

SENATE BILL 666

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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

2 **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
10 Maryland False Health Claims Act.

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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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
7 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
33 \$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
6 incurs as a result of the person's violation of subsection (b) of this section.

7 (d) 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;

11 (2) the number, nature, and severity of any previous violations of this title;

12 (3) the degree of loss suffered by the governmental entity;

13 (4) the person's history of billing compliance;

14 (5) whether the person has a compliance program in place;

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 (7) any funds previously returned to the governmental entity in compliance
18 with federal requirements regarding overpayments, to the extent the funds represented
19 losses to the governmental entity caused by the violation;

20 (8) (i) whether the person self-reported the violation;

21 (ii) the timeliness of the self-reporting;

22 (iii) the extent to which the person otherwise cooperated in the
23 investigation of the violation; and

24 (iv) the extent to which the person had prior knowledge of an
25 investigation or other action relating to the violation; and

26 (9) any other factor as justice requires.

27 (e) 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
29 statute or regulation.

1 (a) If a governmental entity finds that a person has violated or is violating §
2 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
5 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
8 subtitle, court costs and attorney’s fees.

9 (c) A governmental entity may not maintain an action under this section if the
10 governmental entity has filed a civil action based on the same underlying act under §
11 2–603 of the Health – General Article or has sought enforcement by the Attorney General
12 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
24 complaint and a written disclosure of substantially all material evidence and information
25 that the person possesses, in accordance with the provisions of Title 2 of the Maryland
26 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.

31 3. Within 60 days after the governmental entity is served
32 with the complaint and the material evidence and information, the governmental entity
33 may elect to intervene and proceed with the action.

1 (4) (i) 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)(i)1 of this subsection.

4 (ii) Any motions made under subparagraph (i) of this paragraph may
5 be supported by affidavits or other submissions in camera.

6 (5) (i) The defendant may not be required to answer a complaint filed
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
10 Maryland Rules.

11 (ii) When answering a complaint filed under this section, a
12 defendant 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 (iii) During the period in which the complaint is under seal, if the
15 governmental entity's investigation reveals that the act, transaction, or occurrence that
16 gave rise to the alleged violation of this title is reasonably likely to be continuing, the
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
20 State or federal law.

21 (6) Before the later of the expiration of the 60-day period during which the
22 complaint remains under seal under paragraph (3)(i)1 of this subsection or any extension
23 of the 60-day period obtained under paragraph (4) of this subsection, the governmental
24 entity shall:

25 (i) intervene and proceed with the action in a court of competent
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
31 shall dismiss the action.]

32 [(8) (7) If a person initiates an action under this section, no person other
33 than the governmental entity may intervene in the action or initiate a related action based
34 on the facts underlying the pending action.

1 (b) (1) If the governmental entity intervenes and proceeds with the action
2 under subsection (a)(6)(i) of this section:

3 (i) the governmental entity shall have the primary responsibility for
4 proceeding with the action and may not be bound by any act of the person who initiated the
5 action; and

6 (ii) subject to paragraphs (3) through (6) of this subsection, the
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
11 court under Title 2, Chapter 400 of the Maryland Rules] **IF THE GOVERNMENTAL ENTITY
12 HAS REASON TO BELIEVE THAT A PERSON HAS POSSESSION, CUSTODY, OR CONTROL
13 OF ANY RELEVANT DOCUMENTARY MATERIAL, OR THAT THE PERSON HAS
14 INFORMATION RELEVANT TO THE INVESTIGATION, THE GOVERNMENTAL ENTITY
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;**

19 **2. ANSWER, UNDER OATH AND IN WRITING, WRITTEN**
20 **INTERROGATORIES;**

21 **3. GIVE SWORN ORAL TESTIMONY CONCERNING THE**
22 **DOCUMENTARY MATERIAL OR INFORMATION; OR**

23 **4. PROVIDE ANY COMBINATION OF MATERIAL, ANSWERS,**
24 **OR TESTIMONY UNDER ITEMS 1 THROUGH 3 OF THIS SUBPARAGRAPH.**

25 (ii) [A person from whom the governmental entity seeks discovery
26 shall be considered a party under Title 2, Chapter 400 of the Maryland Rules] **A
27 SUBPOENA ISSUED UNDER THIS PARAGRAPH MAY BE SERVED IN THE SAME MANNER
28 AS A SUBPOENA ISSUED BY A CIRCUIT COURT.**

29 (3) (i) Notwithstanding the objections of the person initiating the
30 action, the governmental entity may elect at any point to withdraw its intervention as a
31 party to the action.

