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Testimony in Support of Ohio Senate Bill 72, the Ohio False Claims Act

Chairman Manning Vice Chair Reynolds, Ranking Member Hicks Hudson and Members of the Senate Judiciary Committee:

My name is Marc Dann, Former Attorney General of Ohio, and during my service in the Ohio General Assembly (2003–2007) I sponsored similar legislation. As AG I supported a state False Claims Act. I appreciate the opportunity to testify in strong support of Senate Bill 72, which would enact Ohio’s False Claims Act and empower the State of Ohio to more effectively identify, deter, and remediate waste, fraud, and abuse in programs funded by Ohio taxpayers. [1]

Building on Proven Success and Ohio’s Prior Legislative Record

As my colleagues and I have discussed this bill over the years, We’ve emphasized that the watchwords “waste, fraud, and abuse” have been attached to virtually every discussion of government spending since the founding of our Republic. [2] From the federal government’s enactment of the False Claims Act in 1863—often called the “Lincoln Law”—to the modern era’s robust qui tam enforcement, history has validated Senator Jacob Howard’s insight that incentivizing insiders to come forward is “the safest and most expeditious way...of bringing rogues to justice.” [3]

The experience under the federal False Claims Act speaks for itself. [4] Whistleblowers have been responsible for the vast majority of recoveries, billions of dollars have been returned to taxpayers, and enforcement has reached complex sectors where fraud is most pernicious, including healthcare, procurement, customs, and pandemic-related programs. [5] More than thirty states have followed suit. [4] Ohio should not lag behind. [6] Senate Bill 72 gives this General Assembly the opportunity to adopt a tailored and effective state False Claims Act that complements federal enforcement, addresses Ohio-specific risks, and protects the integrity of state funds.

SB 72's Core Mechanisms: Robust, Targeted, and Balanced

SB 72 adopts the essential architecture that has made false claims laws effective nationwide while tailoring remedies and safeguards to Ohio's needs:

First, SB 72 defines "claims" broadly to reach requests or demands for money or property where the state funds any portion or reimburses any part. [7] This ensures coverage of the full spectrum of state-administered programs, grants, and contracts, including areas where fraudulent schemes often migrate when enforcement gaps are perceived.

Second, the bill's liability provisions are comprehensive. They prohibit knowingly presenting false claims, using false records, conspiring to defraud, improperly handling state property, certifying receipts without knowledge, purchasing or pledging public property unlawfully, and concealing or decreasing obligations owed to the state. [8] Critically, SB 72 addresses kickbacks and improper remuneration tied to Medicaid and workers' compensation, targeting conduct that distorts medical decision-making and inflates costs borne by Ohio's taxpayers. [9]

Third, SB 72 incorporates a civil penalty framework and treble damages, the tried-and-true enforcement lever that both deters misconduct and makes the state whole. [10] At the same time, it incentivizes early self-reporting and cooperation by allowing reduced damages where violators promptly disclose and fully assist the Attorney General before any action commences. [11] This balanced approach drives compliance while creating off-ramps for bad behavior.

Fourth, SB 72 empowers the Attorney General to diligently investigate and prosecute violations, including through civil investigative demands for documents, interrogatories, and testimony. [12] These tools—paired with confidentiality protections—are vital for complex, document-intensive matters and for safeguarding sensitive information during active investigations. [13]

Fifth, the bill includes a qui tam mechanism that allows private persons to bring actions on behalf of the state under seal, with the Attorney General able to intervene and assume primacy. [14] Where the state proceeds, the relator receives between fifteen and twenty-five percent of the recovery, calibrated by the relator's contribution. [15] Where the state declines and the relator successfully prosecutes, the share increases to between twenty-five and thirty percent. [16] These provisions track national best practices and ensure that insiders with direct knowledge have a meaningful incentive to step forward. [17]



Sixth, the bill includes prudent gatekeeping: the public disclosure bar prevents duplicative suits based on publicly disclosed allegations unless the relator has direct and independent knowledge, and it bars actions based on matters already being litigated by the state. [18] Courts may limit participation to avoid undue burden or harassment, and defendants may recover fees in clearly frivolous or vexatious cases. [19] These safeguards protect against abuse and ensure resources are directed to substantiated claims. [20]

Seventh, SB 72 provides robust whistleblower protections. [21] Employees who suffer retaliation for lawful acts in furtherance of a False Claims Act case are entitled to reinstatement, double back pay with interest, special damages, and attorney's fees. [22] These protections address the central reason insiders hesitate to report misconduct: the fear of career-ending reprisals. Shielding whistleblowers makes enforcement possible; rewarding them makes enforcement sustainable.

