

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 559 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert the following:
- 3 "IC 5-11-5.7 IS ADDED TO THE INDIANA CODE AS A NEW
- 4 CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:
- 5 **Chapter 5.7. Medicaid False Claims and Whistleblower**
- 6 **Protection**
- 7 **Sec. 1. (a) This chapter applies only to claims, requests,**
- 8 **demands, statements, records, acts, and omissions made or**
- 9 **submitted in relation to the Medicaid program described in**
- 10 **IC 12-15.**
- 11 **(b) The following definitions apply throughout this chapter:**
- 12 **(1) "Claim" means a request or demand for money or**
- 13 **property, whether under a contract or otherwise, and whether**
- 14 **or not the state has title to the money or property, that:**
- 15 **(A) is presented to an officer, employee, or agent of the**
- 16 **state; or**
- 17 **(B) is made to a contractor, grantee, or other recipient, if**
- 18 **the money or property is to be spent or used on the state's**
- 19 **behalf or to advance a state program or interest, and if the**
- 20 **state:**
- 21 **(i) provides or has provided any part of the money or**
- 22 **property that is requested or demanded; or**
- 23 **(ii) will reimburse the contractor, grantee, or other**
- 24 **recipient for any part of the money or property that is**

- 1 requested or demanded.
- 2 (2) "Documentary material" means:
- 3 (A) the original or a copy of a book, record, report,
- 4 memorandum, paper, communication, tabulation, chart, or
- 5 other document;
- 6 (B) a data compilation stored in or accessible through
- 7 computer or other information retrieval systems, together
- 8 with instructions and all other materials necessary to use
- 9 or interpret the data compilations; and
- 10 (C) a product of discovery.
- 11 (3) "Investigation" means an inquiry conducted by an
- 12 investigator to ascertain whether a person is or has been
- 13 engaged in a violation of this chapter.
- 14 (4) "Knowing", "knowingly", or "known" means that a
- 15 person, regarding information:
- 16 (A) has actual knowledge of the information;
- 17 (B) acts in deliberate ignorance of the truth or falsity of the
- 18 information; or
- 19 (C) acts in reckless disregard of the truth or falsity of the
- 20 information;
- 21 and requires no proof of specific intent to defraud.
- 22 (5) "Material" means having a natural tendency to influence,
- 23 or be capable of influencing, the payment or receipt of money
- 24 or property.
- 25 (6) "Obligation" means an established duty, whether or not
- 26 the duty is fixed, arising from:
- 27 (A) an express or implied contractual relationship;
- 28 (B) a grantor-grantee relationship;
- 29 (C) a licensor-licensee relationship;
- 30 (D) a fee-based or similar relationship;
- 31 (E) a statute;
- 32 (F) a rule or regulation; or
- 33 (G) the retention of an overpayment.
- 34 (7) "Person" includes a natural person, a corporation, a firm,
- 35 an association, an organization, a partnership, a limited
- 36 liability company, a business, or a trust.
- 37 (8) "Product of discovery" means the original or duplicate of:
- 38 (A) a deposition;
- 39 (B) an interrogatory;
- 40 (C) a document;
- 41 (D) a thing;
- 42 (E) a result of the inspection of land or other property; or
- 43 (F) an examination or admission;
- 44 that is obtained by any method of discovery in a judicial or an
- 45 administrative proceeding of an adversarial nature. The term
- 46 includes a digest, an analysis, a selection, a compilation, a
- 47 derivation, an index, or another method of accessing an item

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listed in this subdivision.

(9) "State" means Indiana or any agency of state government.
The term does not include a political subdivision.

Sec. 2. (a) This section does not apply to a claim, record, or statement concerning income tax (IC 6-3).

