

SENATE BILL 652

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1998 Regular Session
8r1694
CF 8r1410

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**

Introduced and read first time: February 6, 1998
Assigned to: Judicial Proceedings

A BILL ENTITLED

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 of
8 statistical analysis; defining certain terms; making the provisions of this Act
9 severable; providing for the application of this Act; providing for the effective
10 date of this Act; and generally relating to certain rights, remedies, and causes of
11 action brought by the State to recover certain expenses.

12 BY repealing and reenacting, with amendments,
13 Article - Health - General
14 Section 15-120
15 Annotated Code of Maryland
16 (1994 Replacement Volume and 1997 Supplement)

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

19 **Article - Health - General**

20 15-120.

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

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

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

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

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

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

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

22 (i) To the Program recipient; or

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

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

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

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

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

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

1 1. PAPER;
2 2. A SUBSTANCE NOT CONTAINING TOBACCO; OR
3 3. A SUBSTANCE CONTAINING TOBACCO WHICH BECAUSE
4 OF ITS APPEARANCE, THE TYPE OF TOBACCO USED IN THE FILLER, OR ITS
5 PACKAGING AND LABELING, IS LIKELY TO BE USED BY THE CONSUMERS OF
6 ORDINARY PAPER-WRAPPED CIGARETTES.

7 (III) 1. "MANUFACTURER OF A TOBACCO PRODUCT" MEANS A
8 DESIGNER, PRODUCER, OR PROCESSOR OF A TOBACCO PRODUCT ENGAGED IN THE
9 MARKETING OR PROMOTION OF A TOBACCO PRODUCT.

10 2. "MANUFACTURER OF A TOBACCO PRODUCT" INCLUDES AN
11 ENTITY NOT OTHERWISE A MANUFACTURER OF A TOBACCO PRODUCT THAT IMPORTS
12 A TOBACCO PRODUCT OR OTHERWISE HOLDS ITSELF OUT AS A MANUFACTURER OF A
13 TOBACCO PRODUCT.

14 3. "MANUFACTURER OF A TOBACCO PRODUCT" DOES NOT
15 INCLUDE:

16 A. A GROWER, BUYER, DEALER, DISTRIBUTOR, OR
17 WHOLESALE OF LEAF TOBACCO; OR

18 B. A RETAILER, DISTRIBUTOR, OR WHOLESALE OF A
19 TOBACCO PRODUCT.

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

23 (V) "TOBACCO PRODUCT" MEANS CIGARETTES OR SMOKELESS
24 TOBACCO.

25 (2) IN ANY ACTION UNDER THIS SECTION OR PURSUANT TO ANY OTHER
26 RIGHT, REMEDY, OR CAUSE OF ACTION BROUGHT BY THE STATE AGAINST A
27 MANUFACTURER OF A TOBACCO PRODUCT, THE CAUSATION AND THE AMOUNT OF
28 MEDICAL ASSISTANCE EXPENDITURES ATTRIBUTABLE TO THE USE OF A TOBACCO
29 PRODUCT MAY BE PROVEN BY USE OF STATISTICAL ANALYSIS, WITHOUT PROOF OF
30 THE CAUSATION OR THE AMOUNT OF EXPENDITURES FOR ANY PARTICULAR
31 PROGRAM RECIPIENT OR ANY OTHER INDIVIDUAL.

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

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

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