

Chapter 26

(House Bill 913)

AN ACT concerning

Attorney General – Powers – Maryland Defense Act of 2017

FOR the purpose of authorizing the Attorney General to employ certain assistant counsel under certain circumstances; authorizing the Attorney General to take certain actions regarding civil and criminal suits and actions that are based on the federal government's action or inaction that threatens the public interest and welfare of the residents of the State; requiring the Attorney General, except under certain circumstances, to provide the Governor with certain notice and an opportunity to review and comment on certain suits and actions before commencing certain suits and actions; requiring the Governor, under certain circumstances, to provide in writing reasons for certain objections to the Attorney General within a certain time period; requiring the Attorney General, except under certain circumstances, to consider the Governor's objections before commencing a certain suit or action; requiring the Governor's proposed budget for a certain fiscal year and annually thereafter to appropriate at least a certain amount to the Attorney General to be used only for certain purposes; requiring the Attorney General to submit a certain report to the Governor and the Legislative Policy Committee on or before a certain date each year; stating the findings of the General Assembly; providing for the construction of this Act; making the provisions of this Act severable; and generally relating to the powers of the Attorney General.

BY adding to

Article – State Government
Section 6–105(f) and 6–106.1
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

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

Article – State Government6–105.

(F) IN ADDITION TO ANY OTHER STAFF APPOINTED UNDER THIS SECTION, THE ATTORNEY GENERAL MAY EMPLOY ANY ASSISTANT COUNSEL THAT THE ATTORNEY GENERAL CONSIDERS NECESSARY TO A CARRY OUT ANY DUTY OF THE OFFICE IF THE EMPLOYMENT OF THE ASSISTANT COUNSEL:

(1) IS ON A PRO BONO BASIS;

(2) WILL NOT RESULT IN MORE THAN MINIMAL COST TO THE STATE;
AND

(3) WILL NOT RESULT IN THE PAYMENT TO THE ASSISTANT COUNSEL
OF ANY PORTION OF THE STATE'S RECOVERY IN ANY CASE OR MATTER.

6-106.1.

(A) THE GENERAL ASSEMBLY FINDS THAT:

(1) THE FEDERAL GOVERNMENT'S ACTION OR FAILURE TO TAKE ACTION MAY POSE A THREAT TO THE HEALTH AND WELFARE OF THE RESIDENTS OF THE STATE; AND

(2) THE STATE SHOULD INVESTIGATE AND OBTAIN RELIEF FROM ANY ARBITRARY, UNLAWFUL, OR UNCONSTITUTIONAL FEDERAL ACTION OR INACTION AND PREVENT SUCH ACTION OR INACTION FROM HARMING THE RESIDENTS OF THE STATE.

(B) (1) IN ADDITION TO ANY OTHER POWERS AND DUTIES AND SUBJECT TO THE REQUIREMENTS OF THIS SUBSECTION, THE ATTORNEY GENERAL MAY INVESTIGATE, COMMENCE, AND PROSECUTE OR DEFEND ANY CIVIL OR CRIMINAL SUIT OR ACTION THAT IS BASED ON THE FEDERAL GOVERNMENT'S ACTION OR INACTION THAT THREATENS THE PUBLIC INTEREST AND WELFARE OF THE RESIDENTS OF THE STATE WITH RESPECT TO:

(I) PROTECTING THE HEALTH OF THE RESIDENTS OF THE STATE AND ENSURING THE AVAILABILITY OF AFFORDABLE HEALTH CARE;

(II) SAFEGUARDING PUBLIC SAFETY AND SECURITY;

(III) PROTECTING CIVIL LIBERTIES;

(IV) PRESERVING AND ENHANCING THE ECONOMIC SECURITY OF WORKERS AND RETIREES;

(V) PROTECTING FINANCIAL SECURITY OF THE RESIDENTS OF THE STATE, INCLUDING THEIR PENSIONS, SAVINGS, AND INVESTMENTS, AND ENSURING FAIRNESS IN MORTGAGES, STUDENT LOANS, AND THE MARKETPLACE;

(VI) PROTECTING THE RESIDENTS OF THE STATE AGAINST FRAUD AND OTHER DECEPTIVE AND PREDATORY PRACTICES;

(VII) PROTECTING THE NATURAL RESOURCES AND ENVIRONMENT OF THE STATE;

(VIII) PROTECTING THE RESIDENTS OF THE STATE AGAINST ILLEGAL AND UNCONSTITUTIONAL FEDERAL IMMIGRATION AND TRAVEL RESTRICTIONS; OR

(IX) OTHERWISE PROTECTING, AS PARENS PATRIAE, THE STATE'S INTEREST IN THE GENERAL HEALTH AND WELL-BEING OF ITS RESIDENTS.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, BEFORE COMMENCING A SUIT OR AN ACTION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE ATTORNEY GENERAL SHALL PROVIDE TO THE GOVERNOR:

(I) WRITTEN NOTICE OF THE INTENDED SUIT OR ACTION; AND

(II) AN OPPORTUNITY TO REVIEW AND COMMENT ON THE INTENDED SUIT OR ACTION.

(3) IF THE GOVERNOR OBJECTS TO THE INTENDED SUIT OR ACTION FOR WHICH NOTICE WAS PROVIDED UNDER THIS SUBSECTION:

(I) THE GOVERNOR SHALL PROVIDE IN WRITING TO THE ATTORNEY GENERAL THE REASONS FOR THE OBJECTION WITHIN 10 DAYS AFTER RECEIVING THE NOTICE; AND

(II) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE ATTORNEY GENERAL SHALL CONSIDER THE GOVERNOR'S OBJECTION BEFORE COMMENCING THE SUIT OR ACTION.

(4) IF THE ATTORNEY GENERAL DETERMINES THAT EMERGENCY CIRCUMSTANCES REQUIRE THE IMMEDIATE COMMENCEMENT OF A SUIT OR AN ACTION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE ATTORNEY GENERAL SHALL PROVIDE TO THE GOVERNOR NOTICE OF THE SUIT OR ACTION AS SOON AS REASONABLY PRACTICABLE.

(C) THE GOVERNOR'S PROPOSED BUDGET FOR FISCAL YEAR 2019, AND FOR EACH FISCAL YEAR THEREAFTER, SHALL APPROPRIATE AT LEAST \$1,000,000 TO THE ATTORNEY GENERAL TO BE USED ONLY FOR:

(1) CARRYING OUT THIS SECTION; AND

(2) EMPLOYING FIVE ATTORNEYS IN THE OFFICE OF THE ATTORNEY GENERAL.

(D) ON OR BEFORE DECEMBER 1 EACH YEAR, THE ATTORNEY GENERAL SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THIS ARTICLE, THE LEGISLATIVE POLICY COMMITTEE ON ANY ACTION TAKEN UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to expand the powers of the Attorney General and may not be construed to limit in any way the constitutional and statutory authority of the Attorney General that existed before the enactment of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2017.

Enacted under Article II, § 17(b) of the Maryland Constitution, April 6, 2017.