

SENATE BILL 319

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5lr1510
CF HB 283

By: **Senators Muse, Kelley, and Lee**

Introduced and read first time: February 5, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of authorizing a court to award to a prevailing plaintiff reasonable
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 the limit on the liability of the State under the Maryland Tort
9 Claims Act does not include a certain award of attorney's fees and expenses;
10 establishing that certain limits on attorney's fees under the Maryland Tort Claims
11 Act do not apply to a certain award of attorney's fees and expenses; providing for the
12 application of this Act; and generally relating to awarding attorney's fees and
13 expenses in certain actions seeking to remedy a violation of a Maryland
14 constitutional right.

15 BY adding to

16 Article – Courts and Judicial Proceedings
17 Section 3–2101 and 3–2102 to be under the new subtitle “Subtitle 21. Award of
18 Attorney's Fees and Expenses – Violation of Maryland Constitutional Right”
19 Annotated Code of Maryland
20 (2013 Replacement Volume and 2014 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – State Government
23 Section 12–104(a)(2) and 12–109
24 Annotated Code of Maryland
25 (2014 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Courts and Judicial Proceedings

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

3–2101.

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

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

3–2102.

FOR PURPOSES OF THE 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).

Article – State Government

12–104.

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

(II) THE LIMIT ON LIABILITY UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT INCLUDE AN AWARD OF ATTORNEY’S FEES AND EXPENSES UNDER § 3–2101 OF THE COURTS ARTICLE.

12–109.

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

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

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

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

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