

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Enrolled

House Bill 391
Appropriations

(Delegate Bartlett)

Budget and Taxation

**False Claims - Civil Penalties or Damages - Authorization to Recover and
Exceptions to General Fund Deposit by Comptroller**

This bill requires that any civil penalty or damages collected by the State under the Maryland False Claims Act (MFCA) or Title 2, Subtitle 6 of the Health-General Article (the Maryland False Health Claims Act, MFHCA) that affects certain special funds be deposited by the Comptroller into the affected funds. The bill also authorizes a governmental entity filing a civil action under MFCA to seek court costs and attorney's fees, which accrue to a new False Claims Fund to support the operations of the Attorney General in carrying out MFCA.

Fiscal Summary

State Effect: General fund revenues decrease beginning in FY 2023 by an indeterminate but likely minimal amount, as discussed below; special fund revenues increase correspondingly. Special fund revenues also increase for the new False Claims Fund beginning in FY 2023 from the collection of any court costs and attorney's fees; special fund expenditures likely increase accordingly. There is no impact on federal fund revenues or Medicaid recoveries. Any additional workload on the Comptroller's Office is minimal and can be absorbed within existing resources.

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

Small Business Effect: Potential minimal.

Analysis

Bill Summary: Any civil penalty or damages collected by the State for violations of MFCA or MFHCA that affect any of the following funds must be deposited into the affected fund(s):

- a fund not subject to § 7-302 of the State Finance and Procurement Article;
- a special fund requiring reversion of appropriated funds to the special fund under § 7-304 of the State Finance and Procurement Article;
- a fund under the jurisdiction of the Board of Trustees for the State Retirement and Pension System; or
- a fund under the jurisdiction of the State Employee and Retiree Health and Welfare Benefits Program.

If more than one fund is affected, the Comptroller must make deposits to the appropriate fund or the general fund on a *pro rata* basis.

The False Claims Fund is a special, nonlapsing fund that consists of (1) all attorney's fees and costs collected by the State by judgment, settlement, agreement, or otherwise under MFCA; (2) money appropriated in the State budget to the fund; (3) interest earnings; and (4) any other money from any other source accepted for the benefit of the fund. The fund may be used only by the Attorney General to investigate and litigate suspected violations of MFCA. Expenditures from the fund may only be made in accordance with the State budget. Money expended from the fund is supplemental to and not intended to supplant funding that would otherwise be appropriated for the Attorney General.

Current Law: Enacted under Chapter 4 of 2010, MFHCA prohibits a person from making a false or fraudulent claim for payment or approval by the State or the Maryland Department of Health under a State health plan or State health program and authorizes individuals to file private party causes of action on behalf of a governmental entity for false health claims made against the State. Enacted under Chapter 165 of 2015, MFCA extends substantially similar provisions to other claims made against a governmental entity.

When a person submits a false claim in violation of MFHCA or MFCA, the State may recover up to three times the amount of the damages sustained and up to \$10,000 per violation. The false claim does not have to be submitted directly to a governmental entity but includes indirect payments, such as a subcontractor submitting a false claim to a prime contractor or contractors submitting claims to nongovernmental agencies that receive government funds.

The Comptroller must deposit any civil penalty or damages collected by the State under MFHCA or MFCA into the general fund.

Generally, per § 7-302 of the State Finance and Procurement Article, at the end of the fiscal year, the unspent balance of each appropriation reverts to the general fund. A special fund may be exempt from this requirement in statute. Under § 7-304 of the State Finance and Procurement Article, at the end of a fiscal year, the unspent part of an appropriation from

a source that State law or an Act of Congress dedicates to a specific purpose does not revert to the general fund but instead reverts to the appropriate special fund.

State Fiscal Impact: The Office of the Attorney General (OAG) advises that several special funds associated with State agencies and programs (*e.g.*, the State Pension Plan, the State Employee and Retiree Health and Welfare Benefits Program, the Transportation Trust Fund) hold funds for a specific purpose. The bill allows recoveries that affect special funds or other dedicated funding to remain in those funds rather than being deposited in the general fund. Recoveries made on behalf of agencies or funds that are subject to reversion to the general fund will continue to be deposited into the general fund.

Requiring any civil penalty or damages collected by the State to be deposited into the affected special fund(s) decreases general fund revenues beginning in fiscal 2023. OAG advises that any such impact is likely minimal. The Comptroller's Office advises that, due to the lack of sufficient historical data to determine how civil penalties or damages previously collected would have been distributed had the provisions of the bill been applied and the unpredictable nature of applicable civil penalties or damages revenues in the future, the bill's impact on revenue distribution cannot be reliably estimated.

Special fund revenues to the new False Claims Act Fund increase beginning in fiscal 2023 to the extent court costs and attorney's fees are awarded to governmental entities that file civil actions under MFCA. Special fund expenditures likely increase accordingly.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 114 (Senator Waldstreicher) - Budget and Taxation.

Information Source(s): Office of the Attorney General; Comptroller's Office; Maryland Insurance Administration; Maryland State Retirement and Pension System; Department of Legislative Services

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