

SENATE BILL NO. 336

BY SENATOR LUNEAU

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AN ACT

To enact R.S. 46:438.9 and 438.10, relative to civil actions; to provide relative to the Medical Assistance Programs Integrity Law; to provide relative to civil investigative demand, deposition, and subpoena; to provide with respect to conditions and requirements; to provide relative to contempt of court; to provide for terms and definitions; to provide relative to discovery; to provide with respect to written interrogatories and production and inspection of documents and things; to provide relative to civil proceedings and legal delays; to provide with respect to civil procedure; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 46:438.9 and 438.10 are hereby enacted to read as follows:

§438.9. Civil investigative demand

A.(1) When the attorney general has information, evidence, or reason to believe that a person or an entity may be in possession, custody, or control of any documentary material, information, or physical evidence relevant to an investigation of a violation of Subpart B of Part VI-A of this Chapter, he may issue to the person or entity a civil investigative demand to require answering under oath and in writing any interrogatories or the production for inspection, copying, or reproduction of documentary material, information, or physical evidence before the commencement of a civil proceeding. A civil investigative demand issued pursuant to this Section shall state a general description of the

1 subject matter being investigated. Each investigative demand shall set a return
2 date of not earlier than twenty days after service of the demand upon the
3 person, legal representative, or agent for service of process.

4 (2) A civil investigative demand for answers to written interrogatories
5 shall set forth with specificity the written interrogatories to be answered. A civil
6 investigative demand for the production of documentary material shall describe
7 each class of documentary material to be produced with definiteness and
8 certainty to permit the material to be fairly identified.

9 (3) A civil investigative demand may not contain an unreasonable
10 requirement if contained in a subpoena or subpoena duces tecum issued by a
11 court in a grand jury investigation or require the production of written answers
12 to interrogatories, or the production of documentary material that is privileged
13 from disclosure.

14 (4) The production of documentary material in response to a civil
15 investigative demand served under this Section shall be made under a sworn
16 certificate stating that all of the documentary material required by the demand
17 and in the possession, custody, or control of the person to whom the demand is
18 directed has been produced and made available to the attorney general. If the
19 demand is made on a natural person, the person to whom the demand is
20 directed shall make the certification. If the demand is on a person other than a
21 natural person, a person having knowledge of the facts and circumstances
22 relating to the production of material and authorized to act on behalf of the
23 person shall make the certification.

24 B. A civil investigative demand issued pursuant to this Section may be
25 served by the sheriff or a post-certified investigator employed by the attorney
26 general when the demand is issued to a resident or domestic business entity
27 found in this state. A civil investigative demand issued to a nonresident or a
28 foreign business entity shall be served as provided for in the Code of Civil
29 Procedure.

30 C. Upon failure of the person or business entity to comply with the civil

1 investigative demand, the attorney general may file a motion with a district
2 court of proper jurisdiction to compel compliance with the civil investigative
3 demand. Failure to comply with a court order shall be punishable by contempt
4 of court.

5 D. Except as otherwise provided in this Section, no documentary
6 material, answers to interrogatories, or copies of material or interrogatories,
7 produced pursuant to this Section or information derived therefrom, or
8 transcripts and information derived from investigative depositions conducted
9 pursuant to R.S. 46:438.10 shall be subject to disclosure, discovery, subpoena,
10 or other means of legal compulsion for release by any person or entity except
11 as determined by the attorney general and subject to the imposition of any
12 conditions for effective enforcement of the laws of this state.

13 E. Nothing in this Section shall be construed to prohibit or limit the
14 attorney general from sharing any documentary material, answers to
15 interrogatories, or copies, or information derived therefrom, or transcripts and
16 information derived from investigative depositions conducted pursuant to R.S.
17 46:438.10 with any other state government, the United States government, or
18 any state or federal agency, or any person or entity that assists in the
19 investigation or prosecution involved in the subject matter of the civil
20 investigative demand.