32 (ii) If the governmental entity elects to withdraw as a party to the
33 action[:

1 1.] the governmental entity shall notify the court and the
2 party initiating the action[; and

3 2. the court shall dismiss the action].

4 (4) Notwithstanding the objections of the person initiating the action, if the
5 court determines after a hearing that a proposed settlement is fair, adequate, and
6 reasonable under the circumstances, the governmental entity may settle a civil action filed
7 under this section.

8 (5) On motion of the governmental entity or the defendant or on the court's
9 own motion, the court may impose limitations on the participation of the person initiating
10 an action under this section if:

11 (i) the governmental entity shows that the person's unrestricted
12 participation in the action would:

13 1. interfere with or unduly delay the governmental entity in
14 its pursuit of the civil action; or

15 2. be repetitious, irrelevant, or harassing to the defendant;
16 or

17 (ii) the defendant shows that unrestricted participation by the
18 person initiating the action would harass the defendant or cause the defendant undue
19 burden or unnecessary expense.

20 (6) Limitations imposed by the court under paragraph (5) of this subsection
21 may include:

22 (i) a limitation on the number of witnesses the person may call to
23 testify;

24 (ii) a limitation on the length of the testimony of witnesses called by
25 the person;

26 (iii) a limitation on the person's cross-examination of witnesses; and

27 (iv) a limitation on the participation of the person in the litigation.

28 **(7) (I) IF THE GOVERNMENTAL ENTITY DOES NOT PROCEED WITH**
29 **OR WITHDRAWS FROM THE ACTION, THE PERSON INITIATING THE ACTION MAY**
30 **PROCEED WITH THE ACTION.**

1 **(II) IF THE GOVERNMENTAL ENTITY SO REQUESTS, IT SHALL BE**
2 **SERVED WITH COPIES OF ALL PLEADINGS FILED IN THE ACTION AND SUPPLIED WITH**
3 **COPIES OF ALL DEPOSITION TRANSCRIPTS.**

4 **(III) NOTWITHSTANDING THE GOVERNMENTAL ENTITY'S**
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 BY THE**
12 **GOVERNMENTAL ENTITY OF THE FILING OF THE MOTION; AND**

13 **2. THE COURT HAS PROVIDED THE PERSON WITH AN**
14 **OPPORTUNITY FOR A HEARING ON THE MOTION.**

15 (c) (1) On a showing in camera by the governmental entity that certain actions
16 of discovery by the person initiating the action would interfere with the governmental
17 entity's investigation or prosecution of a criminal or civil matter arising out of the same
18 facts, the court may stay the discovery for a period of not more than 60 days.

19 (2) The court may extend the 60-day period on a further showing in camera
20 that:

21 (i) the governmental entity has pursued the criminal or civil
22 investigation or proceeding with reasonable diligence; and

23 (ii) any proposed discovery in the civil action will interfere with the
24 ongoing criminal or civil investigation or proceeding.

25 8–105.

26 (a) (1) 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 (i) not less than 15% and not more than 25% of the proceeds of the
30 action or settlement of the claim; and

31 (ii) proportional to the amount of time and effort that the person
32 substantially contributed to the final resolution of the civil action.

