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**DRAFT CONSENSUS AMENDMENTS**  
**March 11, 2010**

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**SENATE BILL 279**

C3, J1

0lr0001  
CF 0lr0172

**By: The President (By Request – Administration) and Senators Frosh, Lenett, Currie, Della, Gladden, Harrington, Kelley, Klausmeier, Madaleno, Middleton, Pinsky, Raskin, Robey, and Rosapepe**

Introduced and read first time: January 22, 2010

Assigned to: Judicial Proceedings and Finance

A BILL ENTITLED

AN ACT concerning

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**Maryland False Health Claims Act of 2010**

6 FOR the purpose of prohibiting certain actions constituting false claims against a  
7 State health plan or a State health program; providing certain penalties for  
8 making false claims against a State health plan or a State health program;  
9 authorizing the State to file a civil action against a person who makes a false  
10 claim against a State health plan or a State health program under certain  
11 circumstances; authorizing a person other than the State to file a civil action on  
12 behalf of the person and the State against a person who makes a false claim  
13 against a State health plan or a State health program; providing for the  
14 procedures to be followed in a civil action; providing for certain remedies under  
15 a civil action; requiring the State to investigate a civil action alleging a false  
16 claim against a State health plan or a State health program; authorizing the  
17 State to intervene and proceed with the action with or without the person who  
18 initiated the action; authorizing the State to elect not to intervene and proceed  
19 with the action; authorizing the person that initiated the action to proceed if the  
20 State elects not to intervene; authorizing the court to limit the participation of  
21 the person who initiated the action under certain circumstances; authorizing  
22 the State to intervene at a later time in the proceedings or to pursue alternative  
23 remedies; providing for certain damages and payments to the person who  
24 initiated the action under certain circumstances; providing for certain payments  
25 to the person charged under certain circumstances if the person charged  
26 prevails; providing certain limitations on civil actions filed under this Act;  
27 prohibiting a person from taking retaliatory action against an employee,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

\* sb0279 \*

1 contractor, or agent under certain circumstances; authorizing an employee,  
2 contractor, or agent to file a civil action against a person who takes retaliatory  
3 action against the employee, contractor, or agent under certain circumstances;  
4 providing certain remedies for retaliatory action; requiring an employer to make  
5 certain disclosures to employees; requiring the Comptroller to deposit a certain  
6 penalty or damages in the General Fund of the State; requiring certain persons  
7 to report certain information annually to the General Assembly; authorizing the  
8 Department of Health and Mental Hygiene or the Inspector General of the  
9 Department to adopt certain regulations; defining certain terms; and generally  
10 relating to false claims against State health plans and State health programs.

11 BY adding to  
12 Article – Health – General  
13 Section 2–601 through 2–611 to be under the new subtitle “Subtitle 6. False  
14 Claims Against State Health Plans and State Health Programs”  
15 Annotated Code of Maryland  
16 (2009 Replacement Volume)

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

19 **Article – Health – General**

20 **SUBTITLE 6. FALSE CLAIMS AGAINST STATE HEALTH PLANS AND STATE**  
21 **HEALTH PROGRAMS.**

22 **2–601.**

23 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
24 **INDICATED.**

25 **(B) (1) “CLAIM” MEANS A REQUEST OR DEMAND, UNDER A CONTRACT**  
26 **OR OTHERWISE, FOR MONEY OR OTHER PROPERTY, WHETHER OR NOT THE**  
27 **STATE HAS TITLE TO THE MONEY OR PROPERTY, THAT IS:**

28 **(i) PRESENTED THROUGH A STATE HEALTH PLAN OR A**  
29 **STATE HEALTH PROGRAM TO AN OFFICER, EMPLOYEE, OR AGENT OF THE**  
30 **STATE; OR**

31 **(ii) MADE TO A CONTRACTOR, GRANTEE, OR OTHER**  
32 **RECIPIENT, IF THE MONEY OR OTHER PROPERTY IS TO BE SPENT OR USED ON**  
33 **THE STATE’S BEHALF OR TO ADVANCE A STATE INTEREST THROUGH A STATE**  
34 **HEALTH PLAN OR STATE HEALTH PROGRAM, AND THE STATE:**

35 **1. PROVIDES OR HAS PROVIDED ANY PORTION OF**  
36 **THE MONEY OR OTHER PROPERTY REQUESTED OR DEMANDED; OR**

1                   **2. WILL REIMBURSE THE CONTRACTOR, GRANTEE,**  
2 **OR OTHER RECIPIENT FOR ANY PORTION OF THE MONEY OR OTHER PROPERTY**  
3 **THAT IS REQUESTED OR DEMANDED.**

4                   **(2) "CLAIM" DOES NOT INCLUDE REQUESTS OR DEMANDS FOR**  
5 **MONEY OR OTHER PROPERTY THAT THE STATE THROUGH A STATE HEALTH**  
6 **PLAN OR STATE HEALTH PROGRAM HAS PAID TO AN INDIVIDUAL AS**  
7 **COMPENSATION FOR STATE EMPLOYMENT OR AS AN INCOME SUBSIDY WITH NO**  
8 **RESTRICTIONS ON THAT INDIVIDUAL'S USE OF THE MONEY OR OTHER**  
9 **PROPERTY.**

10           **(C) "DOCUMENTARY MATERIAL" INCLUDES:**

11                   **(1) THE ORIGINAL OR A COPY OF:**

12                           **(I) A BOOK;**

13                           **(II) A RECORD;**

14                           **(III) A REPORT;**

15                           **(IV) A MEMORANDUM;**

16                           **(V) A PAPER;**

17                           **(VI) A COMMUNICATION;**

18                           **(VII) A TABULATION;**

19                           **(VIII) A CHART;**

20                           **(IX) A DOCUMENT; OR**

21                           **(X) DATA COMPILATION STORED IN OR ACCESSIBLE**  
22 **THROUGH A COMPUTER OR OTHER INFORMATION RETRIEVAL SYSTEM,**  
23 **INCLUDING INSTRUCTIONS AND ALL OTHER MATERIALS NECESSARY TO USE OR**  
24 **INTERPRET THE DATA COMPILATION; AND**

25                   **(2) ANY PRODUCT OF DISCOVERY, INCLUDING:**

26                           **(I) THE ORIGINAL OR DUPLICATE OF ANY DEPOSITION,**  
27 **INTERROGATORY, DOCUMENT, THING, RESULT OF AN INSPECTION OF LAND OR**  
28 **OTHER PROPERTY, EXAMINATION, OR ADMISSION THAT IS OBTAINED BY ANY**

1 METHOD OF DISCOVERY IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING OF  
2 AN ADVERSARIAL NATURE;

3 (II) ANY DIGEST, ANALYSIS, SELECTION, COMPILATION, OR  
4 DERIVATION OF ANY ITEM LISTED IN ITEM (I) OF THIS ITEM; AND

5 (III) ANY INDEX OR OTHER MANNER OF ACCESS TO ANY ITEM  
6 LISTED IN ITEM (I) OF THIS ITEM.

7 (D) "EMPLOYEE" MEANS AN INDIVIDUAL WHO PERFORMS SERVICES:

8 (1) FOR AND UNDER THE CONTROL AND DIRECTION OF AN  
9 EMPLOYER; AND

10 (2) UNDER AN EMPLOYER'S PROMISE OR IMPLIED PROMISE OF  
11 PAYMENT OF WAGES OR OTHER REMUNERATION.

12 (E) "EMPLOYER" MEANS A PERSON OR GROUP OF PERSONS WHO,  
13 ACTING DIRECTLY OR INDIRECTLY ON BEHALF OF ANOTHER PERSON OR GROUP  
14 OF PERSONS:

15 (1) ALLOWS AN EMPLOYEE TO PERFORM SERVICES UNDER THE  
16 EMPLOYER'S CONTROL AND DIRECTION; AND

17 (2) PROMISES OR IMPLIES THAT THE EMPLOYEE WILL RECEIVE  
18 WAGES OR OTHER REMUNERATION IN PAYMENT FOR THE PERFORMANCE OF  
19 THOSE SERVICES.

20 (F) (1) "KNOWING" OR "KNOWINGLY" MEANS, WITH RESPECT TO  
21 INFORMATION AND WITHOUT REQUIRING PROOF OF SPECIFIC INTENT TO  
22 DEFRAUD, THAT A PERSON:

23 (I) HAS ACTUAL KNOWLEDGE OF THE INFORMATION;

24 (II) ACTS IN DELIBERATE IGNORANCE OF THE TRUTH OR FALSITY  
25 OF THE INFORMATION; OR

26 (III) ACTS IN RECKLESS DISREGARD OF THE TRUTH OR FALSITY OF  
27 THE INFORMATION.

28  
29 (2) "KNOWING OR KNOWINGLY" DOES NOT MEAN, WITH RESPECT  
30 TO INFORMATION, THAT A PERSON ACTS IN A MANNER WHICH CONSTITUTES  
31 MISTAKE OR MERE NEGLIGENCE.

