

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 279
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after “program;” insert “requiring the court to consider and give special attention to certain factors in determining the amount of fines and penalties provided for in this Act;”; in line 13, after “program;” insert “requiring the State to make certain efforts to coordinate certain investigations and to establish a certain objective for the State;”; in line 16, strike “authorizing the person that initiated the action to proceed” and substitute “requiring the court to dismiss the action”; and in line 19, strike “to intervene at a later time in the proceedings or”.

AMENDMENT NO. 2

On page 4, in line 18, after “(F)” insert “(1)”; in line 19, after “REQUIRING” insert “PROOF OF”; in lines 21, 22, and 24, strike “(1)”, “(2)”, and “(3)”, respectively, and substitute “(I)”, “(II)”, and “(III)”, respectively; and after line 25, insert:

“(2) “KNOWING” OR “KNOWINGLY” DOES NOT MEAN, WITH RESPECT TO INFORMATION, THAT A PERSON ACTS IN A MANNER THAT CONSTITUTES MISTAKE OR NEGLIGENCE.”.

On page 6, in line 27, strike “COMMUNITY” and substitute “INFECTIOUS DISEASE AND ENVIRONMENTAL”.

AMENDMENT NO. 3

On page 8, strike beginning with “EXCEPT” in line 3 down through “A” in line 4 and substitute “A”; in line 6, strike “NOT LESS THAN \$5,000 AND”; in line 9, strike “EQUAL TO” and substitute “OF NOT MORE THAN”; and strike in their entirety lines 12 through 31, inclusive, and substitute:

(Over)

“(2) THE TOTAL AMOUNT OWED BY A PERSON UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE LESS THAN THE AMOUNT OF THE ACTUAL DAMAGES THE STATE HEALTH PLAN OR STATE HEALTH PROGRAM INCURS AS A RESULT OF THE PERSON’S VIOLATION OF SUBSECTION (A) OF THIS SECTION.”.

On page 9, in lines 9 and 25, in each instance, after “SUBTITLE;” insert “AND”; strike beginning with “**COMPENSATORY**” in line 10 down through “**(3)**” in line 13; in lines 13 and 29, in each instance, strike “**COURT**” and substitute “SUBJECT TO THE GUIDELINES SET FORTH IN § 2-605(A)(4) OF THIS SUBTITLE, COURT”; strike beginning with “**ANY**” in line 23 down through “**(II)**” in line 24; and strike beginning with “**(III)**” in line 26 down through “**(IV)**” in line 29 and substitute “(II)”.

AMENDMENT NO. 4

On page 8, before line 32, insert:

“(C) (1) IN DETERMINING THE APPROPRIATE AMOUNT OF FINES AND DAMAGES UNDER SUBSECTION (B) OF THIS SECTION, THE COURT SHALL CONSIDER:

(I) THE NUMBER, NATURE, AND SEVERITY OF THE VIOLATIONS OF THIS SUBTITLE FOR WHICH THE PERSON HAS BEEN FOUND LIABLE;

(II) THE NUMBER, NATURE, AND SEVERITY OF ANY PREVIOUS VIOLATIONS OF THIS SUBTITLE;

(III) THE DEGREE OF LOSS SUFFERED BY THE STATE HEALTH PLAN OR STATE HEALTH PROGRAM;

(IV) THE PERSON’S HISTORY OF BILLING COMPLIANCE;

(V) WHETHER THE PERSON HAS A COMPLIANCE PROGRAM
IN PLACE;

(VI) THE EXTENT TO WHICH THE PERSON HAS TAKEN STEPS
TO ADDRESS AND CORRECT THE VIOLATION SINCE THE PERSON BECAME AWARE
OF THE VIOLATION;

(VII) THE EXTENT TO WHICH THE VIOLATION CAUSED HARM
OR DETRIMENT TO PATIENTS OR CONSUMERS OF THE STATE HEALTH PLAN OR
STATE HEALTH PROGRAM;