(b) A person who:

- (1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement that is material to a false or fraudulent claim;
- (3) has possession, custody, or control of property or money used, or to be used, by the state, and knowingly delivers, or causes to be delivered, less than all of the money or property;
- (4) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;
- (5) knowingly buys or receives, as a pledge of an obligation or debt, public property from an employee who is not lawfully authorized to sell or pledge the property;
- (6) knowingly:
 - (A) makes, uses, or causes to be made or used, a false record or statement concerning an obligation to pay or transmit money or property to the state; or
 - (B) conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state;
- (7) conspires with another person to perform an act described in subdivisions (1) through (6); or
- (8) causes or induces another person to perform an act described in subdivisions (1) through (6);

is, except as provided in subsection (c), liable to the state for a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000), as adjusted by the federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, Public Law 101-410), and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

(c) If the factfinder determines that the person who violated this section:

- (1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;
- (2) fully cooperated with the investigation of the violation;

and

1 (3) did not have knowledge of the existence of an investigation,
 2 a criminal prosecution, a civil action, or an administrative
 3 action concerning the violation at the time the person
 4 provided information to state officials;
 5 the person is liable for a penalty of not less than two (2) times the
 6 amount of damages that the state sustained because of the
 7 violation. A person who violates this section is also liable to the
 8 state for the costs of a civil action brought to recover a penalty or
 9 damages.

10 Sec. 3. (a) The:

11 (1) attorney general; and

12 (2) inspector general;

13 have concurrent jurisdiction to investigate a violation of section 2
 14 of this chapter.

15 (b) If the attorney general discovers a violation of section 2 of
 16 this chapter, the attorney general may bring a civil action under
 17 this chapter against a person who may be liable for the violation.

18 (c) If the inspector general discovers a violation of section 2 of
 19 this chapter, the inspector general shall certify this finding to the
 20 attorney general. The attorney general may bring a civil action
 21 under this chapter against a person who may be liable for the
 22 violation.

23 (d) If the attorney general or the inspector general is served by
 24 a person who has filed a civil action under section 4 of this chapter,
 25 the attorney general has the authority to intervene in that action as
 26 set forth in section 4 of this chapter.

27 (e) If the attorney general:

28 (1) is disqualified from investigating a possible violation of
 29 section 2 of this chapter;

30 (2) is disqualified from bringing a civil action concerning a
 31 possible violation of section 2 of this chapter;

32 (3) is disqualified from intervening in a civil action brought
 33 under section 4 of this chapter concerning a possible violation
 34 of section 2 of this chapter;

35 (4) elects not to bring a civil action concerning a possible
 36 violation of section 2 of this chapter; or

37 (5) elects not to intervene under section 4 of this chapter;

38 the attorney general shall certify the attorney general's
 39 disqualification or election to the inspector general.

40 (f) If the attorney general has certified the attorney general's
 41 disqualification or election not to bring a civil action or intervene
 42 in a case under subsection (e), the inspector general has authority
 43 to:

44 (1) bring a civil action concerning a possible violation of
 45 section 2 of this chapter; or

46 (2) intervene in a case under section 4 of this chapter.

47 (g) The attorney general shall certify to the inspector general

1 the attorney general's disqualification or election under subsection
2 (e) in a timely fashion, and in any event not later than:

- 3 (1) sixty (60) days after being served, if the attorney general
4 has been served by a person who has filed a civil action under
5 section 4 of this chapter; or
6 (2) one hundred eighty (180) days before the expiration of the
7 statute of limitations, if the attorney general has not been
8 served by a person who has filed a civil action under section
9 4 of this chapter.

10 (h) A civil action brought under section 4 of this chapter may be
11 filed in:

- 12 (1) a circuit or superior court in Marion County; or
13 (2) a circuit or superior court in the county in which a
14 defendant or plaintiff resides.

15 (i) The state is not required to file a bond under this chapter.

16 Sec. 4. (a) A person may bring a civil action for a violation of
17 section 2 of this chapter on behalf of the person and on behalf of
18 the state. The action:

- 19 (1) must be brought in the name of the state; and
20 (2) may be filed in a circuit or superior court in:
21 (A) the county in which the person resides;
22 (B) the county in which a defendant resides; or
23 (C) Marion County.

24 (b) Except as provided in section 5 of this chapter, an action
25 brought under this section may be dismissed only if:

- 26 (1) the attorney general or the inspector general, if applicable,
27 files a written motion to dismiss explaining why dismissal is
28 appropriate; and
29 (2) the court issues an order:
30 (A) granting the motion; and
31 (B) explaining the court's reasons for granting the motion.

