

## **MARYLAND FALSE CLAIMS ACT**

For the purpose of prohibiting certain actions constituting false claims against a governmental entity; providing certain penalties for making false claims; requiring the court to consider and give special attention to certain factors in determining the amount of fines and penalties provided for in certain provisions of this Act; providing that this Act does not apply to certain claims, records, or statements; authorizing a person and a governmental entity to file a civil action against a person who makes a certain false claim under certain circumstances; providing for the procedures to be followed in the civil action and for certain remedies under the action; requiring the governmental entity to investigate a certain civil action; requiring the governmental entity to make certain efforts to coordinate certain investigations and to establish a certain objective for the governmental entity; authorizing the governmental entity to intervene and proceed with a certain civil action with or without the person who initiated the action; requiring the court to dismiss the action if the governmental entity elects not to intervene in the action; providing certain limitations on civil actions filed under this Act; prohibiting a person from taking retaliatory action against an employee, a contractor, or an agent under certain circumstances; authorizing an employee, a contractor, or an agent to file a civil action against a person who takes retaliatory action against the employee, contractor, or agent under certain circumstances; providing certain remedies for retaliatory action; establishing that certain remedies provided under this Act are in addition to certain other appropriate legal and equitable relief; requiring the Comptroller to deposit a certain penalty or damages into the General Fund of the State; requiring the Office of the Attorney General and the attorney for each county and Baltimore City to report certain information annually to the General Assembly; defining certain terms; providing for the prospective application of this Act; and generally relating to false claims against governmental entities.

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

### **8–101.**

(a) In this title the following words have the meanings indicated.

(b)(1) “Claim” means a request or demand, under a contract or otherwise, for money or other property, whether or not the governmental entity has title to the money or property, that is:

(i) presented to an officer, employee, or agent of a governmental entity; or

(ii) made to a contractor, a grantee, or another recipient, if the money or other property is to be spent or used on a governmental entity's behalf or to advance an interest of a governmental entity, and the governmental entity:

1. provides or has provided any portion of the money or other property requested or demanded; or



2. will reimburse the contractor, grantee, or other recipient for any portion of the money or other property that is requested or demanded.

(2) "Claim" does not include requests or demands for money or other property that a governmental entity has paid to an individual as compensation for employment or as an income subsidy with no restrictions on that individual's use of the money or other property.

(c) "Employee" means an individual who performs services:

(1) for and under the control and direction of an employer; and

(2) under an employer's promise or implied promise of payment of wages or other remuneration.

(d) "Employer" means a person or group of persons that, acting directly or indirectly on behalf of another person or group of persons:

(1) allows an employee to perform services under the employer's control and direction; and

(2) promises or implies that the employee will receive wages or other remuneration in payment for the performance of those services.

(e) "Governmental entity" means:

(1) the State; or

(2) a county.

(f)(1) "Knowing" or "knowingly" means, with respect to information and without requiring proof of specific intent to defraud, that a person:

(i) has actual knowledge that the information is false;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information.

(2) "Knowing" or "knowingly" does not mean, with respect to information, that a person acts in a manner that constitutes a mistake or negligence.

(g) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money or other property.

(h) "Obligation" means an established duty, whether or not fixed, arising from:

(1) an express or implied:



(i) contractual relationship;

(ii) grantor-grantee relationship; or

(iii) licensor-licensee relationship;

(2) a fee-based or similar relationship;

(3) statute or regulation; or

(4) the retention of an overpayment.

(i) "Public body" means:

(1) the General Assembly or any other elected body;

(2) a member or an employee of the General Assembly or any other elected body;

(3) a State court;

(4) a member or an employee of a State court;

(5) a State or local regulatory, administrative, or public agency or authority;

(6) an instrumentality of a State or local regulatory, administrative, or public agency or authority;

(7) a State or local law enforcement agency, prosecutorial office, or police or peace officer;

(8) a State or local department of an executive branch of government; or

(9) a division, a board, a bureau, an office, a committee, or a commission of any of the public bodies listed in this subsection.

