$\mathrm{D3}$  3lr2554 CF HB 773

By: The President (By Request - Office of the Attorney General)

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

## A BILL ENTITLED

1 AN ACT concerning

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## Maryland False Claims Act and Maryland False Health Claims Act – Revisions

- 3 FOR the purpose of authorizing certain persons to continue with actions under the 4 Maryland False Claims Act and the Maryland False Health Claims Act when the 5 governmental entity or the State elects not to proceed with the action; authorizing 6 the governmental entity or the State to serve certain subpoenas under the Maryland 7 False Claims Act and the Maryland False Health Claims Act; establishing certain 8 minimum penalties under the Maryland False Claims Act and the Maryland False 9 Health Claims Act; and generally relating to the Maryland False Claims Act and the Maryland False Health Claims Act. 10
- 11 BY repealing and reenacting, with amendments,
- 12 Article General Provisions
- 13 Section 8–102, 8–103, 8–104, and 8–105(a)
- 14 Annotated Code of Maryland
- 15 (2019 Replacement Volume and 2022 Supplement)
- 16 BY repealing and reenacting, with amendments,
- 17 Article Health General
- 18 Section 2–602, 2–603, 2–604, and 2–605(a)
- 19 Annotated Code of Maryland
- 20 (2019 Replacement Volume and 2022 Supplement)
- 21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 22 That the Laws of Maryland read as follows:
- 23 Article General Provisions
- 24 8–102.

- 1 (a) This section does not apply to claims, records, or statements related to State 2 or local taxes.
- 3 (b) A person may not:
- 4 (1) knowingly present or cause to be presented a false or fraudulent claim 5 for payment or approval;
- 6 (2) knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;
- 8 (3) conspire to commit a violation under this title;
- 9 (4) have possession, custody, or control of money or other property used or 10 to be used by or on behalf of a governmental entity and knowingly deliver or cause to be 11 delivered to the governmental entity less than all of that money or other property;
- 12 (5) (i) be authorized to make or deliver a receipt or other document 13 certifying receipt of money or other property used or to be used by a governmental entity; 14 and
- 15 (ii) make or deliver a receipt or document intending to defraud the 16 governmental entity, knowing that the information contained in the receipt or document is 17 not true;
- 18 (6) knowingly buy or receive as a pledge of an obligation or a debt publicly 19 owned property from an officer, employee, or agent of a governmental entity who lawfully 20 may not sell or pledge the property;
- 21 (7) knowingly make, use, or cause to be made or used a false record or 22 statement material to an obligation to pay or transmit money or other property to a 23 governmental entity;
- 24 (8) knowingly conceal, or knowingly and improperly avoid or decrease, an 25 obligation to pay or transmit money or other property to a governmental entity, including 26 misrepresenting the time at which a trade was made to make the transaction appear less 27 favorable; or
- 28 (9) knowingly make any other false or fraudulent claim against a 29 governmental entity.
- 30 (c) (1) A person that is found to have violated subsection (b) of this section is 31 liable to the governmental entity for:
- 32 (i) a civil penalty of **NOT LESS THAN \$5,000 AND** not more than \$10,000 for each violation; and

1 (ii) an additional amount of not more than three times the amount 2 of damages that the governmental entity sustains as a result of the acts of that person in 3 violation of subsection (b) of this section. 4 (2)The total amount owed by a person under paragraph (1) of this 5 subsection may not be less than the amount of the actual damages the governmental entity incurs as a result of the person's violation of subsection (b) of this section. 6 7 In determining the appropriate amount of fines and damages under 8 subsection (c) of this section, the court shall consider: 9 (1)the number, nature, and severity of the violations of this title for which 10 the person has been found liable; (2) 11 the number, nature, and severity of any previous violations of this title; 12 (3)the degree of loss suffered by the governmental entity; 13 the person's history of billing compliance; (4) 14 whether the person has a compliance program in place; (5)15 (6)the extent to which the person has taken steps to address and correct 16 the violation since the person became aware of the violation: 17 any funds previously returned to the governmental entity in compliance 18 with federal requirements regarding overpayments, to the extent the funds represented losses to the governmental entity caused by the violation; 19 20 (8)whether the person self-reported the violation; (i) 21the timeliness of the self-reporting; (ii) 22 the extent to which the person otherwise cooperated in the (iii) 23 investigation of the violation; and 24 the extent to which the person had prior knowledge of an investigation or other action relating to the violation; and 25 26 (9)any other factor as justice requires. 27 The penalties provided in subsection (c) of this section are in addition to any 28 criminal, civil, or administrative penalties provided under any other State or federal

30 8–103.

statute or regulation.