32 (c) A person who brings an action under this section shall serve:

- 33 (1) a copy of the complaint; and
34 (2) a written disclosure that describes all relevant material
35 evidence and information the person possesses;

36 on both the attorney general and the inspector general. The person
37 shall file the complaint under seal, and the complaint shall remain
38 under seal for at least sixty (60) days. The complaint shall not be
39 served on the defendant until the court orders the complaint served
40 on the defendant following the intervention or the election not to
41 intervene of the attorney general or the inspector general. The
42 state may elect to intervene and proceed with the action not later
43 than sixty (60) days after it receives both the complaint and the
44 written disclosure.

45 (d) For good cause shown, the attorney general or the inspector
46 general may move the court to extend the time during which the
47 complaint must remain under seal. A motion for extension may be

1 supported by an affidavit or other evidence. The affidavit or other
2 evidence may be submitted in camera.

3 (e) Before the expiration of the time during which the complaint
4 is sealed, the attorney general or the inspector general may:

5 (1) intervene in the case and proceed with the action, in which
6 case the attorney general or the inspector general shall
7 conduct the action; or

8 (2) elect not to proceed with the action, in which case the
9 person who initially filed the complaint may proceed with the
10 action.

11 (f) The defendant in an action filed under this section is not
12 required to answer the complaint until twenty-one (21) days after
13 the complaint has been unsealed and served on the defendant.

14 (g) After a person has filed a complaint under this section, no
15 person other than the attorney general or the inspector general
16 may:

17 (1) intervene; or

18 (2) bring another action based on the same facts.

19 (h) If the person who initially filed the complaint:

20 (1) planned and initiated the violation of section 2 of this
21 chapter; or

22 (2) has been convicted of a crime related to the person's
23 violation of section 2 of this chapter;

24 upon motion of the attorney general or the inspector general, the
25 court shall dismiss the person as a plaintiff.

26 **Sec. 5. (a)** If the attorney general or the inspector general
27 intervenes in an action under section 4 of this chapter, the attorney
28 general or the inspector general is responsible for prosecuting the
29 action and is not bound by an act of the person who initially filed
30 the complaint. The attorney general or the inspector general may
31 do the following:

32 (1) File a complaint.

33 (2) Amend the complaint of a person who has brought an
34 action under section 4 of this chapter, to:

35 (A) clarify or add detail to the claims in which the state is
36 intervening; or

37 (B) add additional claims to which the state contends the
38 state is entitled to relief.

39 (3) Move for a change of venue to Marion County if the
40 attorney general or the inspector general files a motion for
41 change of venue not later than ten (10) days after the attorney
42 general or the inspector general intervenes.

43 For statute of limitation purposes, a pleading filed by the attorney
44 general or the inspector general relates back to the filing date of
45 the complaint of the person who originally brought the action, to
46 the extent that the claim of the state arises out of the conduct,
47 transactions, or occurrences set forth, or attempted to be set forth,

1 in the original filed complaint. Except as provided in this section,
2 the person who initially filed the complaint may continue as a party
3 to the action.

4 (b) The attorney general or the inspector general may dismiss
5 the action after:

- 6 (1) notifying the person who initially filed the complaint; and
7 (2) the court has conducted a hearing at which the person who
8 initially filed the complaint was provided the opportunity to
9 be heard on the motion.

10 (c) The attorney general or the inspector general may settle the
11 action if a court determines, after a hearing, that the proposed
12 settlement is fair, adequate, and reasonable in light of the
13 circumstances. Upon a showing of good cause, the court may:

- 14 (1) conduct the settlement hearing in camera; or
15 (2) lift all or part of the seal to facilitate the investigative
16 process or settlement.

17 The court may consider an objection to the settlement brought by
18 the person who initially filed the complaint, but is not bound by
19 this objection.