1           **(G) “MATERIAL” MEANS HAVING A NATURAL TENDENCY TO INFLUENCE**  
2 **OR BE CAPABLE OF INFLUENCING THE PAYMENT OR RECEIPT OF MONEY OR**  
3 **OTHER PROPERTY.**

4           **(H) “OBLIGATION” MEANS AN ESTABLISHED DUTY, WHETHER OR NOT**  
5 **FIXED, ARISING FROM:**

6           **(1) AN EXPRESS OR IMPLIED:**

7                   **(I) CONTRACTUAL RELATIONSHIP;**

8                   **(II) GRANTOR–GRANTEE RELATIONSHIP; OR**

9                   **(III) LICENSOR–LICENSEE RELATIONSHIP;**

10           **(2) A FEE–BASED OR SIMILAR RELATIONSHIP;**

11           **(3) STATUTE OR REGULATION; OR**

12           **(4) THE RETENTION OF AN OVERPAYMENT.**

13           **(I) “PROVIDER” HAS THE MEANING STATED IN § 2–501 OF THIS TITLE.**

14           **(J) “PUBLIC BODY” MEANS:**

15                   **(1) THE GENERAL ASSEMBLY OR ANY OTHER ELECTED BODY;**

16                   **(2) A MEMBER OR AN EMPLOYEE OF THE GENERAL ASSEMBLY OR**  
17 **OTHER ELECTED BODY;**

18                   **(3) A STATE COURT;**

19                   **(4) A MEMBER OR AN EMPLOYEE OF A STATE COURT;**

20                   **(5) A STATE OR LOCAL REGULATORY, ADMINISTRATIVE, OR**  
21 **PUBLIC AGENCY OR AUTHORITY;**

22                   **(6) AN INSTRUMENTALITY OF A STATE OR LOCAL REGULATORY,**  
23 **ADMINISTRATIVE, OR PUBLIC AGENCY OR AUTHORITY;**

24                   **(7) A STATE OR LOCAL LAW ENFORCEMENT AGENCY,**  
25 **PROSECUTORIAL OFFICE, OR POLICE OR PEACE OFFICER;**

1           **(8) A STATE OR LOCAL DEPARTMENT OF AN EXECUTIVE BRANCH**  
2 **OF GOVERNMENT; OR**

3           **(9) A DIVISION, BOARD, BUREAU, OFFICE, COMMITTEE, OR**  
4 **COMMISSION OF ANY OF THE PUBLIC BODIES LISTED IN THIS SUBSECTION.**

5           **(K) “RETALIATORY ACTION” MEANS:**

6           **(1) DISCHARGING, SUSPENDING, DEMOTING, THREATENING,**  
7 **HARASSING, OR DISCRIMINATING AGAINST AN EMPLOYEE, CONTRACTOR, OR**  
8 **AGENT; OR**

9           **(2) ANY OTHER ADVERSE ACTION TAKEN AGAINST AN EMPLOYEE,**  
10 **CONTRACTOR, OR AGENT RELATING TO THE CONDITIONS OF EMPLOYMENT,**  
11 **CONTRACT, OR AGENCY.**

12           **(L) (1) “STATE HEALTH PLAN” MEANS:**

13           **(I) THE STATE MEDICAL ASSISTANCE PLAN ESTABLISHED**  
14 **IN ACCORDANCE WITH THE FEDERAL SOCIAL SECURITY ACT OF 1939, AS**  
15 **AMENDED;**

16           **(II) A MEDICAL ASSISTANCE PLAN ESTABLISHED BY THE**  
17 **STATE; OR**

18           **(III) A PRIVATE HEALTH INSURANCE CARRIER, HEALTH**  
19 **MAINTENANCE ORGANIZATION, MANAGED CARE ORGANIZATION AS DEFINED IN**  
20 **§ 15–101 OF THIS ARTICLE, HEALTH CARE COOPERATIVE OR ALLIANCE, OR**  
21 **ANOTHER PERSON THAT PROVIDES OR CONTRACTS TO PROVIDE HEALTH CARE**  
22 **SERVICES THAT ARE WHOLLY OR PARTIALLY REIMBURSED BY, OR ARE A**  
23 **REQUIRED BENEFIT OF, A HEALTH PLAN ESTABLISHED IN ACCORDANCE WITH**  
24 **THE FEDERAL SOCIAL SECURITY ACT OF 1939, AS AMENDED, OR BY THE STATE.**

25           **(2) “STATE HEALTH PLAN” INCLUDES A PERSON WHO PROVIDES**  
26 **OR CONTRACTS OR SUBCONTRACTS TO PROVIDE HEALTH CARE SERVICES FOR**  
27 **AN ENTITY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.**

28           **(M) “STATE HEALTH PROGRAM” MEANS THE MEDICAL ASSISTANCE**  
29 **PROGRAM, THE CIGARETTE RESTITUTION FUND PROGRAM, THE MENTAL**  
30 **HYGIENE ADMINISTRATION, THE DEVELOPMENTAL DISABILITIES**  
31 **ADMINISTRATION, THE ALCOHOL AND DRUG ABUSE ADMINISTRATION, THE**  
32 **FAMILY HEALTH ADMINISTRATION, THE COMMUNITY HEALTH**  
33 **ADMINISTRATION, OR ANY OTHER UNIT OF THE DEPARTMENT THAT PAYS A**

1 PROVIDER FOR A SERVICE RENDERED OR CLAIMED TO HAVE BEEN RENDERED  
2 TO A RECIPIENT.

3 (N) "SUPERVISOR" MEANS AN INDIVIDUAL WITHIN AN EMPLOYER'S  
4 ORGANIZATION WHO HAS THE AUTHORITY TO:

5 (1) DIRECT AND CONTROL THE WORK PERFORMANCE OF AN  
6 EMPLOYEE; OR

7 (2) TAKE CORRECTIVE ACTION REGARDING THE VIOLATION OF A  
8 LAW OR REGULATION THAT IS THE SUBJECT OF A COMPLAINT OR CHARGE  
9 UNDER THIS SUBTITLE.

10 2-602.

11 (A) A PERSON MAY NOT:

12 (1) KNOWINGLY PRESENT OR CAUSE TO BE PRESENTED A FALSE  
13 OR FRAUDULENT CLAIM FOR PAYMENT OR APPROVAL;

14 (2) KNOWINGLY MAKE, USE, OR CAUSE TO BE MADE OR USED A  
15 FALSE RECORD OR STATEMENT MATERIAL TO A FALSE OR FRAUDULENT CLAIM;

16 (3) CONSPIRE TO COMMIT A VIOLATION UNDER THIS SUBTITLE;

17 (4) HAVE POSSESSION, CUSTODY, OR CONTROL OF MONEY OR  
18 OTHER PROPERTY USED BY OR ON BEHALF OF THE STATE UNDER A STATE  
19 HEALTH PLAN OR A STATE HEALTH PROGRAM AND KNOWINGLY DELIVER OR  
20 CAUSE TO BE DELIVERED TO THE STATE LESS THAN ALL OF THAT MONEY OR  
21 OTHER PROPERTY;

22 (5) (I) BE AUTHORIZED TO MAKE OR DELIVER A RECEIPT OR  
23 OTHER DOCUMENT CERTIFYING RECEIPT OF MONEY OR OTHER PROPERTY USED  
24 OR TO BE USED BY THE STATE UNDER A STATE HEALTH PLAN OR A STATE  
25 HEALTH PROGRAM; AND

26 (II) INTENDING TO DEFRAUD THE STATE OR THE  
27 DEPARTMENT, MAKE OR DELIVER A RECEIPT OR DOCUMENT KNOWING THAT  
28 THE INFORMATION CONTAINED IN THE RECEIPT OR DOCUMENT IS NOT TRUE;

29 (6) KNOWINGLY BUY OR RECEIVE AS A PLEDGE OF AN  
30 OBLIGATION OR DEBT PUBLICLY OWNED PROPERTY FROM AN OFFICER,  
31 EMPLOYEE, OR AGENT OF A STATE HEALTH PLAN OR A STATE HEALTH  
32 PROGRAM WHO LAWFULLY MAY NOT SELL OR PLEDGE THE PROPERTY;

1 (7) KNOWINGLY MAKE, USE, OR CAUSE TO BE MADE OR USED, A  
2 FALSE RECORD OR STATEMENT MATERIAL TO AN OBLIGATION TO PAY OR  
3 TRANSMIT MONEY OR OTHER PROPERTY TO THE STATE;

4 (8) KNOWINGLY CONCEAL, OR KNOWINGLY AND IMPROPERLY  
5 AVOID OR DECREASE, AN OBLIGATION TO PAY OR TRANSMIT MONEY OR OTHER  
6 PROPERTY TO THE STATE; OR

7 (9) KNOWINGLY MAKE ANY OTHER FALSE OR FRAUDULENT CLAIM  
8 AGAINST A STATE HEALTH PLAN OR A STATE HEALTH PROGRAM.

