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## **Opinion: Anti-fraud legislation in Maryland could have disturbing side effects**

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The Maryland General Assembly this year came close to passing a state version of the federal False Claims Act, a measure promoted by its backers as a powerful weapon against fraud but deplored by the state's chamber of commerce as "burdensome and unfair."

The bill failed on the last day of session when Minority Leader [David Brinkley](#), R-Frederick County, used a procedural maneuver to kill it; since then it's become an issue in the hotly contested District 4 primary, with Brinkley's challenger, Del. [Michael Hough](#), among the few Republicans to support the measure.

The law is controversial for good reason. At the federal level, it has led to some alarming unintended consequences.

Based on a Civil War era statute that was drastically expanded in 1986, the federal False Claims Act allows freelance informers to accuse business or non-profit entities dealing with the government of fraud, and then pocket a hefty share of the proceeds of a resulting judgment or settlement. To encourage suit-filing, the law awards treble or other multiple damages, attorney's fees, stiff statutory damages and other enhancers. The model of privatized law enforcement has led to successful exposure of some genuine frauds, but has also led to some disturbing side effects.

The law has made rich various employees who participated in frauds themselves, or failed to inform higher-ups of their discovery of accounting problems (which might mean sacrificing a False Claims Act award for themselves). It has even provided a reason to not report fraud too quickly, as in the case of an employee accused by [General Electric](#) chairman [Jack Welch](#) of having "sat back and waited in the weeds so the damages would mount."

Complainants have also couched as "fraud" simple differences of opinion in complex areas of government contracting — reimbursement formulas, overhead rates, etc. — as well as industry customs not challenged by government payors at the time. When stakes are high defendants often settle for some fraction of the demand. Lawyers jump to file suits based on gray areas of contracting regulations where there are high stakes and a solvent defendant. They don't bother to

file suits against serious, unmistakable fraud when there is no one with deep pockets to sue (say, because the fraudster is broke).

Animal rights activists have used the law to go after a federally funded cancer researcher, supposedly on the theory that he misrepresented the results of his research. That's among many instances in which the law has enabled vendettas or given private actors — say, labor unions or community organizers — extra leverage against companies they attack.

A hedge fund sold short the stock of a target firm (betting its stock would fall) and then filed a False Claims Act naming the company, bringing about the very stock drop it had bet on.

By now the business community has mobilized to protest consequences of this sort. But the law had made many lawyers quite rich, and they form a powerful lobby defending the law and pushing for its further expansion, including copycat state laws.

The proposed Maryland version, would have gone much further than most state equivalents. For example, it had a much less usable statute of limitations, meaning clever lawyers could reach back to attack long-past conduct. The Council on State Taxation warned that owing to vague language that did not exclude tax disputes, it might be seized on to justify freelance suits demanding a retroactive hike in a Maryland company's tax bill — plus multiple damages, lawyers' fees, etc. — and a court might agree to let such a claim go forward.

If that's enough to make you worry, brace yourself: some version of the bill will probably be back next session.

*-Walter Olson, a senior fellow at the Cato Institute, fears Maryland will try again to pass anti-fraud legislation.*