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- 1 (a) If a governmental entity finds that a person has violated or is violating § 8–102 of this title, the governmental entity may file a civil action in a court of competent 3 jurisdiction within the State against the person.
- 4 (b) In filing **OR INTERVENING IN** a civil action under this [section] **TITLE**, the governmental entity may seek:
- 6 (1) the penalties provided under § 8–102(c) of this title; and
- 7 (2) subject to the guidelines under [§ 8–105(b)(4)] § 8–105(A)(5) of this subtitle, court costs and attorney's fees.
- 9 (c) A governmental entity may not maintain an action under this section if the governmental entity has filed a civil action based on the same underlying act under § 12–603 of the Health General Article or has sought enforcement by the Attorney General under § 11–205 or § 11–205.1 of the State Finance and Procurement Article.
- 13 8–104.
- 14 (a) (1) (i) A person may file a civil action on behalf of the person and the 15 governmental entity in a court of competent jurisdiction within the State against a person 16 who has acted or is acting in violation of § 8–102 of this title.
- 17 (ii) A civil action filed under subparagraph (i) of this paragraph shall 18 be brought in the name of the governmental entity.
- 19 (2) A person filing an action under this section may seek:
- 20 (i) the penalties provided under § 8–102(c) of this title; and
- 21 (ii) subject to the guidelines set forth in [§ 8–105(a)(4)] § 22 8–105(A)(5) of this title, court costs and attorney's fees.
- 23 (3) (i) The person shall serve on the governmental entity a copy of the complaint and a written disclosure of substantially all material evidence and information that the person possesses, in accordance with the provisions of Title 2 of the Maryland Rules for serving process on the State or a local entity.
- 27 (ii) 1. The complaint shall be filed in camera and shall remain 28 under seal for at least 60 days.
- 29 2. The complaint may not be served on the defendant until 30 the complaint is unsealed and the court orders the complaint served.
- 3. Within 60 days after the governmental entity is served with the complaint and the material evidence and information, the governmental entity may elect to intervene and proceed with the action.

- 1 **(4)** For good cause shown, the governmental entity may move the 2 court for extensions of the time during which the complaint remains under seal under 3 paragraph (3)(ii)1 of this subsection. 4 Any motions made under subparagraph (i) of this paragraph may (ii) be supported by affidavits or other submissions in camera. 5 6 (i) The defendant may not be required to answer a complaint filed (5)7 under this section until after the complaint is: 8 1. unsealed and ordered by the court to be served; and 9 2. served on the defendant in accordance with Title 2 of the Maryland Rules. 10 11 When answering a complaint filed under this section, a (ii) 12defendant shall follow the time frames and other provisions for filing answers to a 13 complaint as required under Title 2, Chapter 300 of the Maryland Rules. 14 During the period in which the complaint is under seal, if the (iii) 15 governmental entity's investigation reveals that the act, transaction, or occurrence that gave rise to the alleged violation of this title is reasonably likely to be continuing, the 16 17 governmental entity shall notify the defendant as soon as practicable without jeopardizing 18 the course and conduct of the governmental entity's or the federal government's 19 investigation of the violation, compromising the development of evidence, or violating any State or federal law. 20 21Before the later of the expiration of the 60-day period during which the 22complaint remains under seal under paragraph (3)(ii)1 of this subsection or any extension 23of the 60-day period obtained under paragraph (4) of this subsection, the governmental 24entity shall: 25intervene and proceed with the action in a court of competent (i) 26 jurisdiction within the State; or 27 (ii) notify the court that it will not intervene and proceed with the 28 action. 29 [(7)]If the governmental entity does not elect to intervene and proceed with 30 the action under paragraph (6) of this subsection, before unsealing the complaint, the court
  - [(8)] (7) If a person initiates an action under this section, no person other than the governmental entity may intervene in the action or initiate a related action based on the facts underlying the pending action.