1 **(2) IF THE GOVERNMENTAL ENTITY DOES NOT INTERVENE AND THE**
2 **PERSON INITIATING THE ACTION PROCEEDS WITH THE ACTION UNDER § 8-104 OF**
3 **THIS SUBTITLE AND PREVAILS, THE COURT SHALL AWARD THE PERSON INITIATING**
4 **THE ACTION AN AMOUNT THAT IS:**

5 **(I) NOT LESS THAN 25% AND NOT MORE THAN 30% OF THE**
6 **PROCEEDS OF THE ACTION OR SETTLEMENT OF THE CLAIM; AND**

7 **(II) PROPORTIONAL TO THE AMOUNT OF TIME AND EFFORT**
8 **THAT THE PERSON SUBSTANTIALLY CONTRIBUTED TO THE FINAL RESOLUTION OF**
9 **THE CIVIL ACTION.**

10 **[(2)] (3)** (i) If the court finds that the action is based primarily on
11 disclosures of specific information relating to allegations or transactions in a criminal, a
12 civil, or an administrative hearing, in a legislative or an administrative report, a hearing,
13 an audit, or an investigation, or from the news media, the court may make an award to the
14 person initiating the action that:

15 1. the court considers appropriate, taking into account the
16 significance of the information and the role of the person initiating the action in advancing
17 the case to litigation; and

18 2. does not exceed 10% of the proceeds of the action.

19 (ii) The information described in subparagraph (i) of this paragraph
20 does not include information disclosed and provided by the person initiating the action.

21 **[(3)] (4)** Any payment to a person under **[paragraph] PARAGRAPHS (1)**
22 **[or (2)] THROUGH (3)** of this subsection shall be made from the proceeds of the action.

23 **[(4)] (5)** (i) In addition to the amount provided under paragraphs (1)
24 **[and (2)] THROUGH (3)** of this subsection, a court may award the person initiating the
25 action:

26 1. an amount for reasonable expenses that the court finds to
27 have been necessarily incurred; and

28 2. reasonable attorney's fees and costs.

29 (ii) In determining the amount of any award under subparagraph (i)
30 of this paragraph, the court shall consider the amount of any penalties and damages
31 recovered in the action and any other factor as justice may require.

32 (iii) Any expenses, fees, and costs awarded under this paragraph
33 shall be awarded against the defendant.

Article – Health – General

1
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
7 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
22 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
24 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

1 (ii) An additional amount of not more than three times the amount
2 of damages that the State sustains as a result of the acts of that person in violation of
3 subsection (a) 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 State health plan or
6 State health program incurs as a result of the person's violation of subsection (a) of this
7 section.

8 (c) (1) In determining the appropriate amount of fines and damages under
9 subsection (b) of this section, the court shall consider:

10 (i) The number, nature, and severity of the violations of this subtitle
11 for which the person has been found liable;

12 (ii) The number, nature, and severity of any previous violations of
13 this subtitle;

14 (iii) The degree of loss suffered by the State health plan or State
15 health program;

16 (iv) The person's history of billing compliance;

17 (v) Whether the person has a compliance program in place;

18 (vi) The extent to which the person has taken steps to address and
19 correct the violation since the person became aware of the violation;

20 (vii) The extent to which the violation caused harm or detriment to
21 patients or consumers of the State health plan or State health program;

22 (viii) Any funds previously returned to the State health plan or State
23 health program in compliance with federal requirements regarding overpayments, to the
24 extent the funds represented losses to the State health plan or State health program caused
25 by the violation;

26 (ix) Whether the person self-reported the violation, the timeliness of
27 the self-reporting, the extent to which the person otherwise cooperated in the investigation
28 of the violation, and the extent to which the person had prior knowledge of an investigation
29 or other action relating to the violation; and

30 (x) Any other factor as justice requires.

31 (2) In weighing the factors set forth in paragraph (1) of this subsection, the
32 court shall, where appropriate, give special consideration to:

1 (i) The extent to which the person's size, operations, or financial
2 condition may have affected each of the factors set forth in paragraph (1) of this subsection;
3 and

4 (ii) The extent to which the person's size, operations, or financial
5 condition may affect the person's ability to provide care and continue operations after
6 payment of damages and fines.

7 (d) The penalties provided in subsection (b) of this section are in addition to any
8 criminal, civil, or administrative penalties provided under any other State or federal
9 statute or regulation.

