to do so under division (A) (1) or (2) 141  
of this section. 142

(D) If an employer takes any disciplinary or retaliatory 143  
action against an ~~employee-person~~ as a result of the ~~employee's-~~ 144  
~~person's~~ having filed a report under division (A) of this 145  
section, the ~~employee-person~~ may bring a civil action for 146  
appropriate injunctive relief or for the remedies set forth in 147  
division (E) of this section, or both, within one hundred eighty 148  
days after the date the disciplinary or retaliatory action was 149  
taken, in a court of common pleas in accordance with the Rules 150  
of Civil Procedure. A civil action under this division is not 151  
available to an ~~employee-a person~~ as a remedy for any 152  
disciplinary or retaliatory action taken by an appointing 153  
authority against the ~~employee-person~~ as a result of the 154  
~~employee's-person's~~ having filed a report under division (A) of 155  
section 124.341 of the Revised Code. 156

(E) The court, in rendering a judgment for the ~~employee-~~ 157  
~~person~~ in an action brought pursuant to division (D) of this 158  
section, may order, as it determines appropriate, reinstatement 159  
of the ~~employee-person~~ to the same position that the ~~employee-~~ 160  
~~person~~ held at the time of the disciplinary or retaliatory 161  
action and at the same site of employment or to a comparable 162  
position at that site, the payment of back wages, full 163  
reinstatement of fringe benefits and seniority rights, or any 164  
combination of these remedies. The court also may award the 165  
prevailing party all or a portion of the costs of litigation 166

and, if the ~~employee-person~~ who brought the action prevails in 167  
the action, may award the prevailing ~~employee-person~~ reasonable 168  
attorney's fees, witness fees, and fees for experts who testify 169  
at trial, in an amount the court determines appropriate. If the 170  
court determines that an employer deliberately has violated 171  
division (B) of this section, the court, in making an award of 172  
back pay, may include interest at the rate specified in section 173  
1343.03 of the Revised Code. 174

(F) Any report filed with the inspector general under this 175  
section shall be filed as a complaint in accordance with section 176  
121.46 of the Revised Code. 177

(G) As used in this section: 178

(1) "Contribution" has the same meaning as in section 179  
3517.01 of the Revised Code. 180

(2) "Improper solicitation for a contribution" means a 181  
solicitation for a contribution that satisfies all of the 182  
following: 183

(a) The solicitation violates division (B), (C), or (D) of 184  
section 3517.092 of the Revised Code; 185

(b) The solicitation is made in person by a public 186  
official or by an employee who has a supervisory role within the 187  
public office; 188

(c) The public official or employee knowingly made the 189  
solicitation, and the solicitation violates division (B), (C), 190  
or (D) of section 3517.092 of the Revised Code; 191

(d) The employee reporting the solicitation is an employee 192  
of the same public office as the public official or the employee 193  
with the supervisory role who is making the solicitation. 194

(3) "Misappropriation of public money" means knowingly 195  
using public money or public property for an unauthorized, 196  
improper, or unlawful purpose to serve a private or personal 197  
benefit or interest. 198

(4) "Misuse of public money" means knowingly using public 199  
money or public property in a manner not authorized by law. 200

(5) "Public office" has the same meaning as in section 201  
117.01 of the Revised Code. 202

(H) Nothing in this section shall be construed to limit 203  
the authority of an auditor to make inquiries or interview state 204  
or local government employees or officials or otherwise perform 205  
audit procedures related to fraud during the course of an audit 206  
or attestation engagement. 207

**Section 2.** That existing section 4113.52 of the Revised 208  
Code is hereby repealed. 209