9 (B) (1) ~~EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~  
10 ~~SUBSECTION, A~~ PERSON WHO IS FOUND TO HAVE VIOLATED SUBSECTION (A)  
11 OF THIS SECTION IS LIABLE TO THE STATE FOR:

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12 (i) A CIVIL PENALTY OF ~~NOT LESS THAN \$5,000 AND~~ NOT  
13 MORE THAN \$10,000 FOR EACH VIOLATION OF SUBSECTION (A) OF THIS  
14 SECTION; ~~AND~~

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15 (ii) AN ADDITIONAL AMOUNT ~~EQUAL TO OF NOT MORE THAN~~  
16 THREE TIMES THE AMOUNT OF DAMAGES THAT THE STATE SUSTAINS AS A  
17 RESULT OF THE ACTS OF THAT PERSON IN VIOLATION OF SUBSECTION (A) OF  
18 THIS SECTION; ~~AND~~.

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19  
20 ~~(iii) THE TOTAL AMOUNT OWED BY A PERSON UNDER~~  
21 ~~SUBSECTION B(1)(i) AND (ii) SHALL NOT BE LESS THAN THE AMOUNT OF THE~~  
22 ~~ACTUAL DAMAGES THE STATE HEALTH PLAN OR THE STATE HEALTH PROGRAM~~  
23 ~~INCURS AS A RESULT OF THE PERSON'S VIOLATION OF SECTION 2-602(A).~~

24 ~~(2) AS AN ALTERNATIVE TO PARAGRAPH (1) OF THIS~~  
25 ~~SUBSECTION, A COURT MAY ASSESS NOT LESS THAN TWO TIMES THE AMOUNT OF~~  
26 ~~DAMAGES THAT THE STATE SUSTAINS AS A RESULT OF A PERSON'S ACTS IN~~  
27 ~~VIOLATION OF SUBSECTION (A) OF THIS SECTION, AND NO CIVIL PENALTY, IF~~  
28 ~~THE COURT FINDS THAT:~~

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29 ~~(i) THE PERSON COMMITTING THE VIOLATION PROVIDED~~  
30 ~~STATE OFFICIALS RESPONSIBLE FOR INVESTIGATING FALSE CLAIMS~~  
31 ~~VIOLATIONS INVOLVING STATE HEALTH PLANS OR STATE HEALTH PROGRAMS~~  
32 ~~WITH ANY INFORMATION ABOUT THE VIOLATION KNOWN TO THE PERSON~~  
33 ~~WITHIN 30 DAYS AFTER THE DATE ON WHICH THE PERSON FIRST OBTAINED THE~~  
34 ~~INFORMATION;~~

1 ~~\_\_\_\_\_ (II) THE PERSON COOPERATED FULLY WITH ANY STATE~~  
2 ~~INVESTIGATION OF THE VIOLATION; AND~~

3 ~~\_\_\_\_\_ (III) AT THE TIME THE PERSON PROVIDED THE STATE WITH~~  
4 ~~THE INFORMATION ABOUT THE VIOLATION;~~

5 ~~\_\_\_\_\_ 1. NO CRIMINAL PROSECUTION, CIVIL ACTION, OR~~  
6 ~~ADMINISTRATIVE ACTION RELATING TO THE SAME VIOLATION HAD BEEN~~  
7 ~~INITIATED; AND~~  
8

9 ~~\_\_\_\_\_ 2. THE PERSON DID NOT HAVE ACTUAL PRIOR~~  
10 ~~KNOWLEDGE OF THE EXISTENCE OF AN INVESTIGATION OF THE VIOLATION.~~

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11 ~~\_\_\_\_\_ (2) IN DETERMINING THE APPROPRIATE AMOUNT OF FINES AND~~  
12 ~~DAMAGES UNDER SECTION 2-602(B)(1) OF THIS SUBTITLE, THE COURT SHALL~~  
13 ~~CONSIDER:~~

14 ~~\_\_\_\_\_ (I) THE NUMBER, NATURE, AND SEVERITY OF THE~~  
15 ~~VIOLATIONS OF THIS SUBTITLE FOR WHICH THE PERSON HAS BEEN FOUND~~  
16 ~~LIABLE;~~  
17

18 ~~\_\_\_\_\_ (II) THE NUMBER, NATURE AND SEVERITY OF ANY~~  
19 ~~PREVIOUS VIOLATIONS OF THIS SUBTITLE;~~  
20

21 ~~\_\_\_\_\_ (III) THE DEGREE OF LOSS SUFFERED BY THE STATE HEALTH~~  
22 ~~PLAN OR STATE HEALTH PROGRAM;~~  
23

24 ~~\_\_\_\_\_ (IV) THE PERSON'S HISTORY OF BILLING COMPLIANCE;~~  
25

26 ~~\_\_\_\_\_ (V) WHETHER THE PERSON HAS A COMPLIANCE PROGRAM~~  
27 ~~IN PLACE;~~  
28

29 ~~\_\_\_\_\_ (VI) THE EXTENT TO WHICH THE PERSON HAS TAKEN STEPS~~  
30 ~~TO ADDRESS AND CORRECT THE VIOLATION SINCE IT BECAME AWARE OF THE~~  
31 ~~VIOLATION;~~  
32

33 ~~\_\_\_\_\_ (VII) THE EXTENT TO WHICH THE VIOLATION CAUSED HARM~~  
34 ~~OR DETRIMENT TO PATIENTS OR CONSUMERS OF THE STATE HEALTH PLAN OR~~  
35 ~~STATE HEALTH PROGRAM;~~  
36

37 ~~\_\_\_\_\_ (VIII) ANY FUNDS PREVIOUSLY RETURNED TO THE STATE~~  
38 ~~HEALTH PLAN OR PROGRAM IN COMPLIANCE WITH FEDERAL REQUIREMENTS~~  
39  
40

1 REGARDING OVERPAYMENTS, TO THE EXTENT THE FUNDS REPRESENTED  
2 LOSSES TO THE STATE HEALTH PLAN OR PROGRAM CAUSED BY THE VIOLATION;

3  
4 (IX) WHETHER THE PERSON SELF-REPORTED THE  
5 VIOLATION, THE TIMELINESS OF THE SELF-REPORTING, THE EXTENT TO WHICH  
6 THE PERSON OTHERWISE COOPERATED IN THE INVESTIGATION OF THE  
7 VIOLATION, AND THE EXTENT TO WHICH THE PERSON HAD PRIOR KNOWLEDGE  
8 OF AN INVESTIGATION OR OTHER ACTION RELATING TO THE VIOLATION; AND

9  
10 (X) ANY OTHER FACTOR AS JUSTICE REQUIRES; AND

11  
12 (3) IN WEIGHING THE FACTORS IN SUBPARAGRAPH (2) ABOVE,  
13 THE COURT SHALL, WHERE APPROPRIATE, GIVE SPECIAL CONSIDERATION TO:

14  
15 (i) THE EXTENT TO WHICH THE PERSON'S SIZE,  
16 OPERATIONS OR FINANCIAL CONDITION MAY HAVE AFFECTED EACH OF THE  
17 FACTORS; AND

18  
19 (ii) THE EXTENT TO WHICH THE PERSON'S SIZE,  
20 OPERATIONS OR FINANCIAL CONDITION MAY AFFECT THE PERSON'S ABILITY TO  
21 PROVIDE CARE AND CONTINUE OPERATIONS AFTER PAYMENT OF DAMAGES AND  
22 FINES.

23  
24  
25  
26 (C) THE PENALTIES PROVIDED IN SUBSECTION (B) OF THIS SECTION  
27 ARE IN ADDITION TO ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE PENALTIES  
28 PROVIDED UNDER ANY OTHER STATE OR FEDERAL STATUTE OR REGULATION.

29 2-603.

30 (A) IF THE STATE FINDS THAT A PERSON HAS VIOLATED OR IS  
31 VIOLATING § 2-602(A) OF THIS SUBTITLE, THE STATE MAY FILE A CIVIL ACTION  
32 IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE AGAINST THE  
33 PERSON.

34 (B) IN FILING A CIVIL ACTION UNDER THIS SECTION, THE STATE MAY  
35 SEEK:

36 (1) THE PENALTIES PROVIDED UNDER § 2-602(B) OF THIS  
37 SUBTITLE;

1 ~~(2) — COMPENSATORY DAMAGES TO COMPENSATE THE STATE FOR~~  
2 ~~INJURIES INCURRED AS A DIRECT RESULT OF A VIOLATION OF § 2-602(A) OF~~  
3 ~~THIS SUBTITLE; AND~~

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4 (23) COURT COSTS AND ATTORNEY’S FEES.

5 2-604.