20 (d) Upon a showing by the attorney general, the inspector
21 general, or the defendant that unrestricted participation by the
22 person who initially filed the complaint:

- 23 (1) will interfere with or unduly delay the prosecution of the
24 case by the attorney general or the inspector general;
25 (2) will involve the presentation of repetitious or irrelevant
26 evidence, or evidence introduced for purposes of harassment;
27 or
28 (3) will cause the defendant to suffer undue burden or
29 unnecessary expense;

30 the court may impose reasonable limitations on the person's
31 participation, including a limit on the number of witnesses that the
32 person may call, a limit to the length of testimony that the person's
33 witness may present, a limit to the person's cross-examination of
34 a witness, or otherwise limit the participation by the person in the
35 litigation.

36 (e) If the attorney general or the inspector general elects not to
37 intervene in the action, the person who initially filed the complaint
38 has the right to prosecute the action. Upon request, the attorney
39 general or the inspector general shall be served with copies of all
40 documents filed in the action and may obtain a copy of depositions
41 and other transcripts at the state's expense.

42 (f) If the attorney general and the inspector general have elected
43 not to intervene in an action in accordance with section 4 of this
44 chapter, upon a showing of good cause, a court may permit either
45 the attorney general or the inspector general to intervene at a later
46 time. The attorney general may move to intervene at any time. If
47 the attorney general has not moved to intervene, the inspector

1 general may move to intervene by providing written notice to the
2 attorney general of the inspector general's intent to intervene. If
3 the attorney general does not move to intervene earlier than fifteen
4 (15) days after receipt of the notice of intent to intervene, the
5 inspector general may move to intervene. If the attorney general or
6 the inspector general intervenes under this subsection, the attorney
7 general or the inspector general is responsible for prosecuting the
8 action as if the attorney general or the inspector general had
9 intervened in accordance with section 4 of this chapter.

10 (g) If the attorney general or inspector general shows that a
11 specific discovery action by the person who initially filed the
12 complaint will interfere with the investigation or prosecution of a
13 civil or criminal matter arising out of the same facts, the court
14 may, following a hearing in camera, stay discovery for not more
15 than sixty (60) days. After the court has granted a sixty (60) day
16 stay, the court may extend the stay, following a hearing in camera,
17 if it determines that the state has pursued the civil or criminal
18 investigation with reasonable diligence and that a specific
19 discovery action by the person who initially filed the complaint will
20 interfere with the state's investigation or prosecution of the civil or
21 criminal matter.

22 (h) A court may dismiss an action brought under this chapter to
23 permit the attorney general or the inspector general to pursue its
24 claim through an alternative proceeding, including an
25 administrative proceeding or a proceeding brought in another
26 jurisdiction. The person who initially filed the complaint has the
27 same rights in the alternative proceedings as the person would
28 have had in the original proceedings. A finding of fact or
29 conclusion of law made in the alternative proceeding is binding on
30 all parties to an action under this section once the determination
31 made in the alternative proceeding is final under the rules,
32 regulations, statutes, or law governing the alternative proceeding,
33 or if the time for seeking an appeal or review of the determination
34 made in the alternative proceeding has elapsed.

35 Sec. 6. (a) The person who initially filed the complaint is entitled
36 to the following amounts if the state prevails in the action:

37 (1) Except as provided in subdivision (2), if the attorney
38 general or the inspector general intervened in the action, the
39 person is entitled to receive at least fifteen percent (15%) and
40 not more than twenty-five percent (25%) of the proceeds of
41 the action or settlement, plus reasonable attorney's fees and
42 an amount to cover the expenses and costs of bringing the
43 action.

44 (2) If the attorney general or the inspector general intervened
45 in the action and the court finds that the evidence used to
46 prosecute the action consisted primarily of specific
47 information, other than information provided by the person

1 bringing the action, contained in:

2 (A) a transcript of a criminal, a civil, or an administrative
3 hearing;

4 (B) a legislative, an administrative, or another public
5 report, hearing, audit, or investigation; or

6 (C) a news media report;

7 the person is entitled to receive not more than ten percent
8 (10%) of the proceeds of the action or settlement, taking into
9 account the significance of the information and the role of the
10 person bringing the action in advancing the case to litigation,
11 plus reasonable attorney's fees and an amount to cover the
12 expenses and costs of bringing the action.

