

SENATE BILL 1042

D3

8lr2464
CF 8lr0621

By: **Senators Smith, Muse, Lee, Madaleno, and Ramirez**

Introduced and read first time: February 5, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Access to Maryland Courts Act**

3 FOR the purpose of authorizing a court to award to a prevailing plaintiff reasonable
4 attorney's fees and expenses in certain actions seeking to remedy a violation of a
5 certain provision of the Maryland Constitution or the Maryland Declaration of
6 Rights; authorizing a court to award reasonable attorney's fees and expenses to a
7 prevailing defendant under certain circumstances; providing that the combined total
8 of certain damages and certain attorney's fees and expenses awarded under certain
9 provisions of this Act may not exceed certain limits on liability; establishing that
10 certain limits on attorney's fees under the Maryland Tort Claims Act do not apply to
11 a certain award of attorney's fees and expenses; providing for the application of this
12 Act; defining a certain term; and generally relating to awarding attorney's fees and
13 expenses in certain actions seeking to remedy a violation of a certain provision of the
14 Maryland Constitution or the Maryland Declaration of Rights.

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 2017 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – Courts and Judicial Proceedings
23 Section 5–303(a)
24 Annotated Code of Maryland
25 (2013 Replacement Volume and 2017 Supplement)

26 BY repealing and reenacting, with amendments,

27 Article – State Government
28 Section 12–104(a) and 12–109

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2014 Replacement Volume and 2017 Supplement)

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

5 **Article – Courts and Judicial Proceedings**

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

8 **3–2101.**

9 (A) IN THIS SECTION, “SELF-EXECUTING” MEANS A PROVISION SO
10 COMPLETE THAT IT MAY BE ENFORCED BY A COURT WITHOUT THE NEED FOR
11 FURTHER LEGISLATIVE AUTHORITY OR DIRECTION.

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

20 (C) A COURT MAY AWARD REASONABLE ATTORNEY’S FEES AND EXPENSES
21 TO A PREVAILING DEFENDANT ONLY ON A FINDING THAT THE CLAIM FOR RELIEF
22 BROUGHT BY THE PLAINTIFF TO REMEDY A VIOLATION OF A RIGHT THAT IS SECURED
23 BY A SELF-EXECUTING PROVISION OF THE MARYLAND CONSTITUTION OR THE
24 MARYLAND DECLARATION OF RIGHTS WAS MAINTAINED IN BAD FAITH OR WITHOUT
25 SUBSTANTIAL JUSTIFICATION.

26 (D) THE LIMITS ON ATTORNEY’S FEES PROVIDED UNDER § 12–109 OF THE
27 STATE GOVERNMENT ARTICLE DO NOT APPLY TO AN AWARD OF ATTORNEY’S FEES
28 UNDER THIS SECTION.

29 **3–2102.**

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

33 (B) THE COMBINED TOTAL OF ALL DAMAGES AND ATTORNEY’S FEES AND

1 EXPENSES AWARDED TO A PREVAILING PLAINTIFF UNDER THIS SUBTITLE MAY NOT
2 EXCEED:

3 (1) IF AWARDED AGAINST A LOCAL GOVERNMENT AS DEFINED IN §
4 5-301 OF THIS ARTICLE, THE LIMITS ON LIABILITY ESTABLISHED UNDER § 5-303 OF
5 THIS ARTICLE; OR

6 (2) IF AWARDED AGAINST THE STATE, THE LIMIT ON LIABILITY
7 ESTABLISHED UNDER § 12-104 OF THE STATE GOVERNMENT ARTICLE.

8 5-303.

9 (a) (1) Subject to paragraph (2) of this subsection, the liability of a local
10 government may not exceed \$400,000 per an individual claim, and \$800,000 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 under
13 subsection (c) of this section.

14 (2) The limits on liability provided under paragraph (1) of this subsection
15 [do]:

16 (I) INCLUDE ANY ATTORNEY'S FEES AND EXPENSES AWARDED
17 UNDER § 3-2101 OF THIS ARTICLE; AND

18 (II) DO not include interest accrued on a judgment.

19 **Article – State Government**

20 12-104.

21 (a) (1) Subject to the exclusions and limitations in this subtitle and
22 notwithstanding any other provision of law, the immunity of the State and of its units is
23 waived as to a tort action, in a court of the State, to the extent provided under paragraph
24 (2) of this subsection.

25 (2) The liability of the State and its units may not exceed \$400,000 to a
26 single claimant for injuries arising from a single incident or occurrence.

27 (3) THE LIMIT ON LIABILITY PROVIDED UNDER PARAGRAPH (2) OF
28 THIS SUBSECTION INCLUDES ANY ATTORNEY'S FEES AND EXPENSES AWARDED
29 UNDER § 3-2101 OF THE COURTS ARTICLE.

30 12-109.

31 [Counsel] EXCEPT AS PROVIDED IN § 3-2101 OF THE COURTS ARTICLE,

1 COUNSEL may not charge or receive fees that exceed:

2 (1) 20% of a settlement made under this subtitle; or

3 (2) 25% of a judgment made under this subtitle.

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

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2018.