

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 889

(Chair, Judicial Proceedings Committee)(By Request -
Office of the Attorney General)

Judicial Proceedings

**Civil Actions - Enforcement Actions by the Attorney General - Statutes of
Limitations**

This bill authorizes a civil enforcement action brought by the Office of the Attorney General (OAG) to enforce the provisions of the Maryland Antitrust Act to be instituted at any time. The bill also specifies that a civil enforcement action brought by OAG is exempt from the one-year statute of limitations under § 5-107 of the Courts and Judicial Proceedings Article for prosecutions or suits for a fine, penalty, or forfeiture.

Fiscal Summary

State Effect: General fund revenues increase, potentially significantly and beginning in FY 2029, from recoveries in OAG antitrust enforcement actions brought under the bill's extended statutes of limitations. Expenditures are not materially affected.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law/Background: An action to enforce the Maryland Antitrust Act must be commenced within four years after the cause of action accrues.

Generally, under § 5-107 of the Courts and Judicial Proceedings Article, unless otherwise specified, a prosecution or suit for a fine, penalty, or forfeiture must be initiated within one year after the offense was committed.

OAG previously advised that the former Court of Special Appeals (now the Appellate Court of Maryland) has held on multiple occasions that § 5-107 of the Courts and Judicial Proceedings Article does not apply to *administrative* proceedings. Examples of OAG units with the authority to pursue administrative civil enforcement actions are the Consumer Protection Division, the Securities Division, and the enforcement unit of the Civil Rights Division. The Antitrust Division does not have the ability to bring administrative actions. OAG further advised that no Maryland appellate court has applied § 5-107 to limit an OAG civil statutory cause of action. With respect to similar legislation, OAG advised that the bill clarifies that civil enforcement actions brought by OAG are not subject to the limitations under § 5-107, whether the action is brought in court or through an administrative process. However, as referenced above, the Maryland Antitrust Act includes a separate statute of limitations.

State Revenues: General fund revenues increase, perhaps significantly, from recoveries in OAG antitrust enforcement actions that are allowed to proceed under the bill. Antitrust civil penalties are deposited into the general fund; damages are returned to injured persons. According to OAG, Antitrust Division recoveries average between \$500,000 and \$3.0 million annually; OAG did not provide information on what portion of this amount are civil penalties. Violators of the Maryland Antitrust Act are subject to a civil penalty of up to \$10,000 for each violation; each day that a violation continues is a separate violation.

This analysis assumes any fiscal impact on general fund revenues is not realized until fiscal 2029, when the four-year statute of limitations under current law would have otherwise expired.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2024
rh/jkb

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510