(j) "Retaliatory action" means discharging, suspending, demoting, threatening, harassing, or discriminating against an employee, a contractor, or an agent as a result of an activity described in § 8-107(a) of this title.

(k) "Supervisor" means an individual within an employer's organization who has the authority to:

(1) direct and control the work performance of an employee; or

(2) take corrective action regarding the violation of a law or regulation that is the subject of a complaint or charge under this title.

## **8-102.**

(a) This section does not apply to claims, records, or statements related to State or local taxes.



(b) A person may not:

- (1) knowingly present or cause to be presented a false or fraudulent claim for payment or approval;
- (2) knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;
- (3) conspire to commit a violation under this title;
- (4) have possession, custody, or control of money or other property used or to be used by or on behalf of a governmental entity and knowingly deliver or cause to be delivered to the governmental entity less than all of that money or other property;
- (5)(i) be authorized to make or deliver a receipt or other document certifying receipt of money or other property used or to be used by a governmental entity; and  
  
(ii) make or deliver a receipt or document intending to defraud the governmental entity, knowing that the information contained in the receipt or document is not true;
- (6) knowingly buy or receive as a pledge of an obligation or a debt publicly owned property from an officer, employee, or agent of a governmental entity who lawfully may not sell or pledge the property;
- (7) knowingly make, use, or cause to be made or used a false record or statement material to an obligation to pay or transmit money or other property to a governmental entity;
- (8) knowingly conceal, or knowingly and improperly avoid or decrease, an obligation to pay or transmit money or other property to a governmental entity, including misrepresenting the time at which a trade was made to make the transaction appear less favorable; or
- (9) knowingly make any other false or fraudulent claim against a governmental entity.

(c)(1) A person that is found to have violated subsection (b) of this section is liable to the governmental entity for:

- (i) a civil penalty of not more than \$10,000 for each violation; and
- (ii) an additional amount of not more than three times the amount of damages that the governmental entity sustains as a result of the acts of that person in violation of subsection (b) of this section.

(2) The total amount owed by a person under paragraph (1) of this subsection may not be less than the amount of the actual damages the governmental entity incurs as a result of the person's violation of subsection (b) of this section.

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



- (1) the number, nature, and severity of the violations of this title for which the person has been found liable;
- (2) the number, nature, and severity of any previous violations of this title;
- (3) the degree of loss suffered by the governmental entity;
- (4) the person's history of billing compliance;
- (5) whether the person has a compliance program in place;
- (6) the extent to which the person has taken steps to address and correct the violation since the person became aware of the violation;
- (7) any funds previously returned to the governmental entity in compliance with federal requirements regarding overpayments, to the extent the funds represented losses to the governmental entity caused by the violation;
- (8)(i) whether the person self-reported the violation;
  - (ii) the timeliness of the self-reporting;
  - (iii) the extent to which the person otherwise cooperated in the investigation of the violation; and
  - (iv) the extent to which the person had prior knowledge of an investigation or other action relating to the violation; and

(9) any other factor as justice requires.

(e) The penalties provided in subsection (c) of this section are in addition to any criminal, civil, or administrative penalties provided under any other State or federal statute or regulation.

**8–103.**

- (a) If a governmental entity finds that a person has violated or is violating § 8–102 of this title, the governmental entity may file a civil action in a court of competent jurisdiction within the State against the person.
- (b) In filing a civil action under this section, the governmental entity may seek the penalties provided under § 8–102(c) of this title.
- (c) A governmental entity may not maintain an action under this section if the governmental entity has filed a civil action based on the same underlying act under § 2–603 of the Health—General Article or has sought enforcement by the Attorney General under § 11–205 or § 11–205.1 of the State Finance and Procurement Article.



**8-104.**

(a)(1)(i) A person may file a civil action on behalf of the person and the governmental entity in a court of competent jurisdiction within the State against a person who has acted or is acting in violation of § 8-102 of this title.

