
By: Senator Frosh

Introduced and read first time: February 2, 1996

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program - Recovery of Benefits - Tobacco-Related**
3 **Illnesses**

4 FOR the purpose of establishing certain provisions to be used in determining liability and
5 the amount of recovery in a subrogation action brought by the Department of
6 Health and Mental Hygiene against certain tobacco product manufacturers and
7 other persons to seek reimbursement of certain medical expenses incurred by the
8 Maryland Medical Assistance Program under certain circumstances; establishing
9 strict liability against manufacturers of cigarettes and other tobacco products under
10 this Act; eliminating certain defenses for purposes of this Act; specifying the
11 method of determining the amount of recovery; making provisions of this Act
12 severable; and generally relating to establishing certain provisions to be used in
13 determining liability and the amount of recovery in a certain subrogation action
14 brought by the Department against certain manufacturers of cigarettes and other
15 tobacco products.

16 BY adding to
17 Article - Health - General
18 Section 15-120.1
19 Annotated Code of Maryland
20 (1994 Replacement Volume and 1995 Supplement)

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

23 **Article - Health - General**

24 15-120.1.

25 (A) THE PROVISIONS OF SUBSECTIONS (B) AND (C) OF THIS SECTION SHALL
26 APPLY FOR THE PURPOSE OF DETERMINING LIABILITY AND THE AMOUNT OF
27 RECOVERY IN AN ACTION BROUGHT BY THE DEPARTMENT UNDER § 15-120 OF THIS
28 SUBTITLE AGAINST ANY MANUFACTURER OF CIGARETTES OR OTHER TOBACCO
29 PRODUCTS OR OTHER APPROPRIATE PARTIES TO RECOVER MEDICAL EXPENSES
30 PROVIDED BY THE PROGRAM.

31 (B) IN DETERMINING LIABILITY IN AN ACTION BROUGHT BY THE
32 DEPARTMENT UNDER § 15-120 OF THIS SUBTITLE:

1 (1) ANY MANUFACTURER OF CIGARETTES OR OTHER TOBACCO
2 PRODUCTS SHALL BE STRICTLY LIABLE FOR MEDICAL EXPENSES THAT ARE
3 REASONABLY ATTRIBUTABLE TO THE USE OF ITS PRODUCTS WITHOUT REGARD TO
4 ANY NEGLIGENCE, INTENT, WARNINGS, OR OTHER CONDUCT OR KNOWLEDGE ON
5 THE PART OF THE MANUFACTURER;

6 (2) THE DEFENSES OF ASSUMPTION OF RISK, CONTRIBUTORY
7 NEGLIGENCE, OR ANY OTHER DEFENSE BASED ON THE CONDUCT OR KNOWLEDGE
8 OF A PROGRAM RECIPIENT MAY NOT APPLY; AND

9 (3) ANY ACTION BROUGHT UNDER § 15-120 OF THIS SUBTITLE IS
10 INDEPENDENT OF AND IN ADDITION TO ANY RIGHT OR CAUSE OF ACTION OF A
11 PROGRAM RECIPIENT.

12 (C) IN DETERMINING THE AMOUNT OF RECOVERY IN AN ACTION BROUGHT
13 BY THE DEPARTMENT UNDER § 15-120 OF THIS SUBTITLE, THE MEDICAL EXPENSES
14 FOR INDIVIDUALS THAT ARE ATTRIBUTABLE TO THE USE OF CIGARETTES OR
15 OTHER TOBACCO PRODUCTS SHALL BE BASED ON RELIABLE ESTIMATES FOR THE
16 CLASS OF PERSONS AFFECTED IN LIGHT OF AVAILABLE EPIDEMIOLOGICAL,
17 SCIENTIFIC, SURVEY, STATISTICAL, AND OTHER DATA RATHER THAN ON PROOF OF
18 THE CAUSE OF EXPENDITURES FOR ANY PARTICULAR PROGRAM RECIPIENT.

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

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1996.