10 2-603.

11 (a) If the State finds that a person has violated or is violating § 2-602(a) of this
12 subtitle, the State may file a civil action in a court of competent jurisdiction within the
13 State against the person.

14 (b) In filing **OR INTERVENING IN** a civil action under this [section] **TITLE**, the
15 State may seek:

16 (1) The penalties provided under § 2-602(b) of this subtitle; and

17 (2) Subject to the guidelines set forth in [§ 2-605(a)(4)] **§ 2-605(A)(5)** of
18 this subtitle, court costs and attorney's fees.

19 2-604.

20 (a) (1) (i) A person may file a civil action on behalf of the person and the
21 State in a court of competent jurisdiction within the State against a person who has acted
22 or is acting in violation of § 2-602(a) of this subtitle.

23 (ii) A civil action filed under subparagraph (i) of this paragraph shall
24 be brought in the name of the State.

25 (2) A person filing an action under this section may seek:

26 (i) The penalties provided under § 2-602(b) of this subtitle; and

27 (ii) Subject to the guidelines set forth in [§ 2-605(a)(4)] **§**
28 **2-605(A)(5)** of this subtitle, court costs and attorney's fees.

29 (3) (i) The person shall serve on the State a copy of the complaint and
30 a written disclosure of substantially all material evidence and information that the person
31 possesses, in accordance with the provisions of Title 2 of the Maryland Rules for serving
32 process on the State.

1 (ii) 1. The complaint shall be filed in camera and shall remain
2 under seal for at least 60 days.

3 2. The complaint may not be served on the defendant until
4 the complaint is unsealed and the court orders the complaint served.

5 3. Within 60 days after the State receives the complaint and
6 the material evidence and information, the State may elect to intervene and proceed with
7 the action.

8 (4) (i) For good cause shown, the State may move the court for
9 extensions of the time during which the complaint remains under seal under paragraph
10 (3)(i)1 of this subsection.

11 (ii) Any motions made under subparagraph (i) of this paragraph may
12 be supported by affidavits or other submissions in camera.

13 (5) (i) The defendant may not be required to answer a complaint filed
14 under this section until after the complaint is:

15 1. Unsealed and ordered by the court to be served; and

16 2. Served on the defendant in accordance with Title 2 of the
17 Maryland Rules.

18 (ii) When answering a complaint filed under this section, a
19 defendant shall follow the time frames and other provisions for filing answers to a
20 complaint as required under Title 2, Chapter 300 of the Maryland Rules.

21 (iii) During the period in which the complaint is under seal, if the
22 State's investigation reveals that the act, transaction, or occurrence that gave rise to the
23 alleged violation of this subtitle is reasonably likely to be continuing, the State shall notify
24 the defendant as soon as practicable without jeopardizing the course and conduct of the
25 State's or the federal government's investigation of the violation, compromising the
26 development of evidence, or violating any State or federal law.

27 (6) Before the later of the expiration of the 60-day period during which the
28 complaint remains under seal under paragraph (3)(i)1 of this subsection or any extension
29 of the 60-day period obtained under paragraph (4) of this subsection, the State shall:

30 (i) Intervene and proceed with the action in a court of competent
31 jurisdiction within the State; or

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

1 [(7) If the State does not elect to intervene and proceed with the action
2 under paragraph (6) of this subsection, before unsealing the complaint, the court shall
3 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) (i) During an investigation by the State conducted either
14 independently or in conjunction with a civil action filed under this subtitle, [the Attorney
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
18 RELEVANT DOCUMENTARY MATERIAL, OR THAT THE PERSON HAS INFORMATION
19 THAT MAY BE RELEVANT TO THE INVESTIGATION, THE ATTORNEY GENERAL MAY,
20 BEFORE THE INSTITUTION OF A CIVIL PROCEEDING, ISSUE IN WRITING AND CAUSE
21 TO BE SERVED ON THE PERSON A SUBPOENA REQUIRING THE PERSON TO:**

22 **1. PRODUCE THE DOCUMENTARY MATERIAL FOR
23 INSPECTION AND COPYING OR REPRODUCTION;**

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.**

1 (3) (i) Notwithstanding the objections of the person initiating the
2 action, the State may elect at any point to withdraw its intervention as a party to the action.