6 (A) (1) (I) A PERSON MAY FILE A CIVIL ACTION ON BEHALF OF THE  
7 PERSON AND THE STATE IN A COURT OF COMPETENT JURISDICTION WITHIN  
8 THE STATE AGAINST A PERSON WHO HAS ACTED OR IS ACTING IN VIOLATION OF  
9 § 2-602(A) OF THIS SUBTITLE.

10 (II) A CIVIL ACTION FILED UNDER SUBPARAGRAPH (I) OF  
11 THIS PARAGRAPH SHALL BE BROUGHT IN THE NAME OF THE STATE.

12 (2) A PERSON FILING AN ACTION UNDER THIS SECTION MAY  
13 SEEK:

14 ~~(i) — ANY REMEDY AVAILABLE IN COMMON LAW TORT;~~

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15 (ii) THE PENALTIES PROVIDED UNDER § 2-602(B) OF THIS  
16 SUBTITLE; AND

17 ~~(iii) — COMPENSATORY DAMAGES TO COMPENSATE THE STATE~~  
18 ~~FOR INJURIES INCURRED AS A DIRECT RESULT OF A VIOLATION OF § 2-602(A)~~  
19 ~~OF THIS SUBTITLE; AND~~

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20 (iv) COURT COSTS AND ATTORNEY’S FEES, SUBJECT TO THE  
21 GUIDELINES SET FORTH IN SECTION 2-605(A)(4) OF THIS SUBTITLE.

22 (3) (I) THE PERSON SHALL SERVE ON THE STATE A COPY OF  
23 THE COMPLAINT AND A WRITTEN DISCLOSURE OF SUBSTANTIALLY ALL  
24 MATERIAL EVIDENCE AND INFORMATION THAT THE PERSON POSSESSES, IN  
25 ACCORDANCE WITH THE PROVISIONS OF TITLE 2 OF THE MARYLAND RULES  
26 FOR SERVING PROCESS ON THE STATE.

27 (II) 1. THE COMPLAINT SHALL BE FILED IN CAMERA AND  
28 SHALL REMAIN UNDER SEAL FOR AT LEAST 60 DAYS.

29 2. THE COMPLAINT MAY NOT BE SERVED ON THE  
30 DEFENDANT UNTIL THE COMPLAINT IS UNSEALED AND THE COURT ORDERS THE  
31 COMPLAINT SERVED.

1                           3.    **WITHIN 60 DAYS AFTER THE STATE RECEIVES**  
2 **THE COMPLAINT AND THE MATERIAL EVIDENCE AND INFORMATION, THE STATE**  
3 **MAY ELECT TO INTERVENE AND PROCEED WITH THE ACTION.**

4                           (4)   **(I) FOR GOOD CAUSE SHOWN, THE STATE MAY MOVE THE**  
5 **COURT FOR EXTENSIONS OF THE TIME DURING WHICH THE COMPLAINT**  
6 **REMAINS UNDER SEAL UNDER PARAGRAPH (3)(II)1 OF THIS SUBSECTION.**

7                           **(II) ANY MOTIONS MADE UNDER SUBPARAGRAPH (I) OF**  
8 **THIS PARAGRAPH MAY BE SUPPORTED BY AFFIDAVITS OR OTHER SUBMISSIONS**  
9 **IN CAMERA.**

10                          (5)   **(I) THE DEFENDANT MAY NOT BE REQUIRED TO ANSWER A**  
11 **COMPLAINT FILED UNDER THIS SECTION UNTIL AFTER THE COMPLAINT IS:**

12                                   1.    **UNSEALED AND ORDERED BY THE COURT TO BE**  
13 **SERVED; AND**

14                                   2.    **SERVED ON THE DEFENDANT IN ACCORDANCE**  
15 **WITH TITLE 2 OF THE MARYLAND RULES.**

16                           **(II) WHEN ANSWERING A COMPLAINT FILED UNDER THIS**  
17 **SECTION, A DEFENDANT SHALL FOLLOW THE TIME FRAMES AND OTHER**  
18 **PROVISIONS FOR FILING ANSWERS TO A COMPLAINT AS REQUIRED UNDER**  
19 **TITLE 2, CHAPTER 300 OF THE MARYLAND RULES.**

20  
21                                   **(III) DURING THE PERIOD IN WHICH THE COMPLAINT IS**  
22 **UNDER SEAL, IF THE STATE'S INVESTIGATION REVEALS THAT THE ACT,**  
23 **TRANSACTION OR OCCURRENCE THAT GAVE RISE TO THE ALLEGED VIOLATION**  
24 **OF THIS SUBTITLE IS REASONABLY LIKELY TO BE CONTINUING, THE STATE**  
25 **SHALL NOTIFY THE DEFENDANT AS SOON AS IS PRACTICABLE WITHOUT**  
26 **JEOPARDIZING THE COURSE AND CONDUCT OF THE STATE'S OR THE FEDERAL**  
27 **GOVERNMENT'S INVESTIGATION OF THE VIOLATION, COMPROMISING THE**  
28 **DEVELOPMENT OF EVIDENCE, OR VIOLATING ANY STATE OR FEDERAL LAW.**

29                           (6)   **BEFORE THE LATER OF THE EXPIRATION OF THE 60-DAY**  
30 **PERIOD DURING WHICH THE COMPLAINT REMAINS UNDER SEAL UNDER**  
31 **PARAGRAPH (3)(II)1 OF THIS SUBSECTION OR ANY EXTENSION OF THE 60-DAY**  
32 **PERIOD OBTAINED UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE STATE**  
33 **SHALL:**

34                                   **(I) INTERVENE AND PROCEED WITH THE ACTION IN A**  
35 **COURT OF COMPETENT JURISDICTION WITHIN THE STATE; OR**

1 (II) NOTIFY THE COURT THAT IT WILL NOT INTERVENE AND  
2 PROCEED WITH THE ACTION.

3  
4 (7) IF, AFTER THE 60-DAY PERIOD UNDER SEAL AND ANY  
5 EXTENSIONS THEREOF UNDER PARAGRAPH (3)(II)(1) AND PARAGRAPH (4) OF  
6 THIS SUBSECTION, THE STATE DOES NOT ELECT TO INTERVENE AND PROCEED  
7 WITH THE ACTION UNDER PARAGRAPH (6) OF THIS SUBSECTION, PRIOR TO  
8 LIFTING THE SEAL, THE COURT SHALL DISMISS THE ACTION.

9 (87) IF A PERSON INITIATES AN ACTION UNDER THIS SECTION, NO  
10 PERSON OTHER THAN THE STATE MAY INTERVENE IN THE ACTION OR INITIATE  
11 A RELATED ACTION BASED ON THE FACTS UNDERLYING THE PENDING ACTION.

12 (B) (1) IF THE STATE INTERVENES AND PROCEEDS WITH THE ACTION  
13 UNDER SUBSECTION (A)(6)(I) OF THIS SECTION:

14 (i) THE STATE SHALL HAVE THE PRIMARY RESPONSIBILITY  
15 FOR PROCEEDING WITH THE ACTION AND MAY NOT BE BOUND BY ANY ACT OF  
16 THE PERSON WHO INITIATED THE ACTION; AND

17 (ii) SUBJECT TO PARAGRAPHS (3) THROUGH (6) OF THIS  
18 SUBSECTION, THE PERSON WHO INITIATED THE ACTION MAY CONTINUE AS A  
19 PARTY TO THE ACTION.

20 (2) (i) DURING AN INVESTIGATION BY THE STATE CONDUCTED  
21 EITHER INDEPENDENTLY OR IN CONJUNCTION WITH A CIVIL ACTION FILED  
22 UNDER THIS SUBTITLE, THE ATTORNEY GENERAL SHALL HAVE THE SAME  
23 RIGHTS OF DISCOVERY AS A CIVIL LITIGANT IN THE CIRCUIT COURT UNDER  
24 TITLE 2, CHAPTER 400 OF THE MARYLAND RULES.

25 (ii) A PERSON FROM WHOM THE ATTORNEY GENERAL  
26 SEEKS DISCOVERY SHALL BE CONSIDERED A PARTY UNDER TITLE 2, CHAPTER  
27 400 OF THE MARYLAND RULES.

28 (3) (i) NOTWITHSTANDING THE OBJECTIONS OF THE PERSON  
29 INITIATING THE ACTION, THE STATE MAY ELECT AT ANY POINT TO WITHDRAW  
30 ITS INTERVENTION AS A PARTY TO THE ACTION; AND

31  
32 (ii) IN THE EVENT THE STATE ELECTS TO WITHDRAW AS A  
33 PARTY TO THE ACTION, THE STATE SHALL NOTIFY THE COURT AND THE PARTY  
34 BRINGING THE ACTION, AND THE COURT SHALL DISMISS THE ACTION.  
35 PETITION THE COURT TO DISMISS AN ACTION IF:

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1 ~~(i) THE PERSON INITIATING THE ACTION IS NOTIFIED BY~~  
2 ~~THE STATE OF THE FILING OF THE MOTION TO DISMISS; AND~~

3 ~~(ii) THE COURT PROVIDES THE PERSON INITIATING THE~~  
4 ~~ACTION WITH AN OPPORTUNITY FOR A HEARING ON THE MOTION TO DISMISS.~~

5 (4) NOTWITHSTANDING THE OBJECTIONS OF THE PERSON  
6 INITIATING THE ACTION, IF THE COURT DETERMINES AFTER A HEARING THAT A  
7 PROPOSED SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE UNDER THE  
8 CIRCUMSTANCES, THE STATE MAY SETTLE A CIVIL ACTION FILED UNDER THIS  
9 SECTION.