Finally, SB 72 ensures practical enforcement. It sets a reasonable statute of limitations, establishes appropriate venue, confirms the preponderance-of-the-evidence standard, and estops defendants who have been criminally convicted from relitigating the essential elements in parallel civil actions. [23] Together with confidentiality provisions for investigative materials and a process for returning documents when matters are resolved, SB 72 reflects experienced, careful legislative craftsmanship.

Why Ohio Needs SB 72 Now

No Attorney General's office, no matter how capable or committed, can police—on its own—an \$80-plus billion budget and a Medicaid program exceeding \$20 billion in scale. [24] The reality is that fraud thrives in complexity, capitalizes on programmatic growth, and exploits enforcement bottlenecks. [25] SB 72 multiplies enforcement capacity at no cost to taxpayers by deputizing knowledgeable insiders and private counsel to act as force multipliers. [26] It does not displace the Attorney General; it empowers the Attorney General with additional eyes, ears, and hands to uncover wrongdoing, recover losses, and deter future misconduct. [27]

We should also be candid about the risk environment. [25] Where states lack a false claims framework, unscrupulous actors view that vacuum as an opportunity. [6] Ohio's procurement processes, grantmaking, healthcare expenditures, and benefits programs are all potential targets for sophisticated schemes. [4] Enacting SB 72 sends a clear message: Ohio will match national



best practices, protect whistleblowers, and pursue restitution and penalties aggressively and fairly.

Conclusion

SB 72 is a well-designed, balanced, and urgently needed piece of legislation. It aligns Ohio with proven national models, equips the Attorney General with essential investigative tools, protects and incentivizes whistleblowers, and erects guardrails to deter frivolous actions while prioritizing meritorious claims. Above all, it advances the fundamental objective of any government entrusted with public funds: to spend wisely, safeguard integrity, and hold bad actors to account.

For these reasons, I respectfully urge the Committee to favorably report SB 72. Thank you for your consideration, and I would be pleased to answer any questions.

References

1. Cosponsors: Senators Weinstein, Smith, Craig A [BILL To enact sections 2749.01, 2749.02, 2749.03, 2749.04, 2749.05, 2749.06, 2749.07, 2749.08, 2749.09, and 2749.10 of the Revised Code regarding filing false or fraudulent claims with the state and defrauding the state of money or property](#). BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: Section 1. That sections 2749.01, 2749.02, 2749.03, 2749.04, 2749.05, 2749.06, 2749.07, 2749.08, 2749.09, and 2749.10 of the Revised Code be enacted to read as follows: Sec. 2749.01. As used in this chapter: (A) "Claim" includes any request or demand, whether under (sb72_00_IN.pdf)
2. testify in favor of HB 533, the Ohio False Claims Act. [Since the founding of our republic, the catch phrase, "waste, fraud, and abuse" has been attached to nearly every discussion about government spending](#). In his book "George Washington's Expense Account," author Marvin Kitman shows how the man who could not tell a lie indulges his insatiable lust for fine food and drink, extravagant clothing, and lavish accommodations by padding his wartime expense account. During the Civil War unscrupulous contractors sold the Union Army so many broken down horses and mules, faulty rifles, canons and ammunition, and rancid (DLF 2022 11 04 BDF Testimony on HB 533.docx)

3. and rancid rations that Congress was forced to act. In 1863 the House and Senate passed, and President Lincoln signed the federal False Claims Act (FCA) which is often referred to as the "Lincoln Law" for obvious reasons. Senator Jacob M. Howard of Michigan inserted the qui tam or whistleblower provisions into the statute because he believed rewarding those who had knowledge of waste, fraud, and abuse was "the safest and most expeditious way...of bringing rogues to justice." History has proved him right. As of 2019, more than 72 percent of cases brought under the FCA have been (DLF 2022 11 04 BDF Testimony on HB 533.docx)

