

SENATE BILL 544

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4lr2612
CF HB 568

By: **Senator Muse**

Introduced and read first time: January 29, 2014

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 plaintiff reasonable
4 attorney’s fees and expenses in certain civil actions; authorizing a court to
5 award attorney’s fees to a prevailing defendant only under certain
6 circumstances; establishing the method of calculating certain awards of
7 attorney’s fees; establishing that the limit on the liability of the State under the
8 Maryland Tort Claims Act does not include a certain award of attorney’s fees
9 and expenses; establishing that certain limits on attorney’s fees under the
10 Maryland Tort Claims Act do not apply to a certain award of attorney’s fees and
11 expenses; providing that a certain plaintiff is considered a prevailing plaintiff;
12 providing for the application of this Act; and generally relating to awarding
13 attorney’s fees and expenses in certain actions.

14 BY adding to

15 Article – Courts and Judicial Proceedings
16 Section 3–1901 and 3–1902 to be under the new subtitle “Subtitle 19. Award of
17 Attorney’s Fees and Expenses in Civil Actions”
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2013 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article – State Government
22 Section 12–104(a)(2) and 12–109
23 Annotated Code of Maryland
24 (2009 Replacement Volume and 2013 Supplement)

25 Preamble

26 WHEREAS, There is no provision in Maryland law that permits an award of
27 attorney’s fees to individuals asserting a State constitutional claim, which means that

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 many Marylanders are unable to assert their rights under the State constitution for
2 lack of counsel, because these claims are often for injunctive or nonmonetary relief
3 and, without a monetary award, there are no funds with which to pay an attorney; and

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

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

11 WHEREAS, Such provisions permit aggrieved parties to be "made whole" by
12 ensuring that they do not have to pay for their legal representation from the
13 compensation they were awarded; and

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

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

21 WHEREAS, When large segments of Maryland's population are denied effective
22 access to the justice system, public trust and confidence in the justice system are
23 placed in jeopardy; now, therefore,

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

26 **Article – Courts and Judicial Proceedings**

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

28 **3-1901.**

29 **(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COURT**
30 **MAY AWARD A PREVAILING PLAINTIFF REASONABLE ATTORNEY'S FEES AND**
31 **EXPENSES IN ANY CIVIL ACTION THAT HAS RESULTED IN THE ENFORCEMENT OF**
32 **A RIGHT THAT IS SECURED BY THE MARYLAND CONSTITUTION OR THE**
33 **MARYLAND DECLARATION OF RIGHTS.**

1 **(B) IN THIS SUBTITLE, A PREVAILING PLAINTIFF INCLUDES A**
2 **PLAINTIFF WHOSE LITIGATION WHOLLY OR SUBSTANTIALLY ACHIEVED THE**
3 **DESIRED RESULT BY BRINGING ABOUT A VOLUNTARY CHANGE IN THE CONDUCT**
4 **OF THE DEFENDANT.**

5 **(C) THE COURT MAY AWARD ATTORNEY'S FEES TO A PREVAILING**
6 **DEFENDANT ONLY ON A FINDING THAT THE ACTION BROUGHT BY THE**
7 **PLAINTIFF WAS FRIVOLOUS.**

8 **3-1902.**

9 **FOR PURPOSES OF THIS SUBTITLE OR ANY OTHER STATE STATUTE**
10 **AUTHORIZING AN AWARD OF REASONABLE ATTORNEY'S FEES TO A PREVAILING**
11 **PARTY, THE COURT SHALL DETERMINE THE AMOUNT OF AN AWARD OF**
12 **ATTORNEY'S FEES BY:**

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

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

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

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

20 **(III) THE SKILL REQUIRED TO PERFORM THE LEGAL**
21 **SERVICE PROPERLY;**

22 **(IV) WHETHER ACCEPTANCE OF THE CASE PRECLUDED**
23 **OTHER EMPLOYMENT;**

24 **(V) THE CUSTOMARY FEE FOR SIMILAR WORK IN THE**
25 **COMMUNITY;**

26 **(VI) ANY TIME LIMITATIONS IMPOSED BY THE CLIENT OR**
27 **CIRCUMSTANCES;**

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

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

1 **(IX) THE NATURE AND LENGTH OF THE PROFESSIONAL**
2 **RELATIONSHIP WITH THE CLIENT; AND**

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

4 **Article – State Government**

5 12–104.

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

9 **(II) THE LIMIT ON LIABILITY UNDER SUBPARAGRAPH (I) OF**
10 **THIS PARAGRAPH DOES NOT INCLUDE ANY AWARD OF ATTORNEY’S FEES AND**
11 **EXPENSES UNDER § 3–1902 OF THE COURTS ARTICLE.**

12 12–109.

13 **[Counsel] EXCEPT AS PROVIDED IN § 3–1902 OF THE COURTS ARTICLE,**
14 **COUNSEL** may not charge or receive fees that exceed:

15 (1) 20% of a settlement made under this subtitle; or

16 (2) 25% of a judgment made under this subtitle.

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

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2014.