

SENATE BILL 652

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D3

1998 Regular Session
(8lr1694)

ENROLLED BILL

-- Judicial Proceedings/Judiciary --

Introduced by ~~Chairman, Judicial Proceedings Committee and Senators~~
Bromwell, Collins, Conway, Currie, Della, Dorman, Forehand, Frosh,
Green, Hughes, Kelley, Hollinger, Jimeno, Lawlah, Pinsky, Ruben,
Teitelbaum, Van Hollen, and Derr Derr, and McFadden

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Manufacturers of Tobacco Products - State Claims**

3 FOR the purpose of clarifying that the Department of Health and Mental Hygiene's
4 right of subrogation for payments relating to medical assistance recipients is not
5 an exclusive right, remedy, or cause of action; providing that in any action
6 brought by the State against a manufacturer of a tobacco product the causation
7 and the amount of medical assistance expenditures may be ~~proven by the use~~
8 proved or disproved by evidence of statistical ~~analysis;~~ analysis without certain
9 other proof; clarifying language; defining certain terms; making the provisions
10 of this Act severable; providing for the application of this Act; stating a certain
11 agreement between the Law Offices of Peter G. Angelos and the Attorney
12 General; providing that this Act may not be construed to affect the application of
13 certain provisions of the Maryland Lawyers' Rules of Professional Conduct to a
14 certain contract or prohibit or limit a court from applying those provisions to a

1 certain contract; stating the intent of the General Assembly that a portion of any
 2 recovery from certain litigation be allocated in a certain manner to offset certain
 3 losses by tobacco farmers in this State; providing for the effective date of this Act;
 4 and generally relating to certain rights, remedies, and causes of action brought
 5 by the State to recover certain expenses.

6 BY repealing and reenacting, with amendments,
 7 Article - Health - General
 8 Section 15-120
 9 Annotated Code of Maryland
 10 (1994 Replacement Volume and 1997 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Health - General**

14 15-120.

15 (a) If a Program recipient has a cause of action against a person, the
 16 Department shall be subrogated to that cause of action to the extent of any payments
 17 made by the Department on behalf of the Program recipient that result from the
 18 occurrence that gave rise to the cause of action.

19 (b) (1) An attorney representing a Program recipient in a cause of action to
 20 which the Department has a right of subrogation shall notify the Department prior to
 21 filing a claim, commencing an action, or negotiating a settlement.

22 (2) The attorney shall notify the Department in advance of the resolution
 23 of a cause of action and shall allow the Department 3 business days from the receipt
 24 of the notice to establish its subrogated interest.

25 (3) This subsection may not be construed to create a cause of action for
 26 notifying or failing to notify the Department.

27 (c) (1) Any Program recipient or attorney, guardian, or personal
 28 representative of a Program recipient who receives money in settlement of or under a
 29 judgment or award in a cause of action in which the Department has a subrogation
 30 claim shall, after receiving written notice of the subrogation claim, hold that money,
 31 for the benefit of the Department, to the extent required for the subrogation claim,
 32 after deducting applicable attorney fees and litigation costs.

33 (2) A person who, after written notice of a subrogation claim and possible
 34 liability under this paragraph, disposes of the money, without the written approval of
 35 the Department, is liable to the Department for any amount that, because of the
 36 disposition, is not recoverable by the Department.

1 (3) The Department may compromise or settle and release its
2 subrogation claim if, in its judgment, collection of the claim will cause substantial
3 hardship:

4 (i) To the Program recipient; or

5 (ii) In a wrongful death action, to the surviving dependents of a
6 deceased Program recipient.

7 (4) (i) The Department is not liable for payment of or contribution to
8 any attorney fees or litigation costs of any Program recipient or attorney, guardian, or
9 personal representative of any Program recipient.

10 (ii) The deduction of applicable attorney fees and litigation costs
11 under paragraph (1) of this subsection may not be considered as payment for or
12 contribution to those fees or costs by the Department.

13 (D) ANY ACTION BROUGHT UNDER THIS SECTION IS NOT EXCLUSIVE AND IS
14 INDEPENDENT OF AND IN ADDITION TO ANY RIGHT, REMEDY, OR CAUSE OF ACTION
15 AVAILABLE TO THE STATE, THE DEPARTMENT, ANY OTHER STATE AGENCY, OR A
16 PROGRAM RECIPIENT OR ANY OTHER INDIVIDUAL.

17 (E) (1) (I) IN THIS SUBSECTION, THE FOLLOWING WORDS HAVE THE
18 MEANINGS INDICATED.

19 (II) "CIGARETTE" MEANS ANY ROLL OF TOBACCO WRAPPED IN:

20 1. PAPER;

21 2. A SUBSTANCE NOT CONTAINING TOBACCO; OR

22 3. A SUBSTANCE CONTAINING TOBACCO WHICH BECAUSE
23 OF ITS APPEARANCE, THE TYPE OF TOBACCO USED IN THE FILLER, OR ITS
24 PACKAGING AND LABELING, IS LIKELY TO BE USED BY THE CONSUMERS OF
25 ORDINARY PAPER-WRAPPED CIGARETTES.

