

SENATE BILL 502

J1

3lr2596
CF HB 600

By: **Senator Astle**

Introduced and read first time: January 31, 2013

Assigned to: Judicial Proceedings and Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program – Judgments – Third-Party**
3 **Tortfeasors**

4 FOR the purpose of requiring a certain judgment obtained in favor of a Maryland
5 Medical Assistance Program recipient to be increased by a certain amount
6 under certain circumstances; authorizing the Department of Health and Mental
7 Hygiene to collect from a Program recipient the full amount of certain payments
8 under certain circumstances; and generally relating to judgments in favor of
9 Maryland Medical Assistance Program recipients and recovery of payments by
10 the Department of Health and Mental Hygiene.

11 BY repealing and reenacting, with amendments,
12 Article – Health – General
13 Section 15–120
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2012 Supplement)

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

18 **Article – Health – General**

19 15–120.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

22 (i) To the Program recipient; or

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

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

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

31 **(D) (1) IF A JUDGMENT IS OBTAINED IN FAVOR OF A PROGRAM**
32 **RECIPIENT AGAINST A THIRD-PARTY TORTFEASOR FOR DAMAGES THAT**
33 **INCLUDE PAYMENTS MADE BY THE DEPARTMENT ON BEHALF OF THE PROGRAM**
34 **RECIPIENT AND THE JUDGMENT IS NOT PAID BY THE THIRD-PARTY**
35 **TORTFEASOR WITHIN 30 DAYS AFTER THE JUDGMENT IS FINAL AND ALL**
36 **APPEALS ARE EXHAUSTED, THE AMOUNT OF THE JUDGMENT SHALL BE**

1 INCREASED BY AN AMOUNT EQUAL TO THE AMOUNT OF THE PAYMENTS MADE BY
2 THE DEPARTMENT.

3 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF A
4 JUDGMENT IN FAVOR OF A PROGRAM RECIPIENT IS INCREASED UNDER
5 PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT MAY COLLECT FROM
6 THE PROGRAM RECIPIENT THE FULL AMOUNT OF THE PAYMENTS MADE BY THE
7 DEPARTMENT ON BEHALF OF THE PROGRAM RECIPIENT WITHOUT ANY
8 REDUCTION FOR ATTORNEY'S FEES OR PROCUREMENT COSTS.

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

13 [(e)] (F) (1) (i) In this subsection the following words have the
14 meanings indicated.

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

16 1. Paper;

17 2. A substance not containing tobacco; or

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

21 (iii) 1. "Manufacturer of a tobacco product" means a
22 designer, producer, or processor of a tobacco product engaged in the marketing or
23 promotion of a tobacco product.

24 2. "Manufacturer of a tobacco product" includes an
25 entity not otherwise a manufacturer of a tobacco product that imports a tobacco
26 product or otherwise holds itself out as a manufacturer of a tobacco product.

27 3. "Manufacturer of a tobacco product" does not include:

28 A. A grower, buyer, dealer, distributor, or wholesaler of
29 leaf tobacco; or

30 B. A retailer, distributor, or wholesaler of a tobacco
31 product.

32 (iv) "Smokeless tobacco" means a product that consists of cut,
33 ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

1 (v) "Tobacco product" means cigarettes or smokeless tobacco.

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

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

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2013.