

# SENATE BILL 575

J1, D3

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CF 2lr2113

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By: **Senator Astle**

Introduced and read first time: February 3, 2012

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program – Subrogation – Reduction**

3 FOR the purpose of requiring under certain circumstances that the amount for which  
4 the Department of Health and Mental Hygiene has a right of subrogation for  
5 health care benefits or services paid or payable on behalf of a Maryland Medical  
6 Assistance Program recipient be reduced by a certain amount related to the  
7 amount of certain attorney's fees incurred by the Program recipient; specifying  
8 that the amount for which the Department has a right of subrogation may not  
9 be reduced beyond a certain percentage; repealing a certain provision of law  
10 granting certain immunity to the Department; repealing a certain provision of  
11 law relating to a deduction of certain fees and certain costs from certain money  
12 received by a Program recipient; authorizing the Department to compromise or  
13 settle and release certain subrogation claims under certain circumstances; and  
14 generally relating to the Maryland Medical Assistance Program and  
15 subrogation claims.

16 BY repealing and reenacting, with amendments,  
17 Article – Health – General  
18 Section 15–120  
19 Annotated Code of Maryland  
20 (2009 Replacement Volume and 2011 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.

25 (a) If a Program recipient has a cause of action against a person, the  
26 Department shall be subrogated to that cause of action to the extent of any payments

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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) (I) THIS PARAGRAPH APPLIES TO A VOLUNTARY REDUCTION OF A SUBROGATION CLAIM BY THE DEPARTMENT THAT EXCEEDS THE REDUCTION OF THE SUBROGATION CLAIM UNDER PARAGRAPH (4) OF THIS SUBSECTION.**

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

**[(i)] 1. To the Program recipient;**  
**2. TO A TRUST CREATED FOR THE BENEFIT OF THE PROGRAM RECIPIENT; or**

**[(ii)] 3. 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.]

**(4) (I) THIS PARAGRAPH APPLIES TO ALL SUBROGATION INTERESTS HELD BY THE DEPARTMENT, INCLUDING SUBROGATION INTERESTS PAYABLE ON BEHALF OF A PROGRAM RECIPIENT BY A TRUST OR BY BENEFICIARIES OF A DECEASED PROGRAM RECIPIENT IN A WRONGFUL DEATH ACTION.**

**(II) UNLESS THE DEPARTMENT FILES A PETITION TO INTERVENE IN A CAUSE OF ACTION TO WHICH THE DEPARTMENT HAS A SUBROGATION CLAIM AND IS INDEPENDENTLY REPRESENTED BY COUNSEL, THE AMOUNT PERMITTED TO BE RECOVERED BY THE DEPARTMENT FOR HEALTH CARE BENEFITS OR SERVICES PAID OR PAYABLE ON BEHALF OF THE PROGRAM RECIPIENT SHALL BE REDUCED BY THE AMOUNT THAT IS DETERMINED BY:**

**1. SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, DIVIDING THE AMOUNT OF THE TOTAL RECOVERY IN THE CAUSE OF ACTION INTO THE TOTAL AMOUNT OF THE ATTORNEY'S FEES INCURRED BY THE PROGRAM RECIPIENT FOR SERVICES RENDERED IN CONNECTION WITH THE CAUSE OF ACTION; AND**

**2. MULTIPLYING THE RESULT UNDER ITEM 1 OF THIS SUBPARAGRAPH BY THE AMOUNT OF THE DEPARTMENT'S SUBROGATION CLAIM.**

**(III) THE PERCENTAGE UNDER SUBPARAGRAPH (II)1 OF THIS PARAGRAPH MAY NOT EXCEED ONE-THIRD.**

(d) Any action brought under this section is not exclusive and is independent of and in addition to any right, remedy, or cause of action available to the State, the Department, any other State agency, or a Program recipient or any other individual.

(e) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Cigarette" means any roll of tobacco wrapped in:

1. Paper;

2. A substance not containing tobacco; or

1                               3.     A substance containing tobacco which because of its  
2 appearance, the type of tobacco used in the filler, or its packaging and labeling, is  
3 likely to be used by the consumers of ordinary paper-wrapped cigarettes.

4                               (iii) 1.     “Manufacturer of a tobacco product” means a  
5 designer, producer, or processor of a tobacco product engaged in the marketing or  
6 promotion of a tobacco product.

7                               2.     “Manufacturer of a tobacco product” includes an  
8 entity not otherwise a manufacturer of a tobacco product that imports a tobacco  
9 product or otherwise holds itself out as a manufacturer of a tobacco product.

10                              3.     “Manufacturer of a tobacco product” does not include:

11                              A.     A grower, buyer, dealer, distributor, or wholesaler of  
12 leaf tobacco; or

13                              B.     A retailer, distributor, or wholesaler of a tobacco  
14 product.

15                              (iv)   “Smokeless tobacco” means a product that consists of cut,  
16 ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

17                              (v)    “Tobacco product” means cigarettes or smokeless tobacco.

18                              (2)    In any action under this section or pursuant to any other right,  
19 remedy, or cause of action brought by the State against a manufacturer of a tobacco  
20 product, the causation and the amount of medical assistance expenditures attributable  
21 to the use of a tobacco product may be proved or disproved by evidence of statistical  
22 analysis, without proof of the causation or the amount of expenditures for any  
23 particular Program recipient or any other individual.

24                              (3)    Nothing contained in paragraph (2) of this subsection prohibits or  
25 limits the right of any party to introduce any other evidence, otherwise admissible,  
26 that supports or rebuts the evidence of statistical analysis described in paragraph (2)  
27 of this subsection.

28                              SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2012.