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

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

(i) the penalties provided under § 8-102(c) of this title; and

(ii) subject to the guidelines set forth in § 8-105(a)(4) of this title, court costs and attorney's fees.

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

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

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

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

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

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

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

1. unsealed and ordered by the court to be served; and

2. served on the defendant in accordance with Title 2 of the Maryland Rules.

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

(iii) During the period in which the complaint is under seal, if the governmental entity's investigation reveals that the act, transaction, or occurrence that gave rise to the alleged



violation of this title is reasonably likely to be continuing, the governmental entity shall notify the defendant as soon as practicable without jeopardizing the course and conduct of the governmental entity's or the federal government's investigation of the violation, compromising the development of evidence, or violating any State or federal law.

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

- (i) intervene and proceed with the action in a court of competent jurisdiction within the State; or
- (ii) notify the court that it will not intervene and proceed with the action.

(7) If the governmental entity does not elect to intervene and proceed with the action under paragraph (6) of this subsection, before unsealing the complaint, the court shall dismiss the action.

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

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

- (i) the governmental entity shall have the primary responsibility for proceeding with the action and may not be bound by any act of the person who initiated the action; and
- (ii) subject to paragraphs (3) through (6) of this subsection, the person who initiated the action may continue as a party to the action.

(2)(i) During an investigation by the governmental entity conducted either independently or in conjunction with a civil action filed under this title, the governmental entity shall have the same rights of discovery as a civil litigant in the circuit court under Title 2, Chapter 400 of the Maryland Rules.

(ii) A person from whom the governmental entity seeks discovery shall be considered a party under Title 2, Chapter 400 of the Maryland Rules.

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

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

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

(4) Notwithstanding the objections of the person initiating the action, if the court determines after a hearing that a proposed settlement is fair, adequate, and reasonable under the circumstances, the



governmental entity may settle a civil action filed under this section.

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

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

1. interfere with or unduly delay the governmental entity in its pursuit of the civil action; or
2. be repetitious, irrelevant, or harassing to the defendant; or

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

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

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

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

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

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

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

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

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

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

## **8–105.**

(a)(1) If the governmental entity intervenes and proceeds with an action filed under § 8–104 of this title and the governmental entity prevails, the court shall award the person initiating the action an amount that is:

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

(ii) proportional to the amount of time and effort that the person substantially contributed to the



final resolution of the civil action.

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

1. the court considers appropriate, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation; and
2. does not exceed 10% of the proceeds of the action.

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

(3) Any payment to a person under paragraph (1) or (2) of this subsection shall be made from the proceeds of the action.

(4)(i) In addition to the amount provided under paragraphs (1) and (2) of this subsection, a court may award the person initiating the action:

1. an amount for reasonable expenses that the court finds to have been necessarily incurred; and
2. reasonable attorney's fees and costs.

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

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

(b)(1) If a court finds that the action is initiated by a person who planned and initiated or otherwise deliberately participated in the violation on which the action was based, the court may, to the extent it considers appropriate, reduce the share of the proceeds of the action that the person otherwise would have received under this section.

(2) In reducing the share of the proceeds of the person initiating the action under this subsection, the court shall consider:

- (i) the role of the person in advancing the case to litigation; and
- (ii) any relevant circumstances relating to the underlying violation.

(3)(i) If the person initiating a civil action under § 8–104 of this title is convicted of criminal conduct arising from the person's participation in the violation on which the action was based prior



to a final determination of the action, the person:

1. shall be dismissed from the action; and
2. may not receive any share of the proceeds of the action.

(ii) The dismissal of the person initiating the action in accordance with this paragraph does not prejudice the right of the governmental entity to continue the action.

(4) If the person initiating a civil action under § 8–104 of this title is convicted of criminal conduct arising from the person's participation in the violation on which the action was based after the proceeds from the action are awarded to that person, the court shall order the person to repay the proceeds previously awarded.