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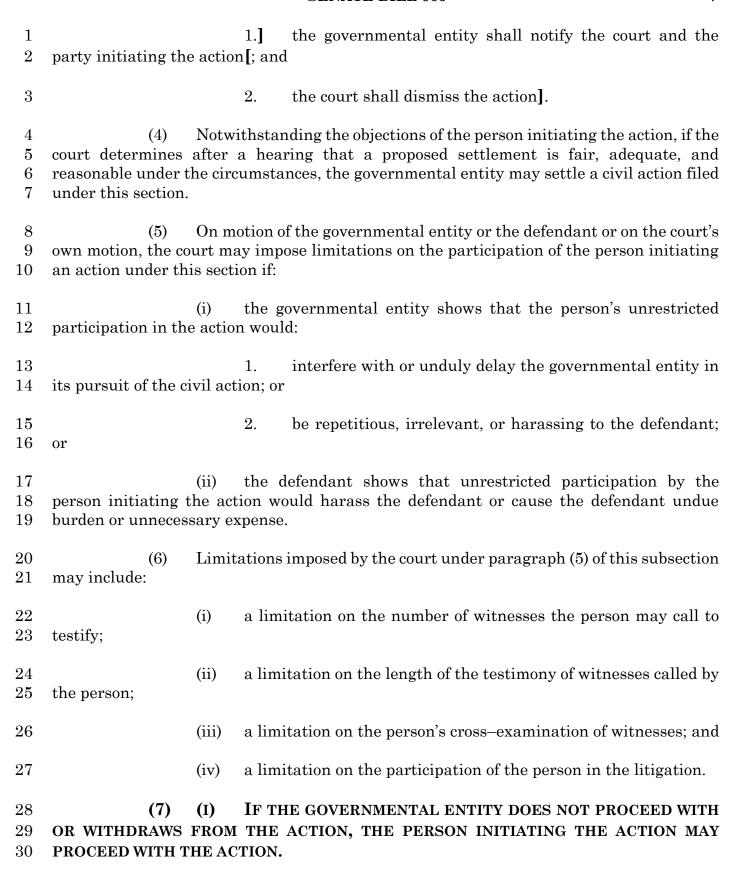
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shall dismiss the action.]

party to the action.

- 1 (1) If the governmental entity intervenes and proceeds with the action (b) 2 under subsection (a)(6)(i) of this section: 3 the governmental entity shall have the primary responsibility for proceeding with the action and may not be bound by any act of the person who initiated the 4 action; and 5 6 subject to paragraphs (3) through (6) of this subsection, the (ii) 7 person who initiated the action may continue as a party to the action. 8 (2)(i) During an investigation by the governmental entity conducted 9 either independently or in conjunction with a civil action filed under this title, [the 10 governmental entity shall have the same rights of discovery as a civil litigant in the circuit court under Title 2, Chapter 400 of the Maryland Rules IF THE GOVERNMENTAL ENTITY 11 12 HAS REASON TO BELIEVE THAT A PERSON HAS POSSESSION, CUSTODY, OR CONTROL 13 OF ANY RELEVANT DOCUMENTARY MATERIAL, OR THAT THE PERSON HAS INFORMATION RELEVANT TO THE INVESTIGATION, THE GOVERNMENTAL ENTITY 14 15 MAY, BEFORE THE INSTITUTION OF A CIVIL PROCEEDING, ISSUE IN WRITING AND 16 CAUSE TO BE SERVED ON THE PERSON A SUBPOENA REQUIRING THE PERSON TO: 17 1. **PRODUCE** THE **DOCUMENTARY MATERIAL FOR** 18 INSPECTION AND COPYING OR REPRODUCTION; 2. ANSWER, UNDER OATH AND IN WRITING, WRITTEN 19 20INTERROGATORIES; 213. GIVE SWORN ORAL TESTIMONY CONCERNING THE 22DOCUMENTARY MATERIAL OR INFORMATION; OR 234. PROVIDE ANY COMBINATION OF MATERIAL, ANSWERS, OR TESTIMONY UNDER ITEMS 1 THROUGH 3 OF THIS SUBPARAGRAPH. 2425 A person from whom the governmental entity seeks discovery (ii) shall be considered a party under Title 2, Chapter 400 of the Maryland Rules A 26 SUBPOENA ISSUED UNDER THIS PARAGRAPH MAY BE SERVED IN THE SAME MANNER 2728 AS A SUBPOENA ISSUED BY A CIRCUIT COURT. 29 (3)(i) Notwithstanding the objections of the person initiating the action, the governmental entity may elect at any point to withdraw its intervention as a 30
- 32 (ii) If the governmental entity elects to withdraw as a party to the 33 action[:



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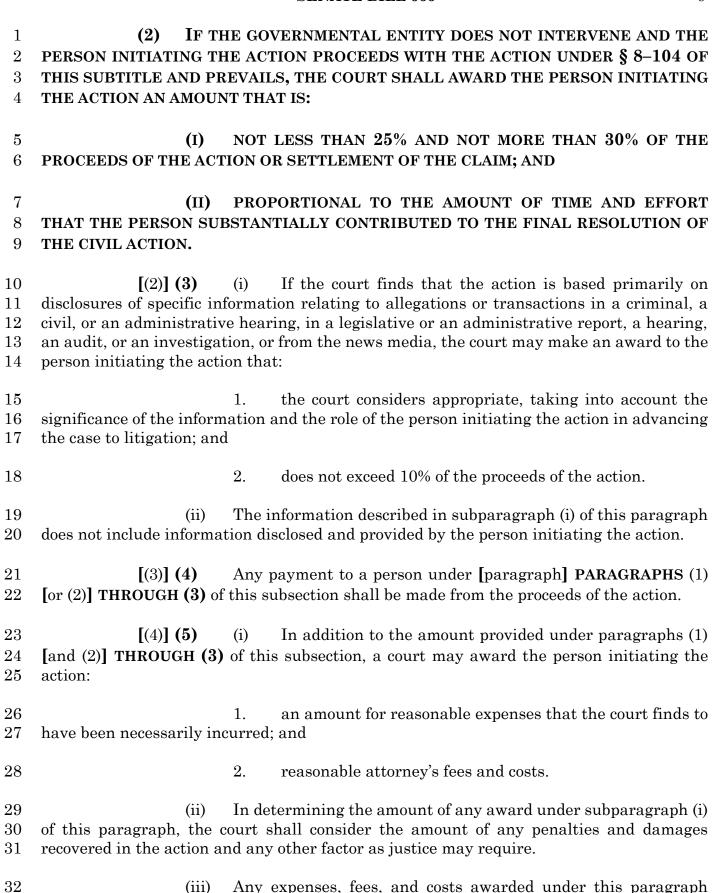
action or settlement of the claim; and

(ii)

substantially contributed to the final resolution of the civil action.

1 IF THE GOVERNMENTAL ENTITY SO REQUESTS, IT SHALL BE (II)2 SERVED WITH COPIES OF ALL PLEADINGS FILED IN THE ACTION AND SUPPLIED WITH 3 COPIES OF ALL DEPOSITION TRANSCRIPTS. (III) NOTWITHSTANDING 4 ENTITY'S  $\mathbf{THE}$ GOVERNMENTAL 5 DECISION NOT TO PROCEED WITH OR TO WITHDRAW FROM THE ACTION, IF THE 6 PERSON INITIATING THE ACTION PROCEEDS WITH THE ACTION, THE COURT SHALL 7 ALLOW THE GOVERNMENTAL ENTITY TO INTERVENE AT A LATER DATE. 8 (IV) ON MOTION BY THE GOVERNMENTAL ENTITY, THE COURT 9 MAY DISMISS THE ACTION NOTWITHSTANDING THE OBJECTIONS OF THE PERSON 10 INITIATING THE ACTION IF: 11 1. THE **PERSON** HAS **BEEN NOTIFIED**  $\mathbf{BY}$ THE 12 GOVERNMENTAL ENTITY OF THE FILING OF THE MOTION; AND 2. 13 THE COURT HAS PROVIDED THE PERSON WITH AN 14 OPPORTUNITY FOR A HEARING ON THE MOTION. 15 (1)On a showing in camera by the governmental entity that certain actions of discovery by the person initiating the action would interfere with the governmental 16 17 entity's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days. 18 19 (2)The court may extend the 60-day period on a further showing in camera 20 that: 21the governmental entity has pursued the criminal or civil 22 investigation or proceeding with reasonable diligence; and 23 any proposed discovery in the civil action will interfere with the (ii) ongoing criminal or civil investigation or proceeding. 24 8-105. 25 26 If the governmental entity intervenes and proceeds with an action filed 27 under § 8–104 of this title and the governmental entity prevails, the court shall award the 28 person initiating the action an amount that is: 29 not less than 15% and not more than 25% of the proceeds of the