13 (3) If the attorney general or the inspector general did not
14 intervene in the action, the person is entitled to receive at least
15 twenty-five percent (25%) and not more than thirty percent
16 (30%) of the proceeds of the action or settlement, plus
17 reasonable attorney's fees and an amount to cover the
18 expenses and costs of bringing the action.

19 (4) If the person who initially filed the complaint:

20 (A) planned and initiated the violation of section 2 of this
21 chapter; or

22 (B) has been convicted of a crime related to the person's
23 violation of section 2 of this chapter;

24 the person is not entitled to an amount under this section.

25 After conducting a hearing at which the attorney general or the
26 inspector general and the person who initially filed the complaint
27 may be heard, the court shall determine the specific amount to be
28 awarded under this section to the person who initially filed the
29 complaint. The award of reasonable attorney's fees plus an amount
30 to cover the expenses and costs of bringing the action is an
31 additional cost assessed against the defendant and may not be paid
32 from the proceeds of the civil action.

33 (b) If:

34 (1) the attorney general or the inspector general did not
35 intervene in the action; and

36 (2) the defendant prevails;

37 the court may award the defendant reasonable attorney's fees plus
38 an amount to cover the expenses and costs of defending the action,
39 if the court finds that the action is frivolous, vexatious, or brought
40 primarily for purposes of harassment.

41 (c) The state is not liable for the expenses, costs, or attorney's
42 fees of a party to an action brought under this chapter.

43 Sec. 7. (a) This section does not apply to an action brought by:

44 (1) the attorney general;

45 (2) the inspector general;

46 (3) a prosecuting attorney; or

47 (4) a state employee in the employee's official capacity.

1 (b) A court does not have jurisdiction over an action brought
2 under section 4 of this chapter if the action is brought by an
3 incarcerated offender, including an offender incarcerated in
4 another jurisdiction.

5 (c) A court does not have jurisdiction over an action brought
6 under section 4 of this chapter against the state, a state officer, a
7 judge (as defined in IC 33-23-11-7), a justice, a member of the
8 general assembly, a state employee, or an employee of a political
9 subdivision, if the action is based on information known to the state
10 at the time the action was brought.

11 (d) A court does not have jurisdiction over an action brought
12 under section 4 of this chapter if the action is based upon an act
13 that is the subject of a civil suit, a criminal prosecution, or an
14 administrative proceeding in which the state is a party.

15 (e) A court does not have jurisdiction over an action brought
16 under section 4 of this chapter if the action is based upon
17 information contained in:

- 18 (1) a transcript of a criminal, a civil, or an administrative
- 19 hearing in which the state or the state's agent is a party;
- 20 (2) a legislative, an administrative, or another public state
- 21 report, hearing, audit, or investigation; or
- 22 (3) a news media report;

23 unless the person bringing the action either, before a public
24 disclosure under this section voluntarily discloses to the state the
25 information on which the allegations or transactions in a claim are
26 based, or has knowledge that is independent of and materially adds
27 to the publicly disclosed allegations or transactions, and the person
28 bringing the action has voluntarily provided this information to the
29 state before an action is filed under section 4 of this chapter.

30 (f) In determining whether a prior public disclosure bars a court
31 from exercising jurisdiction over an action brought under section
32 4 of this chapter, the court shall consider, but is not bound by, any
33 objection brought by the attorney general or the inspector general.

34 Sec. 8. (a) An employee, contractor, or agent who has been
35 discharged, demoted, suspended, threatened, harassed, or
36 otherwise discriminated against in the terms and conditions of
37 employment because of lawful acts done by the employee,
38 contractor, agent, or associated others to:

- 39 (1) object to or otherwise stop an act or omission described in
- 40 section 2 of this chapter; or
- 41 (2) initiate, testify, assist, or participate in an investigation, an
- 42 action, or a hearing under this chapter;

43 is entitled to all relief necessary to make the employee, contractor,
44 or agent whole.