4. customs and tax fraud, and the misuse of PPP loans. Given the demonstrated effectiveness and success of the federal FCA, it should come as no surprise that more than 30 states across the nation have adopted false claim acts that include qui tam provisions. What is surprising is that Ohio has failed to take advantage of this proven mechanism for reigning in waste, fraud, and abuse and holding bad actors accountable for ripping off Ohio taxpayers. House Bill 533 gives the members of the General Assembly and the governor the opportunity to place this powerful weapon in our (DLF 2022 11 04 BDF Testimony on HB 533.docx)

5. they are justly rewarded under the False Claims Act ." In 2021 alone, more than \$5 billion was returned to taxpayers as a result of FCA settlements and judgements in cases involving health care and Medicare fraud, unlawful kickbacks, procurement fraud, customs and tax fraud, and the misuse of PPP loans. Given the demonstrated effectiveness and success of the federal FCA, it should come as no surprise that more than 30 states across the nation have adopted false claim acts that include qui tam provisions. What is surprising is that Ohio has failed to take advantage of this (DLF 2022 11 04 BDF Testimony on HB 533.docx)

6. false claim acts that include qui tam provisions. What is surprising is that Ohio has failed to take advantage of this proven mechanism for reigning in waste, fraud, and abuse and holding bad actors accountable for ripping off Ohio taxpayers. House Bill 533 gives the members of the General Assembly and the governor the opportunity to place this powerful weapon in our state's legal arsenal. While I do not for a moment dismiss or discount the Attorney General's efforts to combat fraud, the fact is he and his staff do not have the capacity to police the state's (DLF 2022 11 04 BDF Testimony on HB 533.docx)

7. follows: Sec. 2749.01. As used in this chapter: (A) "Claim" includes any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the state provides any portion of the money or

property that is requested or demanded or if the state will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. (B) "Documentary material" includes the original or any 1 2 3 4 5 6 7 8 9 10 11 12 13 14 (sb72_00_IN.pdf)

8. division (D)(1) of this section. Sec. 2749.02. (A) No person shall do any of the following: (1) Knowingly present, or cause to be presented, to an 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 S. B. No.72 Page 3 As Introduced officer or employee of the state or to the state a false or misleading claim for payment or approval; (2) Knowingly make, use, or cause to be made or used a false record or statement to get the (sb72_00_IN.pdf, Page 1)

9. pay or transmit money or property to the state; (8) Knowingly solicit, receive, offer to pay, or pay a kickback, bribe, rebate, or any other form of remuneration, directly or indirectly, overtly or covertly, in cash or in kind, for referring an individual to a health care provider or managed care organization or to a third person for the purpose of referral of the individual by the third person to a health care 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66..... (sb72_00_IN.pdf, Page 2)

10. Except as provided in division (B)(2) of this section, whoever violates division (A) of this section is liable to the state for a civil penalty of not less than five thousand dollars and not more than ten thousand dollars for each false or misleading claim, plus three times the amount of damages that the state sustains because of the violation. (2) Whoever violates division (A) of this section is liable to the state for a civil penalty of not less than two times the amount of damages that the state sustains because of the violation, plus the costs (sb72_00_IN.pdf, Page 3)

11. the state sustains because of the violation. (2) W hoever violates division (A) of this section is liable to the state for a civil penalty of not less than two times the amount of damages that the state sustains because of the violation, plus the costs of a civil action brought to recover any such penalty or damages, if the court finds all of the following: (a) The person committing the violation furnished 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 (sb72_00_IN.pdf, Page 3)

12. Commencement of any other action otherwise authorized by law. Sec. 2749.03. (A) The attorney general diligently shall investigate violations of section 2749.02 of the Revised Code. If the attorney general finds that a person has violated or is violating that section, the

attorney general may bring a civil action under this section against the person. (B)(1) A person may bring a civil action for a violation of section 2749.02 of the Revised Code on behalf of the person and on behalf of the state. A person may not bring an action under this division against the state or (sb72_00_IN.pdf, Page 4)