26 (III) 1. "MANUFACTURER OF A TOBACCO PRODUCT" MEANS A
27 DESIGNER, PRODUCER, OR PROCESSOR OF A TOBACCO PRODUCT ENGAGED IN THE
28 MARKETING OR PROMOTION OF A TOBACCO PRODUCT.

29 2. "MANUFACTURER OF A TOBACCO PRODUCT" INCLUDES AN
30 ENTITY NOT OTHERWISE A MANUFACTURER OF A TOBACCO PRODUCT THAT IMPORTS
31 A TOBACCO PRODUCT OR OTHERWISE HOLDS ITSELF OUT AS A MANUFACTURER OF A
32 TOBACCO PRODUCT.

33 3. "MANUFACTURER OF A TOBACCO PRODUCT" DOES NOT
34 INCLUDE:

35 A. A GROWER, BUYER, DEALER, DISTRIBUTOR, OR
36 WHOLESALE OF LEAF TOBACCO; OR

1 B. A RETAILER, DISTRIBUTOR, OR WHOLESALER OF A
2 TOBACCO PRODUCT.

3 (IV) "SMOKELESS TOBACCO" MEANS A PRODUCT THAT CONSISTS OF
4 CUT, GROUND, POWDERED, OR LEAF TOBACCO THAT IS INTENDED TO BE PLACED IN
5 THE ORAL CAVITY.

6 (V) "TOBACCO PRODUCT" MEANS CIGARETTES OR SMOKELESS
7 TOBACCO.

8 (2) IN ANY ACTION UNDER THIS SECTION OR PURSUANT TO ANY OTHER
9 RIGHT, REMEDY, OR CAUSE OF ACTION BROUGHT BY THE STATE AGAINST A
10 MANUFACTURER OF A TOBACCO PRODUCT, THE CAUSATION AND THE AMOUNT OF
11 MEDICAL ASSISTANCE EXPENDITURES ATTRIBUTABLE TO THE USE OF A TOBACCO
12 PRODUCT MAY BE ~~PROVEN BY USE~~ *PROVED OR DISPROVED BY EVIDENCE* OF
13 STATISTICAL ANALYSIS, WITHOUT PROOF OF THE CAUSATION OR THE AMOUNT OF
14 EXPENDITURES FOR ANY PARTICULAR PROGRAM RECIPIENT OR ANY OTHER
15 INDIVIDUAL.

16 (3) *NOTHING CONTAINED IN PARAGRAPH (2) OF THIS SUBSECTION*
17 *PROHIBITS OR LIMITS THE RIGHT OF ANY PARTY TO INTRODUCE ANY OTHER*
18 *EVIDENCE, OTHERWISE ADMISSIBLE, THAT SUPPORTS OR REBUTS THE EVIDENCE*
19 *OF STATISTICAL ANALYSIS DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION.*

20 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
21 Act or the application thereof to any person or circumstance is held invalid for any
22 reason in a court of competent jurisdiction, the invalidity does not affect other
23 provisions or any other application of this Act which can be given effect without the
24 invalid provision or application, and for this purpose the provisions of this Act are
25 declared severable.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to
27 any case pending or filed on or after the effective date of this Act and may not be
28 applied to any case for which a final judgment has been rendered and for which
29 appeals, if any, have been exhausted before the effective date of this Act.

30 SECTION 4. AND BE IT FURTHER ENACTED, That the Law Offices of Peter
31 G. Angelos and the Attorney General of the State of Maryland agree that the contract
32 between those parties, dated March 27, 1996, is modified to reduce the fee for legal
33 services to 12.5%, and all other provisions of Paragraph 3 of the contract, including
34 the provisions relating to reasonable litigation expenses, as well as other terms of the
35 contract, remain in force and effect.

36 SECTION 5. AND BE IT FURTHER ENACTED, That this Act may not be
37 construed to affect the application of Rule 1.5 of the Maryland Lawyers' Rules of
38 Professional Conduct to the contract, dated March 27, 1996, between the Law Offices
39 of Peter G. Angelos and the Attorney General of the State of Maryland or to prohibit or
40 limit a court of competent jurisdiction from applying Rule 1.5 to that contract.

1 SECTION 6. AND BE IT FURTHER ENACTED, That it is the intent of the
2 General Assembly that a portion of any recovery that the State may receive in the
3 State's suit against tobacco manufacturers, either through a settlement or judgment by
4 the State or as a result of federal legislation, be allocated to a program to be
5 established to offset any losses suffered by Maryland tobacco farmers, and the
6 Governor is authorized to designate funds for this purpose in the budget bill.

7 SECTION 4, ~~5~~, 7, AND BE IT FURTHER ENACTED, That this Act shall take
8 effect July 1, 1998.