45 (b) Relief under this section must include:

- 46 (1) reinstatement with the same seniority status the employee,
- 47 contractor, or agent would have had but for the act described

- 1 in subsection (a);
- 2 (2) two (2) times the amount of back pay;
- 3 (3) interest on the back pay; and
- 4 (4) compensation for any special damages sustained as a
- 5 result of the act described in subsection (a), including costs
- 6 and expenses of litigation and reasonable attorney's fees.
- 7 (c) An employee may bring an action for the relief provided in
- 8 this section in any court with jurisdiction.
- 9 (d) A civil action under this section may not be brought more
- 10 than three (3) years after the date the retaliation occurred.
- 11 Sec. 9. (a) A subpoena requiring the attendance of a witness at
- 12 a trial or hearing conducted under this chapter may be served at
- 13 any place in Indiana.
- 14 (b) A civil action under section 4 of this chapter is barred unless
- 15 it is commenced:
- 16 (1) not later than six (6) years after the date on which the
- 17 violation is committed; or
- 18 (2) not later than three (3) years after the date when facts
- 19 material to the cause of action are known or reasonably
- 20 should have been known by a state officer or employee who is
- 21 responsible for addressing the false claim. However, an action
- 22 is barred unless it is commenced not later than ten (10) years
- 23 after the date on which the violation is committed.
- 24 (c) In a civil action brought under this chapter, the state is
- 25 required to establish:
- 26 (1) the essential elements of the offense; and
- 27 (2) damages;
- 28 by a preponderance of the evidence.
- 29 (d) If a defendant has been convicted (including a plea of guilty
- 30 or nolo contendere) of a crime involving fraud or a false statement,
- 31 the defendant is estopped from denying the elements of the offense
- 32 in a civil action brought under section 4 of this chapter that
- 33 involves the same transaction as the criminal prosecution.
- 34 Sec. 10. (a) Whenever the attorney general, the inspector
- 35 general, or the designee of the attorney general or the inspector
- 36 general has reason to believe that a person may be in possession,
- 37 custody, or control of documentary material or information
- 38 relevant to an investigation under this chapter involving a false
- 39 claim, the attorney general, the inspector general, or the designee
- 40 of the attorney general or inspector general may, before
- 41 commencing a civil proceeding under this chapter, issue and serve
- 42 a civil investigative demand requiring the person to do one (1) or
- 43 more of the following:
- 44 (1) Produce the documentary material for inspection and
- 45 copying.
- 46 (2) Answer an interrogatory in writing concerning the
- 47 documentary material or information.

- 1 **(3) Give oral testimony concerning the documentary material**
- 2 **or information.**
- 3 **(b) If a civil investigative demand is a specific demand for a**
- 4 **product of discovery, the official issuing the civil investigative**
- 5 **demand shall:**
- 6 **(1) serve a copy of the civil investigative demand on the**
- 7 **person from whom the discovery was obtained; and**
- 8 **(2) notify the person to whom the civil investigative demand**
- 9 **is issued of the date of service.**
- 10 **Sec. 11. (a) A civil investigative demand issued under this**
- 11 **chapter must describe the conduct constituting a violation**
- 12 **involving a false claim that is under investigation and the statute**
- 13 **or rule that has been violated.**
- 14 **(b) If a civil investigative demand is for the production of**
- 15 **documentary material, the civil investigative demand must:**
- 16 **(1) describe each class of documentary material to be**
- 17 **produced with sufficient specificity to permit the material to**
- 18 **be fairly identified;**
- 19 **(2) prescribe a return date for each class of documentary**
- 20 **material that provides a reasonable period of time to assemble**
- 21 **and make the material available for inspection and copying;**
- 22 **and**
- 23 **(3) identify the official to whom the material must be made**
- 24 **available.**
- 25 **(c) If a civil investigative demand is for answers to written**
- 26 **interrogatories, the civil investigative demand must:**
- 27 **(1) set forth with specificity the written interrogatories to be**
- 28 **answered;**
- 29 **(2) prescribe the date by which answers to the written**
- 30 **interrogatories must be submitted; and**
- 31 **(3) identify the official to whom the answers must be**
- 32 **submitted.**
- 33 **(d) If a civil investigative demand requires oral testimony, the**
- 34 **civil investigative demand must:**
- 35 **(1) prescribe a date, time, and place at which oral testimony**
- 36 **will be given;**
- 37 **(2) identify the official who will conduct the examination and**
- 38 **the custodian to whom the transcript of the examination will**
- 39 **be submitted;**
- 40 **(3) specifically state that attendance and testimony are**
- 41 **necessary to the conduct of the investigation;**
- 42 **(4) notify the person receiving the demand that the person has**
- 43 **the right to be accompanied by an attorney and any other**
- 44 **representative; and**
- 45 **(5) describe the general purpose for which the demand is**
- 46 **being issued and the general nature of the testimony,**
- 47 **including the primary areas of inquiry.**

