

Ohio False Claims Act, S.B. 72

TESTIMONY OF ANN LUGBILL, ESQ.¹

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My testimony is in support of the Ohio False Claims Act. For decades, I have practiced regularly in complex litigation and, particularly representing whistleblowers in federal False Claims Act cases, both in Ohio and other states. I co-authored a legal text on the False Claims Act and another on Ohio employment law. Two recent cases involved Ohio Medicaid fraud in providing home healthcare services in violation of law, thereby cheating both patients and Ohio Medicaid.

The Ohio General Assembly is to be complimented for exercising leadership on this bill. State False Claims Act bills are a strong deterrent for contractors tempted to cheat state and local governments if they think they can “get away with it.” **The bill evens the playing field for the large majority of Ohio businesses who do not engage in fraud and abuse of government funds.** This bill prevents fraudsters from having an unfair advantage over honest providers. Second, an Ohio False Claims Act will encourage honest citizens to “blow the whistle” on fraud, protect them from employment retaliation, and provide a specific mechanism for Ohio and local governments to recover against fraudulent contractors (most from out of state).

An Ohio law will allow the state to collect double and treble damages in many federal False Claims Act cases filed nationwide, like recent lawsuits against Medicaid providers and pharmaceutical companies paying multi-million dollar

¹ Please feel free to contact me with questions about the proposed law, how it works, and what it will and will not do. My private practice since 1984 has been in federal False Claims Act, state and federal whistleblower law, and other complex cases. Previously, I was an attorney with the U.S. Department of Labor, which has jurisdiction over many federal whistleblower retaliation statutory schemes. I co-authored an Ohio employment law practice manual, *Representing the Terminated Employee in Ohio and False Claims Act: Whistleblower Litigation* and have published other employment law and False Claims Act articles. I chaired the Cincinnati Bar Association Grievance Committee, investigating and prosecuting attorneys who violated lawyer ethics laws.

I have been counsel in over 50 federal False Claims Act *qui tam* cases, with cases throughout Ohio, including Cleveland, Akron, Toledo, Columbus, Cincinnati, and in other states. Several clients' cases were featured in the media, including a 60 Minutes (Mike Wallace) show, “Made in the U.S.A.,” involving a contractor that sold expensive machine tools to the Defense Department, falsely claiming that they were “made in the U.S.A.,” when in fact they were substantially manufactured in Japan.

damages. A majority of the states, including California, New York, Texas, Arkansas, Virginia, Florida, Nevada, Michigan, Tennessee, and Indiana, have state False Claims Act statutes. Anti-fraud statutes are bipartisan.

This bill is a cost-effective method to prevent and ferret out fraud against the State of Ohio by drug companies that overcharge, Medicaid providers who double-bill, and contractors who cheat state, local and municipal governments. Even rural Ohio townships like those where I grew up in Fulton County can benefit from this law. With local governments straining to pay bills, False Claims Act laws enable them to recover funds owed, plus penalties and treble damages, attorneys fees and costs. This is a strong deterrent to cheating the government as it makes the government “whole.” Otherwise, state and local governments must bring a breach of contract action or difficult to prove fraud action. By including *qui tam* and employee whistleblower provisions, this law removes a major obstacle that the government faces in discovering and investigating fraud, that is fear by witnesses and whistleblowers that they will be fired if they truthfully reported fraud.

The current federal False Claims Act was enacted during the Civil War and was known as the “**Lincoln law.**” In 1986, under leadership of **Senator Charles Grassley (R-Iowa)**, later chair of the Senate Finance and Judiciary Committees, amendments were signed into law by **President Reagan** that modernized the Lincoln Law. How does the False Claims Act *qui tam* law work? It is based upon hundreds of years of English and American law. “**Qui tam**” is from a Latin phrase meaning “**he who sues on behalf of the king.**” A primary way that our early American government, and the English kings before them, enforced laws and collected revenues was by empowering private citizens to sue on behalf of the government to recover unpaid customs duties, taxes, etc. Our nation’s founders had little money to run the government. Eleven laws passed by the very first U.S. Congress were *qui tam* statutes.

The Ohio False Claims Act legislation is closely patterned on the federal False Claims Act, as are other states’ *qui tam* laws. The bill would work well in companion with the federal False Claims Act. It provides that those who knowingly or intentionally make, use, or present a false or fraudulent claim or statement to get the government to pay money or to avoid paying the government money are liable for damages. It prohibits bribes, kickbacks, and other inducements related to spending public funds. Suits for violations may be initiated either by a private citizen on behalf of the government **OR** by the government itself, through the Attorney General under federal law and, under this bill, by the Ohio Attorney General. *Qui tam* suits filed by a private citizen, **known as a “relator,”** are sealed so that the government may investigate claims, whether undercover or with subpoena powers, while deciding whether to intervene in the action and prosecute it.

Proof of a federal or proposed Ohio False Claims Act violation is by a simple preponderance of the evidence. The damages provisions provide for three times actual damages. The federal law imposes automatic inflation-adjusted penalties of \$13,946 to \$14,308 per claim, with a maximum penalty of \$28,619 per claim for each false claim submitted by the wrongdoer, with the lower penalty range reserved for cooperative defendants. The government's damages can include its attorneys fees and investigatory costs. The relator's reward is decided by the court, but is generally 15% to 25% of the recovery, as in the federal law. A wrongdoing defendant pays the whistleblower's attorneys fees and costs.

Special provisions limit *qui tam* actions to only bona fide whistleblower cases bringing to the government's attention wrongdoing not previously known. A settlement is final only if a judge finds it "fair, adequate, and reasonable" (the same standard used in class action settlements).

The Ohio False Claims Act is a reasoned response to the need to find additional funds to pay for state services in this time of budget shortfalls and to recover the 10 to 20 cents of every health care dollar wasted on fraud or unnecessary services. Cheating state and local government can take many forms:

- Billing for defective goods and services
- Delivering products or services different from what the government paid for
- Overcharging for prescription drugs and other purchases
- Billing for patients who never showed up
- Billing for services never provided
- Converting government property to private use
- Providing government-paid medical services to ineligible patients
- Paying bribes to obtain government business or get preferential treatment in contract awards.

As indicated by the January 2, 2025 Legislative Service Commission report entitled "Ohio's Medicaid Financial Landscape and FMAP," Ohio's general revenue fund budget is dominated by Medicaid and education spending. The report states that "Medicaid accounted for 47.6% of total GRF spending" in FY 2024. Ohio Medicaid expenditures from all sources totalled \$38.88 billion and rises annually. U.S. prescription drug spending is over 10% of total U.S. health care expenses and in Ohio Medicaid drug costs are rising at a rate of over 8%, totalling over \$ 6 billion in 2024. Hospitals are 30% of total U.S. healthcare costs. An Ohio False Claims Act is one important step in curtailing increased Medicaid expenses.