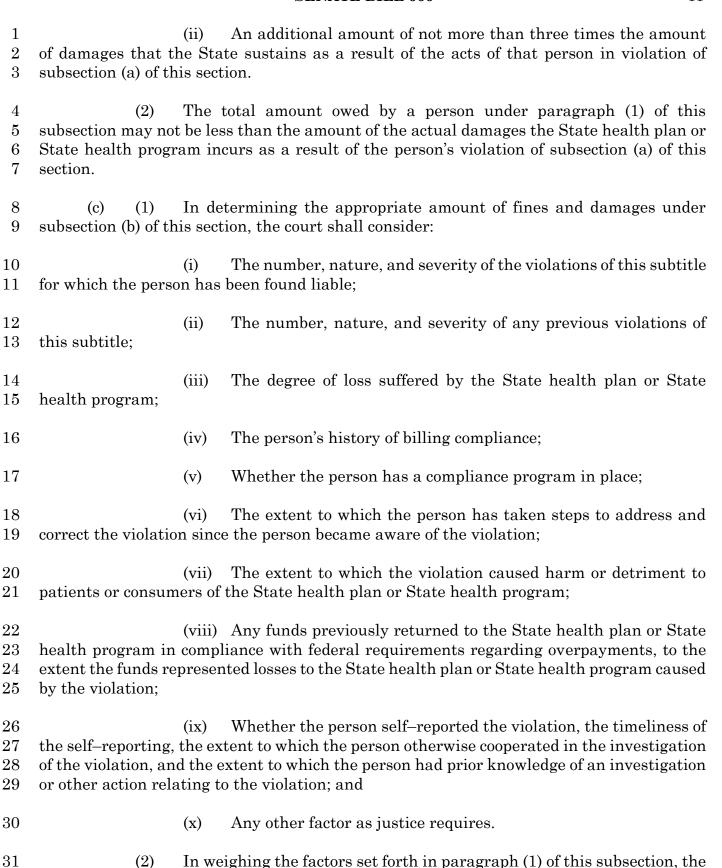
proportional to the amount of time and effort that the person



shall be awarded against the defendant.

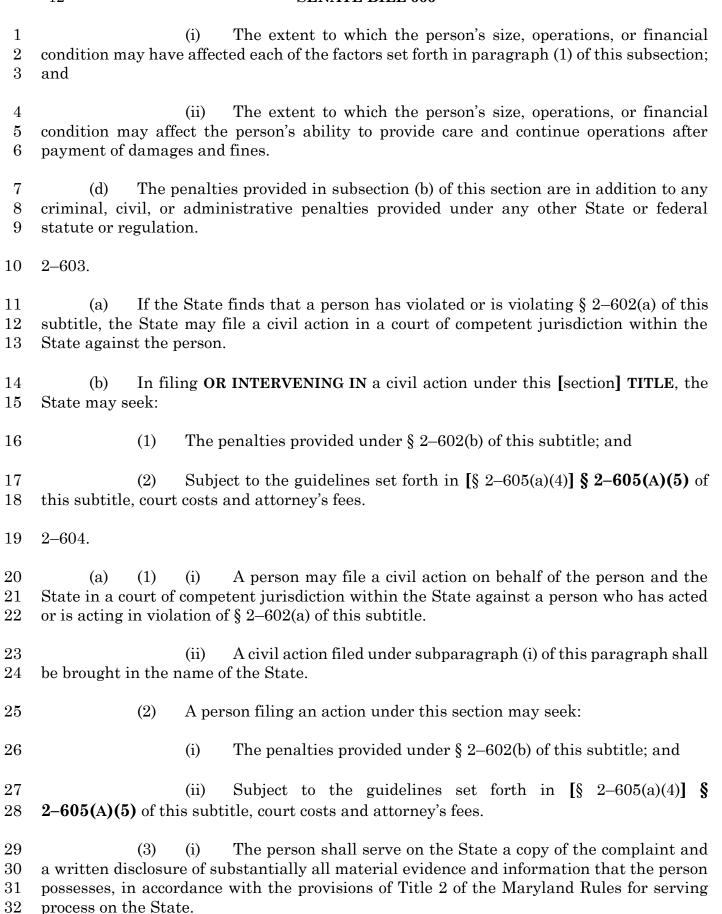
## 1 Article – Health – General 2 2–602.