10 (5) **UPON MOTION OF EITHER PARTY OR UPON ITS OWN MOTION,**  
11 **THE COURT MAY IMPOSE LIMITATIONS ON THE PARTICIPATION OF THE PERSON**  
12 **INITIATING AN ACTION UNDER THIS SECTION IF:**

13 (i) **THE STATE SHOWS THAT THE PERSON'S UNRESTRICTED**  
14 **PARTICIPATION IN THE ACTION WOULD:**

15 1. **INTERFERE WITH OR UNDULY DELAY THE STATE**  
16 **IN ITS PURSUIT OF THE CIVIL ACTION; OR**

17 2. **BE REPETITIOUS, IRRELEVANT, OR HARASSING**  
18 **TO THE DEFENDANT; OR**

19 (ii) **THE DEFENDANT SHOWS THAT UNRESTRICTED**  
20 **PARTICIPATION BY THE PERSON INITIATING THE ACTION WOULD HARASS THE**  
21 **DEFENDANT OR CAUSE THE DEFENDANT UNDUE BURDEN OR UNNECESSARY**  
22 **EXPENSE.**

23 (6) **LIMITATIONS IMPOSED BY THE COURT UNDER PARAGRAPH**  
24 **(5) OF THIS SUBSECTION MAY INCLUDE:**

25 (i) **A LIMITATION ON THE NUMBER OF WITNESSES THE**  
26 **PERSON MAY CALL TO TESTIFY;**

27 (ii) **A LIMITATION ON THE LENGTH OF THE TESTIMONY OF**  
28 **WITNESSES CALLED BY THE PERSON;**

29 (iii) **A LIMITATION ON THE PERSON'S CROSS-EXAMINATION**  
30 **OF WITNESSES; OR**

31 (iv) **A LIMITATION ON THE PARTICIPATION OF THE PERSON**  
32 **IN THE LITIGATION.**

~~(c) (1) IF THE STATE ELECTS NOT TO INTERVENE AND PROCEED WITH THE ACTION UNDER SUBSECTION (A)(6)(II) OF THIS SECTION, THE PERSON INITIATING THE ACTION SHALL HAVE THE RIGHT TO PROCEED WITH THE ACTION.~~

~~(2) NOTWITHSTANDING THE STATE'S ELECTION NOT TO INTERVENE, IF THE STATE REQUESTS, THE COURT SHALL ORDER THAT THE STATE BE SERVED AT THE STATE'S OWN EXPENSE WITH COPIES OF:~~

~~(i) ALL PLEADINGS FILED IN THE ACTION; AND~~

~~(ii) ALL DEPOSITION TRANSCRIPTS.~~

~~(3) (i) IF A PERSON PROCEEDS WITH AN ACTION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT, WITHOUT LIMITING THE STATUS AND RIGHTS OF THE PERSON INITIATING THE ACTION, MAY ALLOW THE STATE TO INTERVENE AT A LATER DATE ON A SHOWING OF GOOD CAUSE.~~

~~(ii) IF THE STATE SUBSEQUENTLY INTERVENES UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PERSON INITIATING THE ACTION SHALL THEREAFTER BE SUBJECT TO THE LIMITATIONS PROVIDED UNDER SUBSECTION (B)(3) THROUGH (6) OF THIS SECTION.~~

**(cD) (1) INSTEAD OF PROCEEDING WITH A CIVIL ACTION FILED UNDER THIS SUBTITLE, THE STATE MAY PURSUE ANY ALTERNATIVE REMEDY AVAILABLE TO THE STATE, INCLUDING ANY APPROPRIATE ADMINISTRATIVE PROCEEDING TO DETERMINE A CIVIL MONEY PENALTY.**

**(2) IF 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 ACTION HAD CONTINUED UNDER THIS SECTION.**

**(3) (i) A FINDING OF FACT OR CONCLUSION OF LAW MADE IN ANY ALTERNATIVE PROCEEDING THAT HAS BECOME FINAL SHALL BE CONCLUSIVE ON ALL PARTIES TO AN ACTION FILED UNDER THIS SUBTITLE.**

**(ii) FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, A FINDING OR CONCLUSION IS FINAL IF:**

**1. IT HAS BEEN FINALLY DETERMINED ON APPEAL TO THE APPROPRIATE COURT OF THE STATE;**

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1                                   2. ALL TIME FOR FILING THE APPEAL WITH  
2 RESPECT TO THE FINDING OR CONCLUSION HAS EXPIRED; OR

3                                   3. THE FINDING OR CONCLUSION IS NOT SUBJECT  
4 TO JUDICIAL REVIEW.

5                    (DE) (1) ~~WHETHER OR NOT THE STATE INTERVENES AND PROCEEDS~~  
6 ~~WITH A CIVIL ACTION FILED UNDER THIS SECTION;~~ ON A SHOWING IN CAMERA  
7 BY THE STATE THAT CERTAIN ACTIONS OF DISCOVERY BY THE PERSON  
8 INITIATING THE ACTION WOULD INTERFERE WITH THE STATE'S INVESTIGATION  
9 OR PROSECUTION OF A CRIMINAL OR CIVIL MATTER ARISING OUT OF THE SAME  
10 FACTS, THE COURT MAY STAY THE DISCOVERY FOR A PERIOD OF NOT MORE  
11 THAN 60 DAYS.

12                   (2) THE COURT MAY EXTEND THE 60-DAY PERIOD ON A FURTHER  
13 SHOWING IN CAMERA THAT:

14                    (i) THE STATE HAS PURSUED THE CRIMINAL OR CIVIL  
15 INVESTIGATION OR PROCEEDING WITH REASONABLE DILIGENCE; AND

16                    (ii) ANY PROPOSED DISCOVERY IN THE CIVIL ACTION WILL  
17 INTERFERE WITH THE ONGOING CRIMINAL OR CIVIL INVESTIGATION OR  
18 PROCEEDING.

19 2-605.

20                   (A) (1) IF THE STATE INTERVENES AND PROCEEDS WITH AN ACTION  
21 FILED UNDER § 2-604 OF THIS SUBTITLE AND THE STATE PREVAILS, THE COURT  
22 SHALL AWARD THE PERSON INITIATING THE ACTION AN AMOUNT THAT IS:

23                    (i) NOT LESS THAN 15% AND NOT MORE THAN 25% OF THE  
24 PROCEEDS OF THE ACTION OR SETTLEMENT OF THE CLAIM; AND

25                    (ii) PROPORTIONAL TO THE AMOUNT OF TIME AND EFFORT  
26 THAT THE PERSON SUBSTANTIALLY CONTRIBUTED TO THE FINAL RESOLUTION  
27 OF THE CIVIL ACTION.

28                   (2) (i) IF THE COURT FINDS THAT THE ACTION IS BASED  
29 PRIMARILY ON DISCLOSURES OF SPECIFIC INFORMATION RELATING TO  
30 ALLEGATIONS OR TRANSACTIONS IN A CRIMINAL, CIVIL, OR ADMINISTRATIVE  
31 HEARING, IN A LEGISLATIVE OR ADMINISTRATIVE REPORT, HEARING, AUDIT, OR  
32 INVESTIGATION, OR FROM THE NEWS MEDIA, THE COURT MAY MAKE AN AWARD  
33 TO THE PERSON INITIATING THE ACTION THAT:

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1                   1.    THE COURT CONSIDERS APPROPRIATE, TAKING  
2 INTO ACCOUNT THE SIGNIFICANCE OF THE INFORMATION AND THE ROLE OF  
3 THE PERSON INITIATING THE ACTION IN ADVANCING THE CASE TO LITIGATION;  
4 AND

5                   2.    DOES NOT EXCEED 10% OF THE PROCEEDS OF  
6 THE ACTION.

7                   (II) THE INFORMATION DESCRIBED IN SUBPARAGRAPH (I)  
8 OF THIS PARAGRAPH DOES NOT INCLUDE INFORMATION DISCLOSED AND  
9 PROVIDED BY THE PERSON INITIATING THE ACTION.

10                  (3) ANY PAYMENT TO A PERSON UNDER PARAGRAPH (1) OR (2) OF  
11 THIS SUBSECTION SHALL BE MADE FROM THE PROCEEDS OF THE ACTION.

