

HOUSE BILL 130

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3lr1321
CF 3lr1320

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

Introduced and read first time: January 17, 2013

Assigned to: Judiciary

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
29 (2006 Replacement Volume and 2012 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

6 Preamble

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

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

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

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

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

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

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

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

35 WHEREAS, When large segments of Maryland's population are denied effective
36 access to the justice system and are unable to assert and defend effectively important

1 civil legal rights and prerogatives, public trust and confidence in the justice system is
2 placed in jeopardy; now, therefore,

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

5 **Article – Courts and Judicial Proceedings**

6 **SUBTITLE 19. AWARD OF ATTORNEY’S FEES AND EXPENSES IN CIVIL ACTIONS.**

7 **3–1901.**

8 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COURT
9 MAY AWARD A PREVAILING PARTY REASONABLE ATTORNEY’S FEES AND
10 EXPENSES IN ANY CIVIL ACTION:

11 (1) TO ENFORCE A RIGHT SECURED BY THE MARYLAND
12 CONSTITUTION OR DECLARATION OF RIGHTS; OR

13 (2) THAT HAS RESULTED IN THE ENFORCEMENT OF AN
14 IMPORTANT RIGHT AFFECTING THE PUBLIC INTEREST.

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

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

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

24 (II) THE NECESSITY AND FINANCIAL BURDEN OF PRIVATE
25 ENFORCEMENT; AND

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

29 (C) THE COURT MAY AWARD ATTORNEY’S FEES TO A PREVAILING
30 DEFENDANT ONLY ON A FINDING THAT THE ACTION BROUGHT BY THE
31 PLAINTIFF WAS FRIVOLOUS.

1 **3-1902.**

2 **FOR PURPOSES OF THIS SUBTITLE OR ANY OTHER STATE STATUTE**
3 **AUTHORIZING AN AWARD OF REASONABLE ATTORNEY'S FEES TO A PREVAILING**
4 **PARTY, THE COURT SHALL DETERMINE THE AMOUNT OF AN AWARD OF**
5 **ATTORNEY'S FEES BY:**

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

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

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

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

13 **(III) THE SKILL REQUIRED TO PERFORM THE LEGAL**
14 **SERVICE PROPERLY;**

15 **(IV) WHETHER ACCEPTANCE OF THE CASE PRECLUDED**
16 **OTHER EMPLOYMENT;**

17 **(V) THE CUSTOMARY FEE FOR SIMILAR WORK IN THE**
18 **COMMUNITY;**

19 **(VI) ANY TIME LIMITATIONS IMPOSED BY THE CLIENT OR**
20 **CIRCUMSTANCES;**

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

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

23 **(IX) THE NATURE AND LENGTH OF THE PROFESSIONAL**
24 **RELATIONSHIP WITH THE CLIENT; AND**

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

26 **5-302.**

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

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

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

7 5-303.

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

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

16 **Article - State Government**

17 12-104.

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

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

24 12-109.

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

27 (1) 20% of a settlement made under this subtitle; or

28 (2) 25% of a judgment made under this subtitle.

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

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