21 F. The attorney general may use documentary material derived from
22 information obtained pursuant to this Section, or copies of the material, in the
23 manner the attorney general determines necessary for the enforcement of the
24 laws of this state, including instituting a civil proceeding with the court.

25 G. The attorney general, upon the written request of a person or entity
26 required to produce documentary material pursuant to this Section, shall
27 destroy or return to the person or entity any material which has not become a
28 part of the record by introduction into evidence in any court, grand jury, or
29 agency proceeding if the case or proceeding has been completed, or proceedings
30 have not been instituted within a reasonable time after analysis of all

1 documentary material and other information produced in the course of the
2 investigation.

3 H. Documentary material, answers to written interrogatories, or oral
4 testimony provided pursuant to a civil investigative demand or investigative
5 deposition are exempt from disclosure under the Public Records Law, R.S. 44:1
6 et seq.

7 I. "Documentary material" as used in this Section includes but is not
8 limited to all electronically stored information including writings, drawings,
9 graphs, charts, photographs, sound recordings, images, and other data or data
10 compilations that are subject to a request for production under Federal Rule of
11 Civil Procedure 34.

12 J. A person who has received a civil investigative demand pursuant to
13 Subsection A of this Section may seek to modify or set aside the demand by
14 filing a petition through ordinary proceedings with the court in the judicial
15 district within which the person resides, is found, or transacts business. If no
16 such jurisdiction exists, the person may file the petition in the Nineteenth
17 Judicial District Court.

18 (1) A petition filed pursuant to this Subsection shall be filed within
19 twenty days after the date of service of the civil investigative demand authorized
20 in accordance with this Section, or at any time before the return date specified
21 in the demand, whichever date is earlier.

22 (2) The petition shall specify each ground upon which the petitioner is
23 seeking relief in accordance with Subsection A of this Section, and may be based
24 upon any failure of the demand to comply with the provisions of this Section or
25 upon any constitutional or other legal right or privilege of the person.

26 (3) During the pendency of proceedings, the court in its discretion may
27 stay the running of the time allowed for compliance with the demand, in whole
28 or in part, except that the person filing the petition shall comply with any
29 portions of the demand not sought to be modified or set aside.

30 §438.10. Investigative deposition

1 A.(1) When the attorney general has information, evidence, or reason to
2 believe that a person or entity has information related to an investigation of a
3 violation of Subpart B of Part VI-A of this Chapter, he may issue an
4 investigative subpoena for deposition testimony to any person or entity that may
5 have information or knowledge relevant to the matter under investigation, or
6 for the purpose of revealing, identifying, or explaining documentary material
7 or other physical evidence sought.

8 (2) The investigative subpoena shall contain a general description of the
9 matter under investigation, and a notice informing the deponent of his right to
10 counsel at the deposition with an opportunity for cross-examination. The
11 deposition shall be conducted at the deponent's principal place of business,
12 place of residence, domicile, or, if agreeable to the deponent, some other place
13 convenient to the attorney general or the deponent and the deponent's attorney
14 or designated lawful representative.

15 (3) The deposition shall be held on a date not earlier than seven days
16 after the date on which demand was received, unless the attorney general
17 determines that exceptional circumstances exist that warrant the
18 commencement of the testimony within a shorter period of time.

19 B. An investigative subpoena issued pursuant to this Section may be
20 served by the sheriff or a post-certified investigator employed by the attorney
21 general when the demand is issued to a resident or domestic business entity
22 found in this state. An investigative subpoena issued to a nonresident or a
23 foreign business entity may be served pursuant to the Code of Civil Procedure.

24 C. When an investigative subpoena is issued to a business entity, the
25 entity shall designate one or more officers, directors, or managing agents, and
26 may set forth, for each person designated, the matters on which he is to testify.
27 The person designated shall testify to the matters known or reasonably available
28 to the organization.

29 D. Upon failure of the person or business entity to comply with the
30 investigative subpoena, the attorney general may file a motion with a district

1 court of proper jurisdiction to compel compliance with the investigative
2 subpoena. Failure to comply with a court order is punishable by contempt of
3 court.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____