3 (ii) If the State elects to withdraw as a party to the action[:

4 1. The] **THE** State shall notify the court and the party
5 initiating the action[; and

6 2. The court shall dismiss the action].

7 (4) Notwithstanding the objections of the person initiating the action, if the
8 court determines after a hearing that a proposed settlement is fair, adequate, and
9 reasonable under the circumstances, the State may settle a civil action filed under this
10 section.

11 (5) On motion of the State or the defendant or on the court's own motion,
12 the court may impose limitations on the participation of the person initiating an action
13 under this section if:

14 (i) The State shows that the person's unrestricted participation in
15 the action would:

16 1. Interfere with or unduly delay the State in its pursuit of
17 the civil action; or

18 2. Be repetitious, irrelevant, or harassing to the defendant;
19 or

20 (ii) The defendant shows that unrestricted participation by the
21 person initiating the action would harass the defendant or cause the defendant undue
22 burden or unnecessary expense.

23 (6) Limitations imposed by the court under paragraph (5) of this subsection
24 may include:

25 (i) A limitation on the number of witnesses the person may call to
26 testify;

27 (ii) A limitation on the length of the testimony of witnesses called by
28 the person;

29 (iii) A limitation on the person's cross-examination of witnesses; or

30 (iv) A limitation on the participation of the person in the litigation.

1 **(7) (I) IF THE STATE DOES NOT PROCEED WITH OR WITHDRAWS**
2 **FROM THE ACTION, THE PERSON INITIATING THE ACTION MAY PROCEED WITH THE**
3 **ACTION.**

4 **(II) 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**
8 **PROCEED WITH OR TO WITHDRAW FROM THE ACTION, IF THE PERSON INITIATING**
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 (c) (1) Instead of proceeding with a civil action filed under this subtitle, the
19 State may pursue any alternative remedy available to the State, including any appropriate
20 administrative proceeding to determine a civil money penalty.

21 (2) If the State seeks an alternative remedy in another proceeding after
22 intervening in a civil action filed under this section, the person initiating the action shall
23 have the same rights in the alternative proceeding as the person would have had if the civil
24 action had continued under this section.

25 (3) (i) A finding of fact or conclusion of law made in any alternative
26 proceeding that has become final shall be conclusive on all parties to an action filed under
27 this subtitle.

28 (ii) For purposes of subparagraph (i) of this paragraph, a finding or
29 conclusion is final if:

30 1. It has been finally determined on appeal to the
31 appropriate court of the State;

32 2. All time for filing the appeal with respect to the finding or
33 conclusion has expired; or

1 1. The court considers appropriate, taking into account the
2 significance of the information and the role of the person initiating the action in advancing
3 the case to litigation; and

4 2. Does not exceed 10% of the proceeds of the action.

5 (ii) The information described in subparagraph (i) of this paragraph
6 does not include information disclosed and provided by the person initiating the action.

7 **[(3)] (4)** Any payment to a person under **[paragraph] PARAGRAPHS (1)**
8 **[or (2)] THROUGH (3)** of this subsection shall be made from the proceeds of the action.

9 **[(4)] (5)** (i) In addition to the amount provided under paragraphs (1)
10 **[and (2)] THROUGH (3)** of this subsection, a court may award the person initiating the
11 action:

12 1. An amount for reasonable expenses that the court finds to
13 have been necessarily incurred; and

14 2. Reasonable attorney's fees and costs.

15 (ii) In determining the amount of any award under subparagraph (i)
16 of this paragraph, the court shall consider the amount of any penalties and damages
17 recovered in the action and any other factor as justice may require.

18 (iii) Any expenses, fees, and costs awarded under this paragraph
19 shall be awarded against the defendant.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2023.