12                  (4) (I) IN ADDITION TO THE AMOUNT PROVIDED UNDER  
13 PARAGRAPHS (1) AND (2) OF THIS SUBSECTION, A COURT ~~MAYSHALL~~ AWARD  
14 THE PERSON INITIATING THE ACTION:

15                   1.    AN AMOUNT FOR REASONABLE EXPENSES THAT  
16 THE COURT FINDS TO HAVE BEEN NECESSARILY INCURRED; AND

17                   2.    REASONABLE ATTORNEY’S FEES AND COSTS;

18  
19                   (II) IN DETERMINING THE AMOUNT OF ANY AWARD UNDER  
20 SUBPARAGRAPH (I), THE COURT SHALL CONSIDER THE AMOUNT OF ANYTHE  
21 PENALTIES AND DAMAGES RECOVERED BY THE PERSON INITIATING THE ACTION  
22 AND ANY OTHER FACTOR AS JUSTICE MAY REQUIRE.

23                   (III) ~~ALL ANY~~ EXPENSES, FEES, AND COSTS AWARDED UNDER  
24 THIS PARAGRAPH SHALL BE AWARDED AGAINST THE DEFENDANT.

25                   ~~(B) (1) IF THE STATE DOES NOT INTERVENE AND PROCEED WITH AN~~  
26 ~~ACTION FILED UNDER § 2-604 OF THIS SUBTITLE AND THE PERSON INITIATING~~  
27 ~~THE ACTION PREVAILS, THE COURT SHALL AWARD THE PERSON INITIATING THE~~  
28 ~~ACTION AN AMOUNT THAT IS REASONABLE FOR COLLECTING THE CIVIL~~  
29 ~~PENALTY AND DAMAGES ON THE STATE’S BEHALF.~~

30                   ~~(2) AN AMOUNT AWARDED UNDER PARAGRAPH (1) OF THIS~~  
31 ~~SUBSECTION SHALL BE:~~

32                   ~~(i) NOT LESS THAN 25% OR MORE THAN 30% OF THE~~  
33 ~~PROCEEDS OF THE ACTION OR SETTLEMENT OF THE CLAIM; AND~~

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1 ~~(H) PAID OUT OF THE PROCEEDS OF THE ACTION.~~

2 ~~(3) (I) THE COURT ALSO SHALL AWARD THE PERSON~~  
3 ~~INITIATING THE ACTION:~~

4 ~~1. AN AMOUNT FOR REASONABLE EXPENSES THAT~~  
5 ~~THE COURT FINDS TO HAVE BEEN NECESSARILY INCURRED; AND~~

6 ~~2. REASONABLE ATTORNEY'S FEES AND COSTS.~~

7 ~~(H) ALL EXPENSES, FEES, AND COSTS AWARDED UNDER~~  
8 ~~THIS PARAGRAPH SHALL BE AWARDED AGAINST THE DEFENDANT.~~

9 ~~(BC) (1) WHETHER OR NOT THE STATE INTERVENES AND PROCEEDS~~  
10 ~~WITH AN ACTION FILED UNDER § 2-604 OF THIS SUBTITLE, IF A COURT FINDS~~  
11 ~~THAT THE ACTION IS INITIATED BY A PERSON WHO PLANNED AND INITIATED OR~~  
12 ~~OTHERWISE DELIBERATELY PARTICIPATED IN THE VIOLATION ON WHICH THE~~  
13 ~~ACTION WAS BASED, THE COURT MAY, TO THE EXTENT IT CONSIDERS~~  
14 ~~APPROPRIATE, REDUCE THE SHARE OF THE PROCEEDS OF THE ACTION THAT~~  
15 ~~THE PERSON OTHERWISE WOULD HAVE RECEIVED UNDER THIS SECTION.~~

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16 (2) IN REDUCING THE SHARE OF THE PROCEEDS OF THE PERSON  
17 INITIATING THE ACTION UNDER THIS SUBSECTION, THE COURT SHALL  
18 CONSIDER:

19 (I) THE ROLE OF THE PERSON IN ADVANCING THE CASE TO  
20 LITIGATION; AND

21 (II) ANY RELEVANT CIRCUMSTANCES RELATING TO THE  
22 UNDERLYING VIOLATION.

23 (3) (I) IF THE PERSON INITIATING A CIVIL ACTION UNDER  
24 § 2-604 OF THIS SUBTITLE IS CONVICTED OF CRIMINAL CONDUCT ARISING  
25 FROM THE PERSON'S PARTICIPATION IN THE VIOLATION ON WHICH THE ACTION  
26 WAS BASED PRIOR TO A FINAL DETERMINATION OF THE ACTION, THE PERSON:

27 1. SHALL BE DISMISSED FROM THE ACTION; AND

28 2. MAY NOT RECEIVE ANY SHARE OF THE PROCEEDS  
29 OF THE ACTION.

1 (II) THE DISMISSAL OF THE PERSON INITIATING THE  
2 ACTION IN ACCORDANCE WITH THIS PARAGRAPH DOES NOT PREJUDICE THE  
3 RIGHT OF THE STATE TO CONTINUE THE ACTION.

4 (4) IF THE PERSON INITIATING A CIVIL ACTION UNDER § 2-604 OF  
5 THIS SUBTITLE IS CONVICTED OF CRIMINAL CONDUCT ARISING FROM THE  
6 PERSON'S PARTICIPATION IN THE VIOLATION ON WHICH THE ACTION WAS  
7 BASED AFTER THE PROCEEDS FROM THE ACTION ARE AWARDED TO THAT  
8 PERSON, THE COURT SHALL ORDER THE PERSON TO REPAY THE PROCEEDS  
9 PREVIOUSLY AWARDED.

10 (D) A COURT ~~SHALL MAY~~ AWARD REASONABLE ATTORNEY'S FEES AND  
11 EXPENSES TO A DEFENDANT AND AGAINST THE PERSON INITIATING THE ACTION  
12 IF:

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13 (1) THE DEFENDANT PREVAILS IN THE ACTION; ~~AND~~

14 (2) THE COURT FINDS THAT THE CLAIM OF THE PERSON  
15 INITIATING THE ACTION WAS - CLEARLY FRIVOLOUS, VEXATIOUS, ~~OR BROUGHT~~  
16 ~~IN BAD FAITH~~ PRIMARILY FOR PURPOSES OF HARASSMENT; ~~AND/OR OTHERWISE~~  
17 ~~BROUGHT IN BAD FAITH.~~

18 (3) ~~THE STATE DID NOT INTERVENE AND PROCEED WITH THE~~  
19 ~~ACTION, AND THE PERSON INITIATING THE ACTION CONDUCTED THE ACTION.~~

20 2-606.

21 (A) NO COURT IN THIS STATE SHALL HAVE JURISDICTION OVER AN  
22 ACTION FILED UNDER § 2-604 OF THIS SUBTITLE AGAINST ANY MEMBER OF THE  
23 LEGISLATIVE BRANCH OR THE JUDICIARY OF THE STATE, ANY MEMBER OF THE  
24 GOVERNOR'S EXECUTIVE COUNCIL, THE ATTORNEY GENERAL, THE  
25 COMPTROLLER, OR THE STATE TREASURER IF THE ACTION IS BASED ON  
26 EVIDENCE OR INFORMATION KNOWN TO THE STATE WHEN THE ACTION WAS  
27 FILED.

28 (B) A CIVIL ACTION MAY NOT BE BROUGHT UNDER THIS SUBTITLE BY A  
29 PERSON WHO IS OR WAS A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL IF THE  
30 ALLEGATIONS OF THE ACTION ARE BASED SUBSTANTIALLY ON:

31 (1) ALLEGATIONS OF WRONGDOING OR MISCONDUCT THAT THE  
32 PERSON HAD A DUTY OR OBLIGATION TO REPORT OR INVESTIGATE WITHIN THE  
33 SCOPE OF THE PERSON'S PUBLIC EMPLOYMENT OR OFFICE; OR

1           **(2) INFORMATION OR RECORDS TO WHICH THE PERSON HAD**  
2 **ACCESS AS A RESULT OF THE PERSON'S PUBLIC EMPLOYMENT OR OFFICE.**

3           **(C) A PERSON MAY NOT BRING AN ACTION UNDER § 2-604 OF THIS**  
4 **SUBTITLE THAT IS BASED ON ALLEGATIONS OR TRANSACTIONS THAT ARE THE**  
5 **SUBJECT OF A CIVIL SUIT OR AN ADMINISTRATIVE CIVIL MONEY PENALTY**  
6 **PROCEEDING IN WHICH THE STATE IS ALREADY A PARTY.**

7 |           **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS**  
8 **SUBSECTION, NO COURT IN THIS STATE SHALL HAVE JURISDICTION OVER AN**  
9 **ACTION FILED UNDER § 2-604 OF THIS SUBTITLE THAT IS BASED ON THE**  
10 **PUBLIC DISCLOSURE OF ALLEGATIONS OR TRANSACTIONS:**