(c) A court may award reasonable attorney's fees and expenses to a defendant and against the person initiating the action if:

- (1) the defendant prevails in the action; and
- (2) the court finds that the claim of the person initiating the action was brought primarily for purposes of harassment or otherwise was brought in bad faith.

## **8–106**

(a) No court in this State shall have jurisdiction over an action filed under § 8–104 of this title against any member of the Legislative Branch or the Judiciary of the State, any member of the Governor's Executive Council, the Attorney General, the Comptroller, or the State Treasurer if the action is based on evidence or information known to the governmental entity when the action was filed.

(b) A civil action may not be brought under this title by a person who is or was a public employee or public official if the allegations of the action are based substantially on:

- (1) allegations of wrongdoing or misconduct that the person had a duty or an obligation to report or investigate within the scope of the person's public employment or office; or
- (2) information or records to which the person had access as a result of the person's public employment or office.

(c) A person may not bring an action under § 8–104 of this title that is based on allegations or transactions that are the subject of a civil action or an administrative civil money penalty proceeding in which the governmental entity is already a party.

(d)(1) Except as provided in paragraphs (2) and (3) of this subsection, no court in this State shall have jurisdiction over an action filed under § 8–104 of this title that is based on the public disclosure of allegations or transactions:

- (i) in a criminal, a civil, or an administrative hearing;



(ii) in a legislative or an administrative report, a hearing, an audit, or an investigation; or

(iii) from the news media.

(2) Paragraph (1) of this subsection does not apply if the action is initiated by a person that:

(i) has direct and independent knowledge of the information on which the allegations are based; and

(ii) has voluntarily provided the information to the governmental entity before filing an action under § 8–104 of this title that is based on the information.

(3) A governmental entity, through the Attorney General, may file a civil action under § 8–103 of this title based on a public disclosure described in paragraph (1) of this subsection.

(e) The governmental entity is not liable for expenses that a person incurs in bringing an action under § 8–104 of this title.

(f) A person that is or was employed by the State, a local government, or any other political subdivision of the State as an auditor, an investigator, an attorney, a financial officer, or a contracting officer may not bring an action under § 8–104 of this title that is based on allegations or transactions that the person discovered or learned of while acting in the person's capacity as an auditor, an investigator, an attorney, a financial officer, or a contracting officer for the State, local government, or other political subdivision of the State.

#### **8–107.**

(a) A person may not take a retaliatory action against an employee, a contractor, or a grantee because the employee, contractor, or grantee:

(1) acts lawfully in furtherance of an action filed under this title, including an investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this title;

(2) discloses or threatens to disclose to a supervisor or to a public body an activity, a policy, or a practice of the person that the employee, contractor, or grantee reasonably believes is in violation of § 8–102 of this title or a regulation adopted under this title;

(3) provides information to, or testifies before, a public body conducting an investigation, a hearing, or an inquiry into a violation of § 8–102 of this title or a regulation adopted under this title that is allegedly or actually committed by the person; or

(4) objects to or refuses to participate in any activity, policy, or practice that the employee, contractor, or grantee reasonably believes is in violation of § 8–102 of this title or a regulation adopted under this title.

(b)(1) An employee, a contractor, or a grantee may file a civil action against a person other than a supervisor in State government, an appointing authority in State government, or the head of a principal unit in State government if the person takes a retaliatory action against the employee,  
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contractor, or grantee in violation of subsection (a) of this section.

(2) The employee, contractor, or grantee may seek in the civil action:

- (i) an injunction to restrain a continuing violation of subsection (a) of this section;
- (ii) reinstatement to the same seniority status held before the retaliatory action;
- (iii) reinstatement of full fringe benefits and seniority rights;
- (iv) two times the amount of lost wages, benefits, and other remuneration, including any interest accumulated;
- (v) payment by the person of reasonable costs and attorney's fees;
- (vi) punitive damages;
- (vii) an assessment of a civil penalty:
  - 1. not exceeding \$1,000 for the first violation; and
  - 2. not exceeding \$5,000 for each subsequent violation; and
- (viii) any other relief necessary to make the employee, contractor, or grantee whole.

