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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**S.B. 72**  
**136<sup>th</sup> General Assembly**

## Fiscal Note & Local Impact Statement

[Click here for S.B. 72's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Sens. Hicks-Hudson and DeMora

**Local Impact Statement Procedure Required:** No

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### Highlights

- The Attorney General may experience an increase in workload and associated administrative costs. The magnitude of that increase will largely depend upon the number of investigations and lawsuits initiated by the Attorney General, as well as the number of private lawsuits that are filed in which the Attorney General may intervene. The Attorney General should be able to absorb any increase with existing staff and resources.
- The state will likely recoup some revenues as a result of successfully litigating fraudulent or false claims against the state. How much money the state might collect annually in the form of damages, civil penalties, and reimbursable expenses from the proceeds of a suit or settlement is uncertain.
- The bill may bring Ohio into compliance with certain provisions of the federal Deficit Reduction Act of 2005. The federal law provides that states with false claims acts that are at least as strong as the federal False Claims Act may retain an additional 10% of certain recoveries under the federal Act.

### Detailed Analysis

The bill prohibits a person from filing specified false or fraudulent claims with the state or defrauding the state of money or property. Enforcement duties are prescribed to the Ohio Attorney General, but provisions of the bill also allow a private individual with knowledge of a false claim to sue on behalf of the state to recover funds paid as a result of the false claim. The state may intervene in such private filings and proceed with the action. If the suit is successful, the private individual who initially brought the claim may be awarded a percentage of the funds recovered. The bill also contains antiretaliation protections for employees who may bring such cases forward or participate in the investigations.

The bill's prohibitions against false or fraudulent claims would apply to fraud in a broad range of state-funded programs and would affect all persons doing business with the state, including health care professionals claiming reimbursement, government contractors, and grant recipients. These prohibitions add to existing Ohio law that aids in the prevention of fraud against the state government.<sup>1</sup> An investigation or lawsuit filed under the bill does not prohibit any other action otherwise allowed by continuing law, including suits for specific false and fraudulent Medicaid claims.

## **State fiscal effects**

### **Attorney General**

The bill requires the Attorney General to diligently investigate suspected violations of its prohibitions. If a violation is suspected, the Attorney General may initiate civil enforcement proceedings, including the filing of a lawsuit in accordance with the bill.

The Attorney General may also intervene in a lawsuit filed in the state's name by a private individual. Generally, the Attorney General has 60 days after receiving such a complaint and corresponding material evidence and information to intervene. Such an action would be brought in the Franklin County Court of Common Pleas; in the court of common pleas of any county in which the defendant or any one of multiple defendants can be found, resides, or transacts business; or in the court of common pleas of any county in which any of the alleged violations occurred.

The additional authority to initiate an investigation or lawsuit, or intervene with an action brought by a private individual will increase the Attorney General's workload and associated administrative costs. According to the Attorney General, the magnitude of that increase is not expected to be significant and any increase should be absorbed by existing staff and resources. It appears unlikely that a large number of new civil enforcement actions will be generated as a result of the bill's prohibitions. Instead, the ability to investigate and enforce violations of the bill will potentially allow the Attorney General to more quickly resolve cases of false claims. For example, under current law and practice, the official administering a state program typically must request the Attorney General to open a case for fraud prior to the Attorney General initiating a case. Ohio law currently does not provide for civil remedies or avenues for private individuals who wish to bring a lawsuit on behalf of the state. Alleged complaints are likely referred to the appropriate state agency for investigation. For these new privately initiated civil complaints, the Attorney General would likely intervene in only the most meritorious cases. There would be work involved to review those complaints and potentially intervene.

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<sup>1</sup> Some existing protections include: (1) Medicaid antifraud provisions to prevent the submission of false or fraudulent claims, (2) falsification provisions related to false claims to secure the payment of unemployment compensation; Ohio Works First; prevention, retention, and contingency benefits and services; disability financial assistance; retirement benefits or health care coverage from a state retirement system; economic development assistance; or other benefits administered by a governmental agency or paid out of a public treasury, and (3) whistleblower protection provisions to protect employees who report violations and misuse of state resources.

## **Civil penalties**

Under the bill, a person who violates a prohibition is liable to the state for a civil penalty ranging from \$5,000 to \$10,000 for each false or misleading claim, plus three times the amount of damages that the state sustains because of the violation. However, the penalties are lesser for those who fully cooperate with a state investigation, as specified by the bill – up to two times the amount of damages that the state sustains because of the violation, plus the costs brought to recover any such penalty or damages. Information on how awards from a private lawsuit are distributed between the state and a private person can be found in the [LSC bill analysis](#).

By allowing state agencies, represented by the Attorney General, to recoup damages and civil penalties from persons or entities who have defrauded the state (beyond what is already permitted under current law), additional monetary recoveries may be generated for deposit in the state treasury to the credit of various funds.

Additionally, the bill may bring Ohio into compliance with certain provisions of the federal Deficit Reduction Act of 2005. The federal law provides that states with false claims acts that are at least as strong as the federal False Claims Act may retain an additional 10% of their recoveries under the Act.

## **Local fiscal effects**

To the degree that the bill has any local fiscal effects, such effects would materialize in the form of increased work and related operating costs for the general division of courts of common pleas, which have original jurisdictional authority over all civil cases in which the sum or matter in dispute exceeds \$15,000. The magnitude of those fiscal effects will be dependent upon the number of new case filings generated by the bill's enactment. While it is uncertain how many cases could be created, the additional workload and costs are likely to be minimal, and could be offset to some degree by the collection of related court costs and fees. Cases could be generated as a result of filings made by the Attorney General, private individuals, and individuals seeking whistleblower remedies. These additional civil remedies are discussed in more detail below.

### **Attorney General-initiated lawsuits**

If the Attorney General pursues additional claims for recovery on behalf of the state, various courts of common pleas across the state may experience an increase in their civil dockets, as well as corresponding increases in costs for court time and potential jury trials. It appears likely that most of these suits would be filed in the Franklin County Court of Common Pleas if pursued by the Attorney General.

### **Private individual-initiated lawsuits**

LBO has not collected any evidence suggesting that a significant number of private individuals might file a private lawsuit in any given court of common pleas. As mentioned, the Attorney General will likely take on only the strongest cases. There are also provisions to discourage the filing of meritless claims and frivolous suits. For instance, when the defendant prevails in a suit where the state did not intervene, the court may award the defendant reasonable attorney's fees and expenses on finding the suit was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. Thus, any additional annual cost for

a court of common pleas to adjudicate such matters (including a jury trial) seems unlikely to exceed minimal.

### **Relief for employer's discriminatory acts**

The bill provides what might be termed “whistleblower protection” if an employee is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by the employee’s employer and is entitled to all relief necessary to make the employee whole. An employee may bring an action for such relief in the appropriate court of common pleas.