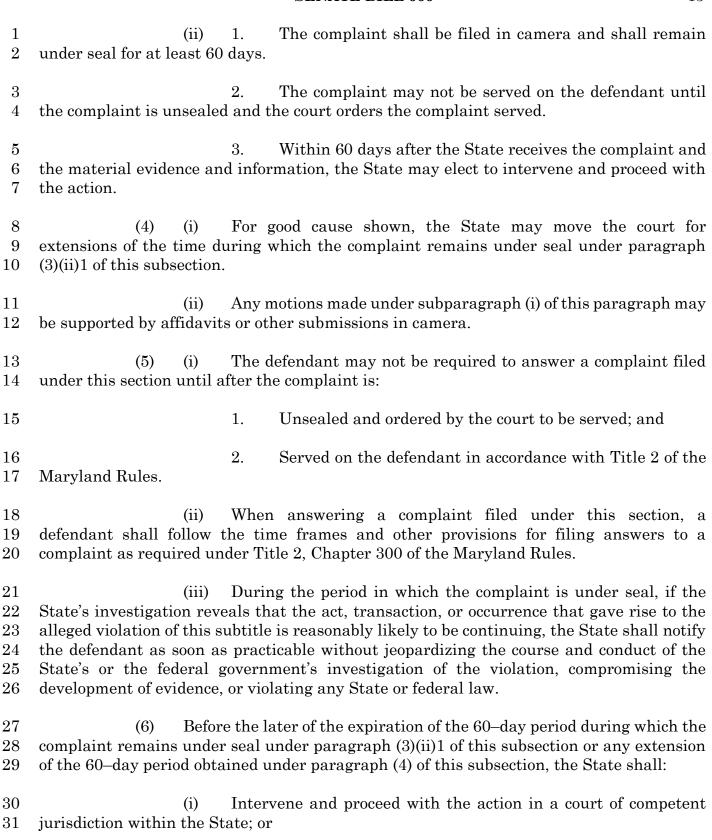
- 3 (a) A person may not:
- 4 (1) Knowingly present or cause to be presented a false or fraudulent claim 5 for payment or approval;
- 6 (2) Knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;
- 8 (3) Conspire to commit a violation under this subtitle;
- 9 (4) Have possession, custody, or control of money or other property used by 10 or on behalf of the State under a State health plan or a State health program and knowingly 11 deliver or cause to be delivered to the State less than all of that money or other property;
- 12 (5) (i) Be authorized to make or deliver a receipt or other document 13 certifying receipt of money or other property used or to be used by the State under a State 14 health plan or a State health program; and
- 15 (ii) Intending to defraud the State or the Department, make or 16 deliver a receipt or document knowing that the information contained in the receipt or 17 document is not true;
- 18 (6) Knowingly buy or receive as a pledge of an obligation or debt publicly 19 owned property from an officer, employee, or agent of a State health plan or a State health 20 program who lawfully may not sell or pledge the property;
- 21 (7) Knowingly make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or other property to the State;
- 23 (8) Knowingly conceal, or knowingly and improperly avoid or decrease, an obligation to pay or transmit money or other property to the State; or
- 25 (9) Knowingly make any other false or fraudulent claim against a State 26 health plan or a State health program.
- 27 (b) (1) A person who is found to have violated subsection (a) of this section is 28 liable to the State for:
- 29 (i) A civil penalty of **NOT LESS THAN \$5,000 AND** not more than 30 \$10,000 for each violation of subsection (a) of this section; and



court shall, where appropriate, give special consideration to:

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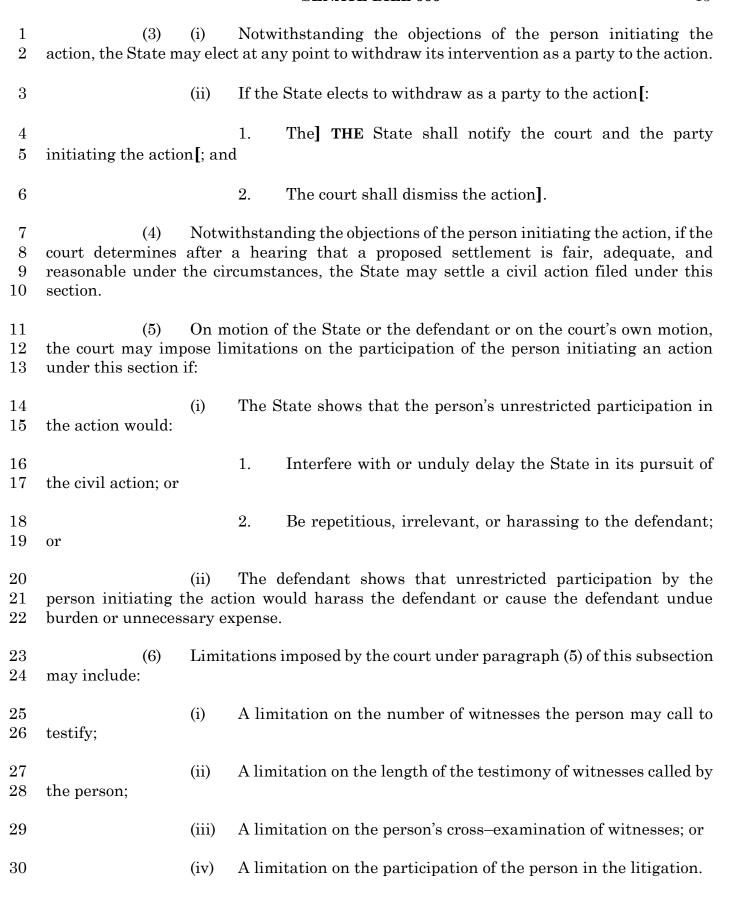