(3) The remedies provided under this section do not diminish or affect the rights, privileges, or remedies available to the employee, contractor, or grantee under:

- (i) any other federal or State statute or regulation; or
- (ii) any collective bargaining agreement or employee contract.

(c) A State employee who is subject to retaliatory action in violation of subsection (a) of this section may file a complaint under Title 5, Subtitle 3 of the State Personnel and Pensions Article.

## **8–108.**

(a) A civil action filed under this title may not be filed after the later of:

- (1) 6 years after the date on which the underlying violation of § 8–102 of this title occurred; or
- (2) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the person initiating the action or the official of the governmental entity charged with responsibility for acting under the circumstances, but in no event more than 10 years after the date on which the underlying violation of § 8–102 of this title occurred.

(b) If the governmental entity elects to intervene and proceed with an action brought under this title, the governmental entity, through the Office of the Attorney General or the attorney for the local

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governmental entity, may:

- (1) file its own complaint; or
  - (2) amend the complaint of the person that brought the action to clarify, add detail to the complaint, or add additional claims to the complaint.
- (c) To the extent that the claim of the governmental entity arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth by a person, a pleading by the governmental entity relates back to the filing date of the complaint of the person that originally brought the action.
- (d) In an action filed under this title, all essential elements of the cause of action, including damages, shall be proven by a preponderance of the evidence.
- (e) Notwithstanding any other provision of law or rule of procedure or evidence in the Maryland Rules, a final judgment rendered in favor of the governmental entity in any criminal proceeding charging fraud or false statements, whether on a verdict after trial or on a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action filed under this title that involves the same act, transaction, or occurrence as in the criminal proceeding.

#### **8–109.**

- (a) Any remedy provided under this title is in addition to any other appropriate legal or equitable relief provided under any other applicable State or federal statute or regulation.
- (b)(1) The governmental entity shall make all reasonable efforts to coordinate any investigation of an alleged violation under this title with any investigation conducted by the federal government involving the same violation.
- (2) The governmental entity's objective shall be to avoid unnecessary duplication of effort on the part of the person alleged to have committed the violation and to minimize the burden of the investigation on the person.
- (c) The Comptroller shall deposit any civil penalty or damages collected by the State under this title into the General Fund of the State.

#### **8–110.**

- (a) Beginning October 1, 2016, the Office of the Attorney General and the attorney for each county shall report annually to the General Assembly, in accordance with § 2–1246 of the State Government Article, the following information for the previous fiscal year:
- (1) the number of civil actions filed under this title;
  - (2) the number of civil actions under this title in which a judgment was entered, whether by settlement or adjudication; and

(3) the number of claims made by the governmental entity based on alleged violations of § 8–102 of

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this title that are settled without the filing of a civil action under this title.

(b) Unless the action is under seal in accordance with § 8–104 of this title, for each civil action reported under subsection (a)(1) or (2) of this section, the report shall state:

(1) whether the action was filed by the governmental entity or by a person on behalf of the governmental entity and, if filed by a person, whether the governmental entity intervened and proceeded with the action;

(2) the name of the defendant;

(3) a description of the violation or alleged violation of § 8–102 of this title; and

(4) the amount sought in the action and, if applicable, the amount for which the defendant is liable under a settlement agreement or court order.

(c) For each claim reported under subsection (a)(3) of this section, the report shall state:

(1) a description of the violation or alleged violation of § 8–102 of this title;

(2) the resolution of the claim;

(3) the amount, if any, the person against whom the claim was made agreed to pay in settlement of the claim; and

(4) the amount, if any, collected by the governmental entity.

## **8–111.**

This title may be cited as the Maryland False Claims Act.

<< Note: MD GEN PROVIS §§ 8–101, 8–102, 8–103, 8–104, 8–105, 8–106, 8–107, 8–108, 8–109, 8–110, 8–111 >>

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any claim made before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2015.