

SENATE BILL 263

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CF HB 130

By: **Chair, Judicial Proceedings Committee (By Request – Chief Judge, Court of Appeals)**

Introduced and read first time: January 18, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Award of Attorney’s Fees and Expenses**

3 FOR the purpose of authorizing a court to award a prevailing party reasonable
4 attorney’s fees and expenses in certain civil actions; requiring a court to
5 consider certain factors in determining whether to make a certain award to a
6 prevailing plaintiff; authorizing a court to award attorney’s fees to a prevailing
7 defendant only under certain circumstances; establishing the method of
8 calculating certain awards of attorney’s fees; establishing that a local
9 government employee shall be fully liable for a certain award of attorney’s fees
10 and expenses in a certain action under the Local Government Tort Claims Act;
11 establishing that the limits on the liability of a local government under the
12 Local Government Tort Claims Act do not include a certain award of attorney’s
13 fees and expenses; establishing that the limit on the liability of the State under
14 the Maryland Tort Claims Act does not include a certain award of attorney’s
15 fees and expenses; establishing that certain limits on attorney’s fees under the
16 Maryland Tort Claims Act do not apply to a certain award of attorney’s fees and
17 expenses; defining a certain term; providing for the application of this Act; and
18 generally relating to awarding attorney’s fees and expenses in certain actions.

19 BY adding to

20 Article – Courts and Judicial Proceedings

21 Section 3–1901 and 3–1902, to be under the new subtitle “Subtitle 19. Award of
22 Attorney’s Fees and Expenses in Civil Actions”

23 Annotated Code of Maryland

24 (2006 Replacement Volume and 2012 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article – Courts and Judicial Proceedings

27 Section 5–302(b)(2)(i) and 5–303(a)

28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2006 Replacement Volume and 2012 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – State Government
4 Section 12–104(a)(2) and 12–109
5 Annotated Code of Maryland
6 (2009 Replacement Volume and 2012 Supplement)

7 Preamble

8 WHEREAS, There are now more than half a million Marylanders living at or
9 near the federal poverty level; and

10 WHEREAS, The legal problems faced by low–income Marylanders are more
11 likely to involve low monetary claims, which make it difficult or impossible for them to
12 attract counsel because the means are not available to compensate an attorney from
13 the proceeds; and

14 WHEREAS, There is no provision in Maryland law that permits an award of
15 attorney’s fees to individuals asserting a State constitutional claim, which means that
16 many Marylanders are unable to assert their rights under the State constitution for
17 lack of counsel, because these claims are often for injunctive or nonmonetary relief
18 and, without a monetary award, there are no funds with which to pay an attorney; and

19 WHEREAS, A law that provides for an award of attorney’s fees to a prevailing
20 party would permit litigants in cases involving low or nonmonetary relief to find
21 attorneys to represent them, provided their cases have merit; and

22 WHEREAS, Such provisions can be a powerful tool for promoting access to
23 justice, and they do so in a way that does not require any additional expenditure of
24 public funds, by creating incentives for private attorneys to accept clients with
25 meritorious claims; and

26 WHEREAS, Such provisions permit aggrieved parties to be “made whole” by
27 ensuring that they do not have to pay for their legal representation from the
28 compensation they were awarded; and

29 WHEREAS, Such provisions permit individual citizens to enforce rights
30 protected by law in a manner that has a larger social benefit, reducing the need for
31 State action and expenditure to enforce the law; and

32 WHEREAS, The purpose of such provisions is not to benefit private attorneys,
33 but to promote access to legal representation for individuals who are unable to retain
34 counsel, despite having meritorious claims, in case types that legal aid organizations
35 are not able to accept because of statutory or funding restrictions; and

1 WHEREAS, When large segments of Maryland's population are denied effective
2 access to the justice system and are unable to assert and defend effectively important
3 civil legal rights and prerogatives, public trust and confidence in the justice system is
4 placed in jeopardy; now, therefore,

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

7 **Article – Courts and Judicial Proceedings**

8 **SUBTITLE 19. AWARD OF ATTORNEY'S FEES AND EXPENSES IN CIVIL ACTIONS.**

9 **3-1901.**

10 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COURT
11 MAY AWARD A PREVAILING PARTY REASONABLE ATTORNEY'S FEES AND
12 EXPENSES IN ANY CIVIL ACTION THAT HAS RESULTED IN THE ENFORCEMENT OF
13 AN IMPORTANT RIGHT THAT:

14 (1) IS SECURED BY THE MARYLAND CONSTITUTION, THE
15 MARYLAND DECLARATION OF RIGHTS, OR A STATE LAW; AND

16 (2) AFFECTS THE PUBLIC INTEREST.

17 (B) (1) IN THIS SUBSECTION, "PREVAILING PLAINTIFF" INCLUDES
18 ONE WHOSE LITIGATION WHOLLY OR SUBSTANTIALLY ACHIEVED THE DESIRED
19 RESULT BY BRINGING ABOUT A VOLUNTARY CHANGE IN THE CONDUCT OF THE
20 DEFENDANT.