32 (ii) Notify the court that it will not intervene and proceed with the 33 action.

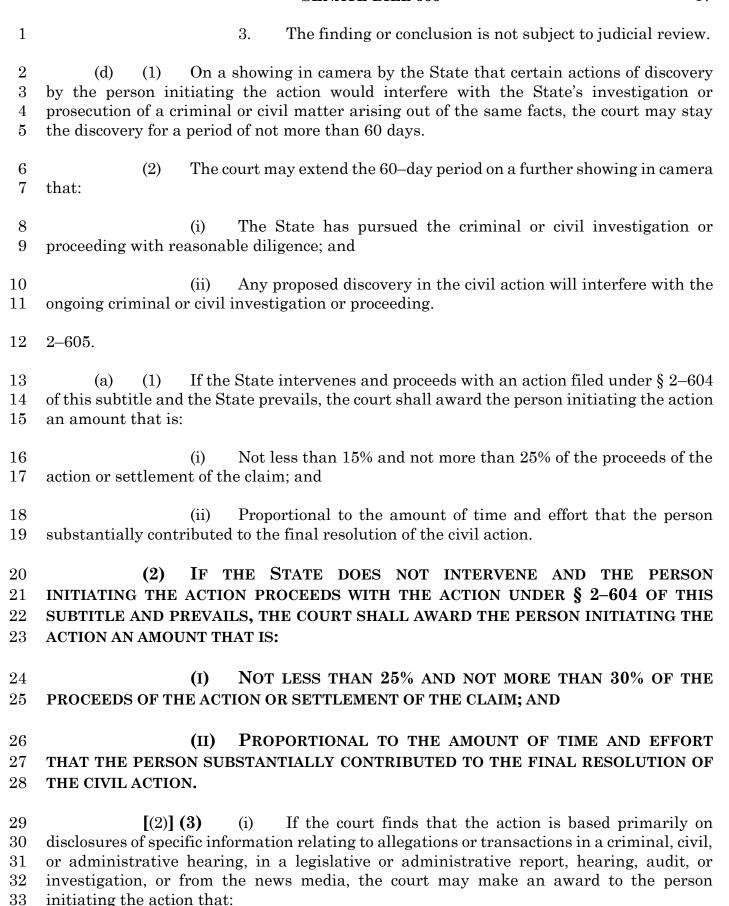
- [(7) If the State does not elect to intervene and proceed with the action under paragraph (6) of this subsection, before unsealing the complaint, the court shall dismiss the action.]
- 4 [(8)] (7) If a person initiates an action under this section, no person other 5 than the State may intervene in the action or initiate a related action based on the facts 6 underlying the pending action.
- 7 (b) (1) If the State intervenes and proceeds with the action under subsection 8 (a)(6)(i) of this section:
- 9 (i) The State shall have the primary responsibility for proceeding 10 with the action and may not be bound by any act of the person who initiated the action; and
- 11 (ii) Subject to paragraphs (3) through (6) of this subsection, the 12 person who initiated the action may continue as a party to the action.
- 13 (2)During an investigation by the State conducted either (i) independently or in conjunction with a civil action filed under this subtitle, [the Attorney 14 15 General shall have the same rights of discovery as a civil litigant in the circuit court under 16 Title 2, Chapter 400 of the Maryland Rules IF THE ATTORNEY GENERAL HAS REASON 17 TO BELIEVE THAT A PERSON HAS POSSESSION, CUSTODY, OR CONTROL OF ANY RELEVANT DOCUMENTARY MATERIAL, OR THAT THE PERSON HAS INFORMATION 18 THAT MAY BE RELEVANT TO THE INVESTIGATION, THE ATTORNEY GENERAL MAY, 19 20 BEFORE THE INSTITUTION OF A CIVIL PROCEEDING, ISSUE IN WRITING AND CAUSE
- 22 1. PRODUCE THE DOCUMENTARY MATERIAL FOR 23 INSPECTION AND COPYING OR REPRODUCTION;