(VIII) ANY FUNDS PREVIOUSLY RETURNED TO THE STATE
HEALTH PLAN OR STATE HEALTH PROGRAM IN COMPLIANCE WITH FEDERAL
REQUIREMENTS REGARDING OVERPAYMENTS, TO THE EXTENT THE FUNDS
REPRESENTED LOSSES TO THE STATE HEALTH PLAN OR STATE HEALTH
PROGRAM CAUSED BY THE VIOLATION;

(IX) WHETHER THE PERSON SELF-REPORTED THE
VIOLATION, THE TIMELINESS OF THE SELF-REPORTING, THE EXTENT TO WHICH
THE PERSON OTHERWISE COOPERATED IN THE INVESTIGATION OF THE
VIOLATION, AND THE EXTENT TO WHICH THE PERSON HAD PRIOR KNOWLEDGE
OF AN INVESTIGATION OR OTHER ACTION RELATING TO THE VIOLATION; AND

(X) ANY OTHER FACTOR AS JUSTICE REQUIRES.

(2) IN WEIGHING THE FACTORS SET FORTH IN PARAGRAPH (1) OF
THIS SUBSECTION, THE COURT SHALL, WHERE APPROPRIATE, GIVE SPECIAL
CONSIDERATION TO:

(Over)

(I) THE EXTENT TO WHICH THE PERSON’S SIZE, OPERATIONS, OR FINANCIAL CONDITION MAY HAVE AFFECTED EACH OF THE FACTORS SET FORTH IN PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) THE EXTENT TO WHICH THE PERSON’S SIZE, OPERATIONS, OR FINANCIAL CONDITION MAY AFFECT THE PERSON’S ABILITY TO PROVIDE CARE AND CONTINUE OPERATIONS AFTER PAYMENT OF DAMAGES AND FINES.”;

and in line 32, strike “(C)” and substitute “(D)”.

AMENDMENT NO. 5

On page 10, after line 29, insert:

“(III) DURING THE PERIOD IN WHICH THE COMPLAINT IS UNDER SEAL, IF THE STATE’S INVESTIGATION REVEALS THAT THE ACT, TRANSACTION, OR OCCURRENCE THAT GAVE RISE TO THE ALLEGED VIOLATION OF THIS SUBTITLE IS REASONABLY LIKELY TO BE CONTINUING, THE STATE SHALL NOTIFY THE DEFENDANT AS SOON AS PRACTICABLE WITHOUT JEOPARDIZING THE COURSE AND CONDUCT OF THE STATE’S OR THE FEDERAL GOVERNMENT’S INVESTIGATION OF THE VIOLATION, COMPROMISING THE DEVELOPMENT OF EVIDENCE, OR VIOLATING ANY STATE OR FEDERAL LAW.”.

AMENDMENT NO. 6

On page 11, after line 4, insert:

“(7) IF THE STATE DOES NOT ELECT TO INTERVENE AND PROCEED WITH THE ACTION UNDER PARAGRAPH (6) OF THIS SUBSECTION, BEFORE UNSEALING THE COMPLAINT, THE COURT SHALL DISMISS THE ACTION.”;

in line 5, strike “(7)” and substitute “(8)”; in line 24, after “(3)” insert “(I)”; strike beginning with “PETITION” in line 25 down through “IF:” in line 26 and substitute “ELECT AT ANY POINT TO WITHDRAW ITS INTERVENTION AS A PARTY TO THE ACTION.”

(II) IF THE STATE ELECTS TO WITHDRAW AS A PARTY TO THE ACTION:

1. THE STATE SHALL NOTIFY THE COURT AND THE PARTY INITIATING THE ACTION; AND

2. THE COURT SHALL DISMISS THE ACTION.”;

and strike in their entirety lines 27 through 30, inclusive.

On pages 12 and 13, strike in their entirety the lines beginning with line 27 on page 12 through line 13 on page 13, inclusive.

On page 13, in line 14, strike “(D)” and substitute “(C)”.