21 (2) IN DETERMINING WHETHER TO MAKE AN AWARD TO A
22 PREVAILING PLAINTIFF UNDER SUBSECTION (A) OF THIS SECTION, THE COURT
23 SHALL CONSIDER:

24 (I) WHETHER A SIGNIFICANT BENEFIT HAS BEEN
25 CONFERRED ON THE GENERAL PUBLIC OR A LARGE CLASS OF PERSONS;

26 (II) THE NECESSITY AND FINANCIAL BURDEN OF PRIVATE
27 ENFORCEMENT; AND

28 (III) WHETHER PAYMENT OF ATTORNEY'S FEES AND
29 EXPENSES OUT OF THE RECOVERY, IF ANY, WOULD BE CONTRARY TO THE
30 INTERESTS OF JUSTICE.

1 **(C) THE COURT MAY AWARD ATTORNEY’S FEES TO A PREVAILING**
2 **DEFENDANT ONLY ON A FINDING THAT THE ACTION BROUGHT BY THE**
3 **PLAINTIFF WAS FRIVOLOUS.**

4 **3-1902.**

5 **FOR PURPOSES OF THIS SUBTITLE OR ANY OTHER STATE STATUTE**
6 **AUTHORIZING AN AWARD OF REASONABLE ATTORNEY’S FEES TO A PREVAILING**
7 **PARTY, THE COURT SHALL DETERMINE THE AMOUNT OF AN AWARD OF**
8 **ATTORNEY’S FEES BY:**

9 **(1) MULTIPLYING THE NUMBER OF HOURS REASONABLY**
10 **EXPENDED BY A REASONABLE HOURLY RATE; AND**

11 **(2) DETERMINING WHETHER ANY ADJUSTMENT SHOULD BE MADE**
12 **TO THE AMOUNT CALCULATED UNDER ITEM (1) OF THIS SECTION, AFTER**
13 **CONSIDERING:**

14 **(I) THE TIME AND LABOR REQUIRED;**

15 **(II) THE NOVELTY AND DIFFICULTY OF THE QUESTIONS;**

16 **(III) THE SKILL REQUIRED TO PERFORM THE LEGAL**
17 **SERVICE PROPERLY;**

18 **(IV) WHETHER ACCEPTANCE OF THE CASE PRECLUDED**
19 **OTHER EMPLOYMENT;**

20 **(V) THE CUSTOMARY FEE FOR SIMILAR WORK IN THE**
21 **COMMUNITY;**

22 **(VI) ANY TIME LIMITATIONS IMPOSED BY THE CLIENT OR**
23 **CIRCUMSTANCES;**

24 **(VII) THE AMOUNT INVOLVED AND THE RESULTS OBTAINED;**

25 **(VIII) THE UNDESIRABILITY OF THE CASE;**

26 **(IX) THE NATURE AND LENGTH OF THE PROFESSIONAL**
27 **RELATIONSHIP WITH THE CLIENT; AND**

28 **(X) AWARDS IN SIMILAR CASES.**

1 5-302.

2 (b) (2) (i) [An employee shall be fully liable for all damages awarded
3 in] **IN** an action in which it is found that [the] **AN** employee acted with actual malice,
4 **THE EMPLOYEE SHALL BE FULLY LIABLE FOR:**

5 1. **ALL DAMAGES AWARDED IN THE ACTION; AND**

6 2. **ANY AWARD OF ATTORNEY'S FEES AND EXPENSES**
7 **UNDER § 3-1901 OF THIS ARTICLE.**

8 5-303.

9 (a) (1) Subject to paragraph (2) of this subsection, the liability of a local
10 government may not exceed \$200,000 per an individual claim, and \$500,000 per total
11 claims that arise from the same occurrence for damages resulting from tortious acts or
12 omissions, or liability arising under subsection (b) of this section and indemnification
13 under subsection (c) of this section.

14 (2) The limits on liability provided under paragraph (1) of this
15 subsection do not include interest accrued on a judgment **OR ANY AWARD OF**
16 **ATTORNEY'S FEES AND EXPENSES UNDER § 3-1901 OF THIS ARTICLE.**

17 **Article – State Government**

18 12-104.

19 (a) (2) **(I) [The] SUBJECT TO SUBPARAGRAPH (II) OF THIS**
20 **PARAGRAPH, THE** liability of the State and its units may not exceed \$200,000 to a
21 single claimant for injuries arising from a single incident or occurrence.

22 **(II) THE LIMIT ON LIABILITY UNDER SUBPARAGRAPH (I) OF**
23 **THIS PARAGRAPH DOES NOT INCLUDE ANY AWARD OF ATTORNEY'S FEES AND**
24 **EXPENSES UNDER § 3-1901 OF THE COURTS ARTICLE.**

25 12-109.

26 [Counsel] **EXCEPT AS PROVIDED IN § 3-1901 OF THE COURTS ARTICLE,**
27 **COUNSEL** may not charge or receive fees that exceed:

28 (1) 20% of a settlement made under this subtitle; or

29 (2) 25% of a judgment made under this subtitle.

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

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2013.