1 (e) A civil investigative demand that is a specific demand for a
 2 product of discovery may not be returned until at least twenty-one
 3 (21) days after a copy of the civil investigative demand has been
 4 served on the person from whom the discovery was obtained.

5 (f) The date prescribed for the giving of oral testimony under a
 6 civil investigative demand issued under this chapter must be a date
 7 that is not less than seven (7) days after the date on which the
 8 demand is received, unless the official issuing the demand
 9 determines that exceptional circumstances are present that require
 10 an earlier date.

11 (g) The official who issues a civil investigative demand may not
 12 issue more than one (1) civil investigative demand for oral
 13 testimony by the same person, unless:

14 (1) the person requests otherwise; or

15 (2) the official who issues a civil investigative demand, after
 16 conducting an investigation, notifies the person in writing that
 17 an additional civil investigative demand for oral testimony is
 18 necessary.

19 Sec. 12. (a) A civil investigative demand issued under this
 20 chapter may not require the production of any documentary
 21 material, the submission of any answers to written interrogatories,
 22 or the giving of any oral testimony if the material, answers, or
 23 testimony would be protected from disclosure under the standards
 24 applicable:

25 (1) to a subpoena or subpoena duces tecum issued by a court
 26 to aid in a grand jury investigation; or

27 (2) to a discovery request under the rules of trial procedure;
 28 to the extent that the application of these standards to a civil
 29 investigative demand is consistent with the purposes of this
 30 chapter.

31 (b) A civil investigative demand that is a specific demand for a
 32 product of discovery supersedes any contrary order, rule, or
 33 statutory provision, other than this section, that prevents or
 34 restricts disclosure of the product of discovery. Disclosure of a
 35 product of discovery under a specific demand does not constitute
 36 a waiver of a right or privilege that the person making the
 37 disclosure may be otherwise entitled to invoke to object to
 38 discovery of trial preparation materials.

39 Sec. 13. (a) A civil investigative demand issued under this
 40 chapter may be served by an investigator or by any other person
 41 authorized to serve process.

42 (b) A civil investigative demand shall be served in accordance
 43 with the rules of trial procedure. A court having jurisdiction over
 44 a person not located in Indiana has the same authority to enforce
 45 compliance with this chapter as the court has over a person located
 46 in Indiana.

47 Sec. 14. (a) The production of documentary material in response

1 to a civil investigative demand served under this chapter shall be
2 made in accordance with Trial Rule 34.

3 (b) Each interrogatory in a civil investigative demand served
4 under this chapter shall be answered in accordance with Trial Rule
5 33.

6 (c) The examination of a person under a civil investigative
7 demand for oral testimony served under this chapter shall be
8 conducted in accordance with Trial Rule 30.

9 Sec. 15. (a) The official who issued the civil investigative demand
10 is the custodian of the documentary material, answers to
11 interrogatories, and transcripts of oral testimony received under
12 this chapter.

13 (b) An investigator who receives documentary material, answers
14 to interrogatories, or transcripts of oral testimony under this
15 section shall transmit them to the official who issued the civil
16 investigative demand. The official shall take physical possession of
17 the material, answers, or transcripts and is responsible for the use
18 made of them and for the return of documentary material.