TO BE SERVED ON THE PERSON A SUBPOENA REQUIRING THE PERSON TO:

- 24 **2.** Answer, under oath and in writing, written 25 interrogatories;
- 26 3. GIVE SWORN ORAL TESTIMONY CONCERNING THE 27 DOCUMENTARY MATERIAL OR INFORMATION; OR
- 28 4. PROVIDE ANY COMBINATION OF MATERIAL, 29 ANSWERS, OR TESTIMONY UNDER ITEMS 1 THROUGH 3 OF THIS SUBPARAGRAPH.
- 30 (ii) [A person from whom the Attorney General seeks discovery shall 31 be considered a party under Title 2, Chapter 400 of the Maryland Rules] A SUBPOENA 32 ISSUED UNDER THIS PARAGRAPH MAY BE SERVED IN THE SAME MANNER AS A 33 SUBPOENA ISSUED BY A CIRCUIT COURT.



- IF THE STATE DOES NOT PROCEED WITH OR WITHDRAWS 1 **(7) (I)** 2 FROM THE ACTION, THE PERSON INITIATING THE ACTION MAY PROCEED WITH THE 3 ACTION. 4 IF THE STATE SO REQUESTS, IT SHALL BE SERVED WITH 5 COPIES OF ALL PLEADINGS FILED IN THE ACTION AND SUPPLIED WITH COPIES OF 6 ALL DEPOSITION TRANSCRIPTS. 7 (III) NOTWITHSTANDING THE STATE'S DECISION NOT TO PROCEED WITH OR TO WITHDRAW FROM THE ACTION, IF THE PERSON INITIATING 8 9 THE ACTION PROCEEDS WITH THE ACTION, THE COURT SHALL ALLOW THE STATE TO 10 INTERVENE AT A LATER DATE. 11 (IV) ON MOTION BY THE STATE, THE COURT MAY DISMISS THE 12 ACTION NOTWITHSTANDING THE OBJECTIONS OF THE PERSON INITIATING THE 13 **ACTION IF:** 14 1. THE PERSON HAS BEEN NOTIFIED BY THE STATE OF 15 THE FILING OF THE MOTION; AND 16 2. THE COURT HAS PROVIDED THE PERSON WITH AN 17 OPPORTUNITY FOR A HEARING ON THE MOTION. 18 Instead of proceeding with a civil action filed under this subtitle, the (c) 19 State may pursue any alternative remedy available to the State, including any appropriate 20administrative proceeding to determine a civil money penalty. 21If the State seeks an alternative remedy in another proceeding after intervening in a civil action filed under this section, the person initiating the action shall have the same rights in the alternative proceeding as the person would have had if the civil
- 22 23action had continued under this section. 24
- A finding of fact or conclusion of law made in any alternative 25proceeding that has become final shall be conclusive on all parties to an action filed under 26 27 this subtitle.
- 28 For purposes of subparagraph (i) of this paragraph, a finding or (ii) 29 conclusion is final if:
- 30 1. It has been finally determined on appeal to the 31 appropriate court of the State;
- 32 All time for filing the appeal with respect to the finding or 2. 33 conclusion has expired; or



## SENATE BILL 666

1 2 3	1. The court considers appropriate, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation; and
4	2. Does not exceed 10% of the proceeds of the action.
5 6	(ii) The information described in subparagraph (i) of this paragraph does not include information disclosed and provided by the person initiating the action.
7 8	[(3)] (4) Any payment to a person under [paragraph] PARAGRAPHS (1) [or (2)] THROUGH (3) of this subsection shall be made from the proceeds of the action.
9 10 11	[(4)] (5) (i) In addition to the amount provided under paragraphs (1) [and (2)] <b>THROUGH (3)</b> of this subsection, a court may award the person initiating the action:
12 13	1. An amount for reasonable expenses that the court finds to have been necessarily incurred; and
14	2. Reasonable attorney's fees and costs.
15 16 17	(ii) In determining the amount of any award under subparagraph (i) of this paragraph, the court shall consider the amount of any penalties and damages recovered in the action and any other factor as justice may require.
18 19	(iii) Any expenses, fees, and costs awarded under this paragraph shall be awarded against the defendant.
20 21	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.