11                   **(I) IN A CRIMINAL, CIVIL, OR AN ADMINISTRATIVE**  
12 **HEARING;**

13                   **(II) IN A LEGISLATIVE OR AN ADMINISTRATIVE REPORT, A**  
14 **HEARING, AN AUDIT, OR AN INVESTIGATION; OR**

15                   **(III) FROM THE NEWS MEDIA.**

16           **(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY IF**  
17 **THE ACTION IS INITIATED BY A PERSON WHO:**

18                   **(I) HAS DIRECT AND INDEPENDENT KNOWLEDGE OF THE**  
19 **INFORMATION ON WHICH THE ALLEGATIONS ARE BASED; AND**

20                   **(II) HAS VOLUNTARILY PROVIDED THE INFORMATION TO**  
21 **THE STATE BEFORE FILING AN ACTION UNDER § 2-604 OF THIS SUBTITLE THAT**  
22 **IS BASED ON THE INFORMATION.**

23                   **(3) THE STATE, THROUGH THE ATTORNEY GENERAL, MAY FILE A**  
24 **CIVIL ACTION UNDER § 2-603 OF THIS SUBTITLE BASED ON THE PUBLIC**  
25 **DISCLOSURE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.**

26           **(E) THE STATE IS NOT LIABLE FOR EXPENSES THAT A PERSON INCURS**  
27 **IN BRINGING AN ACTION UNDER § 2-604 OF THIS SUBTITLE.**

28           **(F) A PERSON WHO IS OR WAS EMPLOYED BY THE STATE, A LOCAL**  
29 **GOVERNMENT, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE AS AN**  
30 **AUDITOR, INVESTIGATOR, ATTORNEY, FINANCIAL OFFICER, OR CONTRACTING**  
31 **OFFICER MAY NOT BRING AN ACTION UNDER § 2-604 OF THIS SUBTITLE THAT IS**  
32 **BASED ON ALLEGATIONS OR TRANSACTIONS THAT THE PERSON DISCOVERED OR**  
33 **LEARNED OF WHILE ACTING IN THE PERSON'S CAPACITY AS AN AUDITOR,**

1 INVESTIGATOR, ATTORNEY, FINANCIAL OFFICER, OR CONTRACTING OFFICER  
2 FOR THE STATE, LOCAL GOVERNMENT, OR OTHER POLITICAL SUBDIVISION OF  
3 THE STATE.

4 2-607.

5 (A) A PERSON MAY NOT TAKE A RETALIATORY ACTION AGAINST AN  
6 EMPLOYEE, CONTRACTOR, OR GRANTEE BECAUSE THE EMPLOYEE,  
7 CONTRACTOR, OR GRANTEE:

8 (1) ACTS LAWFULLY IN FURTHERANCE OF AN ACTION FILED  
9 UNDER THIS SUBTITLE, INCLUDING AN INVESTIGATION FOR, INITIATION OF,  
10 TESTIMONY FOR, OR ASSISTANCE IN AN ACTION FILED OR TO BE FILED UNDER  
11 THIS SUBTITLE;

12 (2) DISCLOSES OR THREATENS TO DISCLOSE TO A SUPERVISOR  
13 OR TO A PUBLIC BODY AN ACTIVITY, POLICY, OR PRACTICE OF THE PERSON  
14 THAT THE EMPLOYEE, CONTRACTOR, OR GRANTEE REASONABLY BELIEVES IS IN  
15 VIOLATION OF § 2-602(A) OF THIS SUBTITLE OR A REGULATION ADOPTED  
16 UNDER THIS SUBTITLE;

17 (3) PROVIDES INFORMATION TO, OR TESTIFIES BEFORE, A  
18 PUBLIC BODY CONDUCTING AN INVESTIGATION, HEARING, OR INQUIRY INTO A  
19 VIOLATION OF § 2-602(A) OF THIS SUBTITLE OR A REGULATION ADOPTED  
20 UNDER THIS SUBTITLE THAT IS ALLEGEDLY OR ACTUALLY COMMITTED BY THE  
21 PERSON; OR

22 (4) OBJECTS TO OR REFUSES TO PARTICIPATE IN ANY ACTIVITY,  
23 POLICY, OR PRACTICE THAT THE EMPLOYEE, CONTRACTOR, OR GRANTEE  
24 REASONABLY BELIEVES IS IN VIOLATION OF § 2-602(A) OF THIS SUBTITLE OR A  
25 REGULATION ADOPTED UNDER THIS SUBTITLE.

26 (B) (1) AN EMPLOYEE, CONTRACTOR, OR GRANTEE MAY FILE A CIVIL  
27 ACTION AGAINST A PERSON OTHER THAN A SUPERVISOR IN STATE  
28 GOVERNMENT, AN APPOINTING AUTHORITY IN STATE GOVERNMENT, OR THE  
29 HEAD OF A PRINCIPAL UNIT IN STATE GOVERNMENT IF THE PERSON TAKES A  
30 RETALIATORY ACTION AGAINST THE EMPLOYEE, CONTRACTOR, OR GRANTEE IN  
31 VIOLATION OF SUBSECTION (A) OF THIS SECTION.

32 (2) THE EMPLOYEE, CONTRACTOR, OR GRANTEE MAY SEEK IN  
33 THE CIVIL ACTION:

34 (i) AN INJUNCTION TO RESTRAIN A CONTINUING  
35 VIOLATION OF SUBSECTION (A) OF THIS SECTION;

1                   **(II) REINSTATEMENT TO THE SAME SENIORITY STATUS**  
2 **HELD BEFORE THE RETALIATORY ACTION;**

3                   **(III) REINSTATEMENT OF FULL FRINGE BENEFITS AND**  
4 **SENIORITY RIGHTS;**

5                   **(IV) TWO TIMES THE AMOUNT OF LOST WAGES, BENEFITS,**  
6 **AND OTHER REMUNERATION, INCLUDING ANY INTEREST ACCUMULATED;**

7                   **(V) PAYMENT BY THE PERSON OF REASONABLE COSTS AND**  
8 **ATTORNEY'S FEES;**

9                   **(VI) PUNITIVE DAMAGES;**

10                   **(VII) AN ASSESSMENT OF A CIVIL PENALTY:**

11                                 **1. NOT EXCEEDING \$1,000 FOR THE FIRST**  
12 **VIOLATION; AND**

13                                 **2. NOT EXCEEDING \$5,000 FOR EACH SUBSEQUENT**  
14 **VIOLATION; AND**

15                   **(VIII) ANY OTHER RELIEF NECESSARY TO MAKE THE**  
16 **EMPLOYEE, CONTRACTOR, OR GRANTEE WHOLE.**

17                   **(3) THE REMEDIES PROVIDED UNDER THIS SECTION DO NOT**  
18 **DIMINISH OR AFFECT THE RIGHTS, PRIVILEGES, OR REMEDIES AVAILABLE TO**  
19 **THE EMPLOYEE, CONTRACTOR, OR GRANTEE UNDER:**

20                                 **(I) ANY OTHER FEDERAL OR STATE STATUTE OR**  
21 **REGULATION; OR**

22                                 **(II) ANY COLLECTIVE BARGAINING AGREEMENT OR**  
23 **EMPLOYEE CONTRACT.**

24                   **(C) THIS SECTION DOES NOT APPLY TO AN EMPLOYEE AS DEFINED IN §**  
25 **1-501 OF THE HEALTH OCCUPATIONS ARTICLE OR A STATE EMPLOYEE.**

26                   **(D) (1) AN EMPLOYEE AS DEFINED IN § 1-501 OF THE HEALTH**  
27 **OCCUPATIONS ARTICLE WHO IS SUBJECT TO RETALIATORY ACTION IN**  
28 **VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY FILE A CIVIL ACTION**  
29 **UNDER TITLE 1, SUBTITLE 5 OF THE HEALTH OCCUPATIONS ARTICLE.**

1           (2) A STATE EMPLOYEE WHO IS SUBJECT TO RETALIATORY  
2 ACTION IN VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY FILE A  
3 COMPLAINT UNDER TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL AND  
4 PENSIONS ARTICLE.

5 2-608.

6 AN EMPLOYER SHALL:

7           (1) CONSPICUOUSLY DISPLAY NOTICES OF THE PROTECTIONS  
8 PROVIDED TO AND OBLIGATIONS REQUIRED OF ITS EMPLOYEES UNDER THIS  
9 SUBTITLE; AND

10           (2) USE ANY APPROPRIATE MEANS TO INFORM ITS EMPLOYEES  
11 OF THE PROTECTIONS AND OBLIGATIONS PROVIDED UNDER THIS SUBTITLE.

12 2-609.