On page 14, in line 1, strike “(E)” and substitute “(D)”; and strike beginning with “WHETHER” in line 1 down through “ON” in line 2 and substitute “ON”.

On pages 15 and 16, strike in their entirety the lines beginning with line 16 on page 15 through line 2 on page 16, inclusive.

On page 16, in line 3, strike “(C)” and substitute “(B)”; and strike beginning with “WHETHER” in line 3 down through “IF” in line 4 and substitute “IF”.

On page 17, in line 1, strike “(D)” and substitute “(C)”.

(Over)

AMENDMENT NO. 7

On page 12, in line 4, strike “**THE**” and substitute “**ON MOTION OF THE STATE OR THE DEFENDANT OR ON THE COURT’S OWN MOTION, THE**”.

AMENDMENT NO. 8

On page 15, in line 9, strike “**SHALL**” and substitute “**MAY**”; after line 13, insert:

“**(II) IN DETERMINING THE AMOUNT OF ANY AWARD UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COURT SHALL CONSIDER THE AMOUNT OF ANY PENALTIES AND DAMAGES RECOVERED IN THE ACTION AND ANY OTHER FACTOR AS JUSTICE MAY REQUIRE.**”;

in line 14, strike “**(II)**” and substitute “**(III)**”; and in the same line, strike “**ALL**” and substitute “**ANY**”.

AMENDMENT NO. 9

On page 17, in line 1, strike “**SHALL**” and substitute “**MAY**”; in line 4, after “**ACTION;**” insert “**AND**”; in line 6, strike “**CLEARLY FRIVOLOUS, VEXATIOUS, OR**”; in line 7, after “**HARASSMENT**” insert “**OR OTHERWISE BROUGHT IN BAD FAITH**”; strike beginning with the semicolon in line 7 down through the third “**ACTION**” in line 9; and in line 30, strike “**PARAGRAPH (2)**” and substitute “**PARAGRAPHS (2) AND (3)**”.

AMENDMENT NO. 10

On page 21, in lines 4 and 12, in each instance, strike “**§ 2-604 OF**”; and in line 9, after “**KNOWN**” insert “**BY THE RELATOR, THE STATE’S INSPECTOR GENERAL, OR THE DIRECTOR OF THE STATE’S MEDICAID FRAUD CONTROL UNIT**”.

AMENDMENT NO. 11

On page 22, after line 10, insert:

“(B) (1) THE STATE SHALL MAKE ALL REASONABLE EFFORTS TO COORDINATE ANY INVESTIGATION OF AN ALLEGED VIOLATION UNDER THIS SUBTITLE WITH ANY INVESTIGATION CONDUCTED BY THE FEDERAL GOVERNMENT INVOLVING THE SAME VIOLATION.

(2) THE STATE’S OBJECTIVE SHALL BE TO AVOID UNNECESSARY DUPLICATION OF EFFORT ON THE PART OF THE PERSON ALLEGED TO HAVE COMMITTED THE VIOLATION AND TO MINIMIZE THE BURDEN OF THE INVESTIGATION ON THE PERSON.”;

and in lines 11 and 14, strike “(B)” and “(C)”, respectively, and substitute “(C)” and “(D)”, respectively.

AMENDMENT NO. 12

On page 23, in line 4, strike the semicolon and substitute “AND THE FOLLOWING INFORMATION ABOUT THE DEFENDANT:

(I) THE NUMBER OF EMPLOYEES AND ANY OTHER DATA RELEVANT TO THE SIZE OF THE DEFENDANT;

(II) THE AMOUNT OF PAYMENTS MADE TO THE DEFENDANT IN THE YEAR PRIOR TO THE FILING OF THE ACTION FROM STATE HEALTH PLANS AND, TO THE EXTENT KNOWN BY THE INSPECTOR GENERAL AND THE MEDICAID FRAUD CONTROL UNIT, FROM OTHER SOURCES; AND

(III) WHETHER THE DEFENDANT IS A MINORITY-OWNED BUSINESS ENTERPRISE AS DEFINED BY § 14-301 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.”.