

Department of Legislative Services  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 26

(Senator Kagan, *et al.*)

Judicial Proceedings

Judiciary

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**Maryland False Claims Act - Municipal Corporations**

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This bill expands the definition of “governmental entity” under the Maryland False Claims Act (MFCA) to include a municipal corporation and adds the attorney for each municipal corporation to the existing reporting requirements under MFCA.

The bill applies prospectively to causes of action arising on or after the bill’s October 1, 2017 effective date.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** Potential significant increase in local revenues from civil penalties and damages awarded in MFCA cases involving municipal corporations. Potential increase in litigation-related expenditures for municipal corporations involved in MFCA cases.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Under the English common law, a private individual could bring a *qui tam* action (a private party cause of action brought on behalf of a governmental entity) in court on behalf of the Crown. If the individual was successful, he or she would receive a part of the penalty imposed. In the United States, the practice exists as a component of some “whistleblower” statutes, including the federal False Claims Act, the Maryland False Health Claims Act (MFHCA), and MFCA.

MFHCA was enacted pursuant to Chapter 4 of 2010. MFHCA prohibits a person from making a false or fraudulent claim for payment or approval by the State or the Department of Health and Mental Hygiene under a State health plan or State health program and authorizes individuals to file private party causes of action on behalf of a governmental entity for false health claims made against the State.

Enacted pursuant to Chapter 165 of 2015, MFCA extends substantially similar provisions to other claims made against a governmental entity. MFCA defines a “governmental entity” as the State or a county.

MFCA (1) prohibits a person from knowingly making a false or fraudulent claim for payment or approval by a governmental entity; (2) authorizes a governmental entity to file a civil action against a person who makes a false claim; (3) establishes civil penalties for making a false claim; (4) permits a private citizen to file a civil action on behalf of a governmental entity against a person who has made a false claim; (5) requires the court to award a certain percentage of the proceeds of the action to the private citizen initiating the action; and (6) prohibits retaliatory actions by a person against an employee, contractor, or grantee for disclosing a false claim or engaging in other specified false claims-related activities.

A civil action brought by a private citizen on behalf of a governmental entity must remain under seal for at least 60 days to allow review by the governmental entity. If the governmental entity elects to intervene in the action, it has primary responsibility for proceeding. If the governmental entity does not elect to intervene, or later withdraws after intervening, the court must dismiss the action.

A person who violates MFCA’s prohibitions is liable to a governmental entity for a civil penalty of up to \$10,000 for each violation and up to triple the governmental entity’s damages resulting from the violation. However, the total amount of a violator’s liability to the governmental entity may not be less than the amount of the actual damages the governmental entity incurred as a result of the false claims violation. These penalties are in addition to any criminal, civil, or administrative penalties provided under any other State or federal law or regulation. Any remedy provided under MFCA is in addition to any other appropriate legal or equitable relief provided under any other applicable statute or regulation. However, a governmental entity may not maintain an action under MFCA if the governmental entity has filed a civil action based on the same underlying act under MFHCA or sought enforcement by the Attorney General under specified procurement statutes pertaining to collusion or falsification or concealment of material facts. Any civil penalties or damages collected by the State are deposited into the State’s general fund.

MFCA applies to claims made on or after June 1, 2015. The statute of limitations for any action brought under MFCA is the later of (1) 6 years from the date of the violation or

(2) 3 years after the date when material facts were known or reasonably should have been known by the person initiating the action or the official of the governmental entity charged with responsibility for acting under the circumstances. However, in no event may a civil action be brought under MFCA if more than 10 years have passed since the date on which the underlying violation occurred. In any action, the governmental entity or the initiating complainant must prove all essential elements of the case by a preponderance of the evidence.

Beginning October 1, 2016, the Office of the Attorney General (OAG) and the attorney for each county must report annually to the General Assembly on the following information for the previous fiscal year: (1) the number of MFCA civil actions filed; (2) the number of MFCA civil actions in which a judgment was entered, whether by settlement or adjudication; and (3) the number of claims made by the governmental entity based on alleged violations of the prohibitions under MFCA (§ 8-102 of General Provisions Article) that are settled without the filing of a civil action under MFCA.

**Background:** According to the *Maryland False Claims Act Annual Report Fiscal Year 2016*, OAG opened 14 MFCA investigations during fiscal 2016. Four of these investigations stemmed from *qui tam* cases filed by private citizens on behalf of the State. OAG declined to intervene in 1 case and continues to investigate the others. Of the remaining 10 investigations, 5 were closed and 5 are still in progress. OAG entered into 1 false claims settlement during fiscal 2016, in the amount of \$92,040. The settlement was in a false claims case involving payment of inaccurate transportation invoices submitted to the Washington Metropolitan Area Transportation Authority. The settlement was part of \$150,000 paid to Maryland, the District of Columbia, and Virginia. While the submission of the inaccurate invoices occurred prior to the effective date of MFCA, OAG advises that the settlement resolved common law claims that were also implicated in the case.

OAG advises that it expects recoveries and settlements to increase in future years, since false claims cases typically take two to three years to litigate and MFCA has only been in effect since June 1, 2015. Information is not readily available on MFCA cases involving individual counties.

Maryland has 156 municipal corporations (Baltimore City, although created as a municipal corporation, functions as a county for purposes of State governance). Prince George's County has 27 municipal corporations, making it the county with the greatest number of municipal corporations. In 2014, 15.5% of the State's population resided in a municipal corporation, and 116 of the State's 156 municipal corporations had fewer than 5,000 residents. Based on this data, Frederick, Montgomery, and Prince George's counties have the highest number of residents residing in municipal corporations. Allegany, Dorchester, and Talbot counties have the highest percentages of county residents living in municipal corporations.

Health care fraud has traditionally dominated false claims litigation at the federal and State levels. According to the U.S. Department of Justice, of the \$4.7 billion in settlements and judgments in federal civil cases involving fraud and false claims during federal fiscal 2016, \$2.5 billion came from the health care industry, and \$1.7 billion came from false claims made in connection with federally insured residential mortgages. Other areas for fraud recoveries include procurement fraud, education funding-related fraud, and customs fraud.

**State Expenditures:** The bill is not expected to materially affect State expenditures. The Judiciary advises that while it cannot determine the bill's fiscal impact at this time, the bill could have a significant operational impact if expanding application of MFCA to the State's many municipal corporations generates a significant number of cases. The Department of Legislative Services advises that, given the size of most of Maryland's municipal corporations and the typical subject matter of false claims litigation compared to the typical services provided by municipal corporations, the bill is unlikely to result in a significant increase in cases. Also, any such increase is most likely to be experienced in the circuit courts of counties with larger municipalities or counties with a large number of municipalities. Furthermore, given the amount of time false claims cases typically take to litigate, any increase would likely be gradual.

**Local Revenues:** Local revenues may increase significantly from civil penalties and damages awarded to municipal corporations in MFCA cases. However, the extent of any such increase cannot be reliably predicted at this time and will vary by jurisdiction and year.

**Local Expenditures:** Local expenditures may increase for municipal corporations to investigate and/or pursue MFCA cases. The extent of any such increase depends on the number of cases generated by the bill and the extent of existing legal services resources in affected jurisdictions.

The City of College Park does not anticipate a negative fiscal impact from the bill. The City of Frostburg does not foresee a fiscal impact from the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** cities of College Park and Frostburg; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); U.S. Department of Justice; Department of Legislative Services

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