

**Department of Legislative Services**  
Maryland General Assembly

**FISCAL NOTE**  
**Revised**

Senate Bill 652 (Senator Bromwell. *et al.*)

Judicial Proceedings

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**Manufacturers of Tobacco Products - State Claims**

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This bill provides that the Department of Health and Mental Hygiene's right of subrogation relating to payments made on behalf of Medicaid recipients is not exclusive and is independent of and in addition to any right, remedy, or cause of action available to the State, the Department of Health and Mental Hygiene, any other State agency, a Medicaid recipient, or any other individual.

The bill also provides that in any action brought by the State against a manufacturer of a tobacco product, the causation and the amount of medical assistance expenditures attributable to the use of a tobacco product may be proved or disproved by evidence of statistical analysis, without proof of the causation or the amount of expenditures for any particular Medicaid recipient or any other individual. The bill does not limit the right of any party to introduce any other evidence, otherwise admissible, that supports or rebuts any such evidence of statistical analysis.

The bill applies to any case pending or filed on or after the bill's July 1, 1998 effective date and may not be applied to any case for which a final judgment has been rendered and for which appeals, if any, have been exhausted before the bill's effective date.

In addition, the Law Offices of Peter G. Angelos and the Attorney General agree that their contract dated March 27, 1996 is modified to reduce the fee for legal services to 12.5%. The bill may not be construed to affect the application of Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct to that contract.

The bill also states that it is the intent of the General Assembly that a portion of any recovery that the State receives in the State's suit against tobacco manufacturers be allocated to a program to be established to offset any losses suffered by Maryland tobacco farmers.

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**Fiscal Summary**

**State Effect:** Potential significant increase in general fund revenues. No direct effect on expenditures.

**Local Effect:** None.

**Small Business Effect:** None.

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## Fiscal Analysis

**State Revenues:** The Office of the Attorney General advises that the bill would significantly increase the State's chances of prevailing in its pending lawsuit against tobacco product manufacturers, State of Maryland v. Philip Morris, et al. A Baltimore City Circuit Court judge recently dismissed 9 of the case's 13 counts, reasoning that the Medicaid subrogation statute is the exclusive remedy when the State seeks to recover Medicaid funds paid. The State is not proceeding under the Medicaid subrogation statute in the lawsuit. This bill would establish that subrogation is not the exclusive remedy, which would allow the State to strengthen the lawsuit by rejoining the nine dismissed counts.

The provision allowing use of statistical analysis to prove damages would also strengthen the lawsuit. The Office of the Attorney General advises that a number of persuasive studies relating to causation and/or damages exist, which could serve as additional proof for the case if they could be used. It is uncertain whether these studies could be used under prevailing rules of evidence. In addition, the use of such studies could streamline the litigation, because it could reduce or eliminate the need to address damages and causation for each individual Medicaid recipient.

The maximum potential recovery from the lawsuit is \$3 billion. The nine dismissed counts sought an additional \$10 billion in punitive damages. At 12.5%, the Law Offices of Peter G. Angelos could potentially earn \$375 million in legal fees if maximum recovery is obtained (more could conceivably be earned if the dismissed counts can be rejoined). The current contract between the Law Offices of Peter G. Angelos and the Attorney General in connection with State of Maryland v. Philip Morris, et al. provides for a 25% contingency fee. Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct states that a lawyer's fee shall be reasonable, and sets forth various factors to be considered in determining the reasonableness of a fee.

The precise impact of this bill on State finances cannot be reliably estimated at this time. The bill is not expected to have a fiscal impact beyond the context of the tobacco litigation.

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**Information Source(s):** Office of the Attorney General, Department of Health and Mental Hygiene, Office of the Comptroller of the Treasury, Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 1998  
nncs Revised - Senate Third Reader - April 3, 1998  
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