

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 Derr, and McFadden

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: April 1, 1998

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 of
8 statistical analysis; defining certain terms; making the provisions of this Act
9 severable; providing for the application of this Act; stating a certain agreement
10 between the Law Offices of Peter G. Angelos and the Attorney General;
11 providing for the effective date of this Act; and generally relating to certain
12 rights, remedies, and causes of action brought by the State to recover certain
13 expenses.

14 BY repealing and reenacting, with amendments,
15 Article - Health - General
16 Section 15-120
17 Annotated Code of Maryland
18 (1994 Replacement Volume and 1997 Supplement)

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

Article - Health - General

15-120.

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

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

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

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

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

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

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

(i) To the Program recipient; or

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

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

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

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

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

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

8 1. PAPER;

9 2. A SUBSTANCE NOT CONTAINING TOBACCO; OR

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

14 (III) 1. "MANUFACTURER OF A TOBACCO PRODUCT" MEANS A
15 DESIGNER, PRODUCER, OR PROCESSOR OF A TOBACCO PRODUCT ENGAGED IN THE
16 MARKETING OR PROMOTION OF A TOBACCO PRODUCT.

17 2. "MANUFACTURER OF A TOBACCO PRODUCT" INCLUDES AN
18 ENTITY NOT OTHERWISE A MANUFACTURER OF A TOBACCO PRODUCT THAT IMPORTS
19 A TOBACCO PRODUCT OR OTHERWISE HOLDS ITSELF OUT AS A MANUFACTURER OF A
20 TOBACCO PRODUCT.

21 3. "MANUFACTURER OF A TOBACCO PRODUCT" DOES NOT
22 INCLUDE:

23 A. A GROWER, BUYER, DEALER, DISTRIBUTOR, OR
24 WHOLESALE OF LEAF TOBACCO; OR

25 B. A RETAILER, DISTRIBUTOR, OR WHOLESALE OF A
26 TOBACCO PRODUCT.

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

30 (V) "TOBACCO PRODUCT" MEANS CIGARETTES OR SMOKELESS
31 TOBACCO.

32 (2) IN ANY ACTION UNDER THIS SECTION OR PURSUANT TO ANY OTHER
33 RIGHT, REMEDY, OR CAUSE OF ACTION BROUGHT BY THE STATE AGAINST A
34 MANUFACTURER OF A TOBACCO PRODUCT, THE CAUSATION AND THE AMOUNT OF
35 MEDICAL ASSISTANCE EXPENDITURES ATTRIBUTABLE TO THE USE OF A TOBACCO
36 PRODUCT MAY BE PROVEN BY USE OF STATISTICAL ANALYSIS, WITHOUT PROOF OF

1 THE CAUSATION OR THE AMOUNT OF EXPENDITURES FOR ANY PARTICULAR
2 PROGRAM RECIPIENT OR ANY OTHER INDIVIDUAL.

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

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

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

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