13           (A) A CIVIL ACTION FILED UNDER ~~§ 2-604 OF~~ THIS SUBTITLE MAY NOT  
14 BE FILED AFTER THE LATER OF:

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15           (1) 6 YEARS AFTER THE DATE ON WHICH THE UNDERLYING  
16 VIOLATION OF § 2-602(A) OF THIS SUBTITLE OCCURRED; OR

17           (2) 3 YEARS AFTER THE DATE WHEN FACTS MATERIAL TO THE  
18 RIGHT OF ACTION ARE KNOWN OR REASONABLY SHOULD HAVE BEEN KNOWN BY  
19 THE STATE'S INSPECTOR GENERAL OR DIRECTOR OF THE STATE'S MEDICAID  
20 FRAUD CONTROL UNIT, BUT IN NO EVENT MORE THAN 10 YEARS AFTER THE  
21 DATE ON WHICH THE UNDERLYING VIOLATION OF § 2-602(A) OF THIS SUBTITLE  
22 IS COMMITTED.

23           (B) A CIVIL ACTION MAY BE FILED UNDER ~~§ 2-604 OF~~ THIS SUBTITLE  
24 FOR ACTIVITY THAT OCCURRED PRIOR TO OCTOBER 1, 2010, IF THE  
25 LIMITATIONS PERIOD UNDER SUBSECTION (A) OF THIS SECTION HAS NOT  
26 LAPSED.

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27           (C) IF THE STATE ELECTS TO INTERVENE AND PROCEED WITH AN  
28 ACTION BROUGHT UNDER THIS SUBTITLE, THE STATE, THROUGH THE OFFICE  
29 OF THE ATTORNEY GENERAL, MAY:

30           (1) FILE ITS OWN COMPLAINT; OR

1           (2) AMEND THE COMPLAINT OF THE PERSON WHO BROUGHT THE  
2 ACTION TO CLARIFY, ADD DETAIL TO THE COMPLAINT, OR ADD ADDITIONAL  
3 CLAIMS TO THE COMPLAINT.

4           (D) TO THE EXTENT THAT THE CLAIM OF THE STATE ARISES OUT OF  
5 THE CONDUCT, TRANSACTIONS, OR OCCURRENCES SET FORTH, OR ATTEMPTED  
6 TO BE SET FORTH BY A PERSON, A STATE PLEADING RELATES BACK TO THE  
7 FILING DATE OF THE COMPLAINT OF THE PERSON WHO ORIGINALLY BROUGHT  
8 THE ACTION.

9           (E) IN AN ACTION FILED UNDER THIS SUBTITLE, ALL ESSENTIAL  
10 ELEMENTS OF THE CAUSE OF ACTION, INCLUDING DAMAGES, SHALL BE PROVEN  
11 BY A PREPONDERANCE OF THE EVIDENCE.

12           (F) NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR RULE OF  
13 PROCEDURE OR EVIDENCE IN THE MARYLAND RULES, A FINAL JUDGMENT  
14 RENDERED IN FAVOR OF THE STATE IN ANY CRIMINAL PROCEEDING CHARGING  
15 FRAUD OR FALSE STATEMENTS, WHETHER ON A VERDICT AFTER TRIAL OR ON A  
16 PLEA OF GUILTY OR NOLO CONTENDERE, SHALL ESTOP THE DEFENDANT FROM  
17 DENYING THE ESSENTIAL ELEMENTS OF THE OFFENSE IN ANY ACTION FILED  
18 UNDER THIS SUBTITLE THAT INVOLVES THE SAME ACT, TRANSACTION, OR  
19 OCCURRENCE AS IN THE CRIMINAL PROCEEDING.

20 **2-610.**

21           (A) ANY REMEDY PROVIDED UNDER THIS SUBTITLE IS IN ADDITION TO  
22 ANY OTHER APPROPRIATE LEGAL OR EQUITABLE RELIEF PROVIDED UNDER ANY  
23 OTHER APPLICABLE STATE OR FEDERAL STATUTE OR REGULATION.

24  
25           (B) (1) THE STATE SHALL MAKE ALL REASONABLE EFFORTS TO  
26 COORDINATE ANY INVESTIGATION OF AN ALLEGED VIOLATION UNDER THIS  
27 SUBTITLE WITH ANY INVESTIGATION CONDUCTED BY THE FEDERAL  
28 GOVERNMENT INVOLVING THE SAME VIOLATION.

29  
30           (2) THE STATE'S OBJECTIVE SHALL BE TO AVOID UNNECESSARY  
31 DUPLICATION OF EFFORTS ON THE PART OF THE PERSON ALLEGED TO HAVE  
32 COMMITTED THE VIOLATION, AND TO MINIMIZE THE BURDEN OF THE  
33 INVESTIGATION ON THE PERSON.

34           (CB) THE COMPTROLLER SHALL DEPOSIT ANY CIVIL PENALTY OR  
35 DAMAGES COLLECTED UNDER THIS SUBTITLE IN THE GENERAL FUND OF THE  
36 STATE.

1        ~~(Dc)~~ THE DEPARTMENT OR THE INSPECTOR GENERAL OF THE  
2 DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF  
3 THIS SUBTITLE.

4        2-611.

5        (A) BEGINNING OCTOBER 1, 2010, THE INSPECTOR GENERAL OF THE  
6 DEPARTMENT AND THE DIRECTOR OF THE MEDICAID FRAUD CONTROL UNIT  
7 IN THE OFFICE OF THE ATTORNEY GENERAL SHALL REPORT ANNUALLY TO THE  
8 GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE  
9 GOVERNMENT ARTICLE, THE FOLLOWING INFORMATION FOR THE PREVIOUS  
10 FISCAL YEAR:

11                (1) THE NUMBER OF CIVIL ACTIONS FILED UNDER THIS  
12 SUBTITLE;

13                (2) THE NUMBER OF CIVIL ACTIONS UNDER THIS SUBTITLE IN  
14 WHICH A JUDGMENT WAS ENTERED, WHETHER BY SETTLEMENT OR  
15 ADJUDICATION; AND

16                (3) THE NUMBER OF CLAIMS MADE BY THE STATE BASED ON  
17 ALLEGED VIOLATIONS OF § 2-602(A) OF THIS SUBTITLE THAT ARE SETTLED  
18 WITHOUT THE FILING OF A CIVIL ACTION UNDER THIS SUBTITLE.

19        (B) UNLESS THE ACTION IS UNDER SEAL IN ACCORDANCE WITH § 2-604  
20 OF THIS SUBTITLE, FOR EACH CIVIL ACTION REPORTED UNDER SUBSECTION  
21 (A)(1) OR (2) OF THIS SECTION, THE REPORT SHALL STATE:

22                (1) WHETHER THE ACTION WAS FILED BY THE STATE OR BY A  
23 PERSON ON BEHALF OF THE STATE AND, IF FILED BY A PERSON, WHETHER THE  
24 STATE INTERVENED AND PROCEEDED WITH THE ACTION;

25                (2) THE NAME OF THE DEFENDANT AND THE FOLLOWING  
26 INFORMATION ABOUT THE DEFENDANT:

27  
28                        (i) THE NUMBER OF EMPLOYEES AND ANY OTHER DATA  
29 RELEVANT TO THE SIZE OF THE DEFENDANT;

30  
31                        (ii) THE AMOUNT OF PAYMENTS MADE TO THE DEFENDANT  
32 IN THE YEAR PRIOR TO THE ACTION FILED FROM STATE HEALTH PLANS AND, TO  
33 THE EXTENT KNOWN BY THE INSPECTOR GENERAL AND MEDICAID FRAUD  
34 CONTROL UNIT, FROM OTHER SOURCES; AND  
35

1 (III) WHETHER THE DEFENDANT IS A MINORITY-OWNED  
2 BUSINESS ENTERPRISE AS DEFINED BY SECTION 14-301(F) OF THE STATE  
3 FINANCE AND PROCUREMENT ARTICLE.

4 (3) A DESCRIPTION OF THE VIOLATION OR ALLEGED VIOLATION  
5 OF § 2-602 OF THIS SUBTITLE; AND

6 (4) THE AMOUNT SOUGHT IN THE ACTION AND, IF APPLICABLE,  
7 THE AMOUNT FOR WHICH THE DEFENDANT IS LIABLE UNDER A SETTLEMENT  
8 AGREEMENT OR COURT ORDER.

9 (C) FOR EACH CLAIM REPORTED UNDER SUBSECTION (A)(3) OF THIS  
10 SECTION, THE REPORT SHALL STATE:

11 (1) A DESCRIPTION OF THE VIOLATION OR ALLEGED VIOLATION  
12 OF § 2-602 OF THIS SUBTITLE;

13 (2) THE RESOLUTION OF THE CLAIM;

14 (3) THE AMOUNT, IF ANY, THE PERSON AGAINST WHOM THE  
15 CLAIM WAS MADE AGREED TO PAY IN SETTLEMENT OF THE CLAIM; AND

16 (4) THE AMOUNT, IF ANY, COLLECTED BY THE STATE.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2010.