HOUSE BILL 903

D2 HB 393/16 – JUD 7lr1989 CF SB 705

By: **Delegates Dumais, Anderson, Lierman, Moon, and Sanchez** Introduced and read first time: February 6, 2017 Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

Award of Attorney's Fees and Expenses – Violation of Maryland Constitutional Right

4 FOR the purpose of authorizing a court to award to a prevailing plaintiff reasonable $\mathbf{5}$ attorney's fees and expenses in certain actions seeking to remedy a violation of a 6 Maryland constitutional right; authorizing a court to award reasonable attorney's 7 fees and expenses to a prevailing defendant under certain circumstances; 8 establishing that certain limits on attorney's fees under the Maryland Tort Claims 9 Act do not apply to a certain award of attorney's fees and expenses; providing for the application of this Act; and generally relating to awarding attorney's fees and 10 11 expenses in certain actions seeking to remedy a violation of a Maryland 12constitutional right.

- 13 BY adding to
- 14 Article Courts and Judicial Proceedings
- 15 Section 3–2101 and 3–2102 to be under the new subtitle "Subtitle 21. Award of
- Attorney's Fees and Expenses Violation of Maryland Constitutional Right"
 Annotated Code of Maryland
- Annotated Code of Maryland(2013 Replacement Volume and 2016)
- 18 (2013 Replacement Volume and 2016 Supplement)
- 19 BY repealing and reenacting, with amendments,
- 20 Article State Government
- 21 Section 12–109
- 22 Annotated Code of Maryland
- 23 (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:
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Article – Courts and Judicial Proceedings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law.



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SUBTITLE 21. AWARD OF ATTORNEY'S FEES AND EXPENSES – VIOLATION OF MARYLAND CONSTITUTIONAL RIGHT.

3 **3–2101.**

4 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY 5 AWARD TO A PREVAILING PLAINTIFF REASONABLE ATTORNEY'S FEES AND 6 EXPENSES FOR ANY CLAIM FOR RELIEF AGAINST THE STATE, ANY POLITICAL 7 SUBDIVISION OF THE STATE, OR AN EMPLOYEE OR AGENT OF THE STATE OR ANY 8 POLITICAL SUBDIVISION OF THE STATE IF THE CLAIM FOR RELIEF SEEKS TO 9 REMEDY A VIOLATION OF A RIGHT THAT IS SECURED BY THE MARYLAND 10 CONSTITUTION OR THE MARYLAND DECLARATION OF RIGHTS.

11 (B) A COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND EXPENSES 12 TO A PREVAILING DEFENDANT ONLY ON A FINDING THAT THE CLAIM FOR RELIEF 13 BROUGHT BY THE PLAINTIFF TO REMEDY A VIOLATION OF A RIGHT THAT IS SECURED 14 BY THE MARYLAND CONSTITUTION OR THE MARYLAND DECLARATION OF RIGHTS 15 WAS MAINTAINED IN BAD FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION.

16 **3–2102.**

FOR PURPOSES OF THIS SUBTITLE, A COURT SHALL DETERMINE WHETHER TO
 AWARD ATTORNEY'S FEES AND EXPENSES BY CONSIDERING THE FACTORS LISTED IN
 MARYLAND RULE 2–703(F)(3).

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Article – State Government

21 12–109.

[Counsel] EXCEPT AS PROVIDED IN § 3–2101 OF THE COURTS ARTICLE, COUNSEL may not charge or receive fees that exceed:

- 24 (1) 20% of a settlement made under this subtitle; or
- 25 (2) 25% of a judgment made under this subtitle.

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 case filed before the effective date of this Act.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect 30 October 1, 2017.

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