13. are paid to witnesses in the court of common pleas. Sec. 2749.10. (A) Except as provided in this division, documentary material, answers to interrogatories, or transcripts of oral testimony received under section 2749.06 of the Revised Code, or copies of documentary material, answers to interrogatories, or transcripts of oral testimony so received, while in the possession of the attorney general, are not available for examination by any individual other than an employee of the attorney general. This prohibition on the availability of material, answers, or transcripts does not apply if the person who produced the material, answers, or (sb72_00_IN.pdf, Page 19)

14. civil action under this section against the person . (B)(1) A person may bring a civil action for a violation of section 2749.02 of the Revised Code on behalf of the person and on behalf of the state. A person may not bring an action under this division against the state or a political subdivision, any department, board, office, commission, agency, institution, or other instrumentality of the state or a political subdivision, or any officer or employee of the state or a political subdivision. A person shall bring the action in the name of the state..... (sb72_00_IN.pdf, Page 4)

15. (G)(1) Except as provided in division (G)(1) of this section, if the state proceeds with an action brought by a person under division (B) of this section, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action. If the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, (sb72_00_IN.pdf, Page 8)

16. 250 251 S. B. No. 72 Page 10 As Introduced (2) If the state does not proceed with an action brought by a person under division (B) of this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages..... (sb72_00_IN.pdf, Page 9)

17. penalty proceeding in which the state is already a party . (2) In no event may a person bring an action under this section based on the public disclosure of allegations or transactions in a criminal, civil, legislative, or administrative hearing, report, audit, or investigation, or

from the news media, unless the person bringing the action has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action based on the information under this section. This division does not apply to the bringing (sb72_00_IN.pdf, Page 10)

18. vexatious, or brought primarily for purposes of harassment . (H)(1) In no event may a person bring an action under division (B) of this section that is based on allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party. (2) In no event may a person bring an action under this section based on the public disclosure of allegations or transactions in a criminal, civil, legislative, or administrative hearing, report, audit, or investigation, or from the news media, unless the person bringing (sb72_00_IN.pdf, Page 10)

19. (4) On a showing by the state that unrestricted participation during the course of the litigation by the person initiating 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 , including all of the following: (a) Limiting the number of witnesses the person may call; (b) Limiting the length of the testimony of witnesses; (c) Limiting the person's cross-examination of witnesses; (d) Otherwise limiting the participation by the person in the (sb72_00_IN.pdf, Page 6)

20. information assembled in the course of the investigation . (D) Documentary material, answers to written interrogatories, and oral testimony provided under a civil investigative demand issued under section 2749.06 of the Revised Code are not public records and are exempt from disclosure under section 149.43 of the Revised Code. 607 608 609 610 611 612 613 614 615 616 617 618 619 620..... (sb72_00_IN.pdf, Page 21)

21. person incurs in bringing an action under this section . (J) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, is entitled to all relief necessary to make the employee whole..... (sb72_00_IN.pdf, Page 10)

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23. (D) A final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether on a verdict after trial or on a plea of guilty or nolo contendere, estops the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under division (A) or (B) of section 2749.03 of the Revised Code. Sec. 2749.05. (A) Except as provided in division (B) of this section, an action under section 2749.03 of the Revised Code shall not be subject to summary judgment. (sb72_00_IN.pdf, Page 11)

24. discount the Attorney General's efforts to combat fraud, the fact is he and his staff do not have the capacity to police the state's \$80.8 billion budget, including the \$21 billion that is devoted to Medicaid. Passing HB 533 will quickly and exponentially increase the number of cops on the beat as emboldened insiders and private attorneys join the battle alongside the AG's staff—at no cost to the state or its citizens. Let's be honest, we all know that at this very moment someone working for a state contractor or vendor is involved in or aware of illegal activity or fraudulent spending that will never be detected because that person is afraid of losing their job or being retaliated against in some other way if they come forward..... (DLF 2022 11 04 BDF Testimony on HB 533.docx)

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