19 (c) The official who issued the civil investigative demand may
20 make copies of documentary material, answers to interrogatories,
21 or transcripts of oral testimony as required for official use by the
22 attorney general, the inspector general, or the state police. The
23 material, answers, or transcripts may be used in connection with
24 the taking of oral testimony under this chapter.

25 (d) Except as provided in subsection (e), documentary material,
26 answers to interrogatories, or transcripts of oral testimony, while
27 in the possession of the official who issued the civil investigative
28 demand, may not be made available for examination to any person
29 other than:

30 (1) the attorney general or designated personnel of the
31 attorney general's office;

32 (2) the inspector general or designated personnel of the
33 inspector general's office; or

34 (3) an officer of the state police who has been authorized by
35 the official who issued the civil investigative demand.

36 (e) The restricted availability of documentary material, answers
37 to interrogatories, or transcripts of oral testimony does not apply:

38 (1) if the person who provided:

39 (A) the documentary material, answers to interrogatories,
40 or oral testimony; or

41 (B) a product of discovery that includes documentary
42 material, answers to interrogatories, or oral testimony;
43 consents to disclosure;

44 (2) to the general assembly or a committee or subcommittee
45 of the general assembly; or

46 (3) to a state agency that requires the information to carry out
47 its statutory responsibility.

1 **Documentary material, answers to interrogatories, or transcripts**
 2 **of oral testimony requested by a state agency may be disclosed only**
 3 **under a court order finding that the state agency has a substantial**
 4 **need for the use of the information in carrying out its statutory**
 5 **responsibility.**

6 **(f) While in the possession of the official who issued the civil**
 7 **investigative demand, documentary material, answers to**
 8 **interrogatories, or transcripts of oral testimony shall be made**
 9 **available to the person, or to the representative of the person who**
 10 **produced the material, answered the interrogatories, or gave oral**
 11 **testimony. The official who issued the civil investigative demand**
 12 **may impose reasonable conditions upon the examination or use of**
 13 **the documentary material, answers to interrogatories, or**
 14 **transcripts of oral testimony.**

15 **(g) The official who issued the civil investigative demand and**
 16 **any attorney employed in the same office as the official who issued**
 17 **the civil investigative demand may use the documentary material,**
 18 **answers to interrogatories, or transcripts of oral testimony in**
 19 **connection with a proceeding before a grand jury, a court, or an**
 20 **agency. Upon the completion of the proceeding, the attorney shall**
 21 **return to the official who issued the civil investigative demand any**
 22 **documentary material, answers to interrogatories, or transcripts**
 23 **of oral testimony that are not under the control of the grand jury,**
 24 **court, or agency.**

25 **(h) Upon written request of a person who produced**
 26 **documentary material in response to a civil investigative demand,**
 27 **the official who issued the civil investigative demand shall return**
 28 **any documentary material in the official's possession to the person**
 29 **who produced documentary material, if:**

- 30 **(1) a proceeding before a grand jury, a court, or an agency**
 31 **involving the documentary material has been completed; or**
 32 **(2) a proceeding before a grand jury, a court, or an agency**
 33 **involving the documentary material has not been commenced**
 34 **within a reasonable time after the completion of the**
 35 **investigation.**

36 **The official who issued the civil investigative demand is not**
 37 **required to return documentary material that is in the custody of**
 38 **a grand jury, a court, or an agency.**

39 **Sec. 16. (a) A person who has failed to comply with a civil**
 40 **investigative demand is subject to sanctions under Trial Rule 37 to**
 41 **the same extent as a person who has failed to cooperate in**
 42 **discovery.**

43 **(b) A person who objects to a civil investigative demand issued**
 44 **under this chapter may seek a protective order in accordance with**
 45 **Trial Rule 26(C).**

46 **Sec. 17. Documentary material, answers to written**
 47 **interrogatories, or oral testimony provided in response to a civil**

- 1 **investigative demand issued under this chapter is confidential.**
- 2 **Sec. 18. Proceedings under this chapter are governed by the**
- 3 **Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial**
- 4 **Procedure are inconsistent with this chapter."**
- 5 Renumber all SECTIONS consecutively.
(Reference is to ESB 559 as printed April 5, 2013.)

Representative Turner