

# HOUSE BILL 353

D3

11r0430

(PRE-FILED)

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By: **Delegate Ivey**

Requested: July 10, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Violation of Rights – Governmental Liability**

3 FOR the purpose of establishing the civil liability of a law enforcement officer who deprives  
4 or allows another to deprive an individual of certain rights under the Maryland  
5 Declaration of Rights and the Maryland Constitution; requiring a court to award  
6 attorney's fees and costs to a plaintiff under certain circumstances; authorizing a  
7 court to award attorney's fees and costs to a certain defendant under certain  
8 circumstances; requiring that the employer of a law enforcement officer indemnify  
9 the law enforcement officer against a judgment or settlement entered against the  
10 officer under this Act subject to certain exceptions; providing for the applicability of  
11 certain provisions of law; prohibiting the use of certain defenses; establishing a  
12 certain statute of limitations for a civil action under this Act; defining a certain term;  
13 and generally relating to civil actions for violations of rights by law enforcement  
14 officers and governmental liability.

15 BY adding to  
16 Article – Courts and Judicial Proceedings  
17 Section 5–809  
18 Annotated Code of Maryland  
19 (2020 Replacement Volume)

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

22 **Article – Courts and Judicial Proceedings**

23 **5–809.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(A) IN THIS SECTION, "LAW ENFORCEMENT OFFICER" HAS THE MEANING**  
2 **STATED IN § 3-101 OF THE PUBLIC SAFETY ARTICLE.**

3           **(B) (1) THE IMMUNITY PROVISIONS PROTECTING STATE AND LOCAL**  
4 **GOVERNMENT PERSONNEL UNDER THE LOCAL GOVERNMENT TORT CLAIMS ACT**  
5 **UNDER SUBTITLE 3 OF THIS TITLE OR THE MARYLAND TORT CLAIMS ACT UNDER**  
6 **TITLE 12, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE DO NOT APPLY TO A**  
7 **CIVIL ACTION BROUGHT UNDER THIS SECTION.**

8           **(2) THE FOLLOWING ARE NOT A DEFENSE TO A CLAIM BROUGHT**  
9 **UNDER THIS SECTION:**

10                   **(I) ANY OF THE ELEMENTS OF THE FEDERAL DOCTRINE OF**  
11 **QUALIFIED IMMUNITY;**

12                   **(II) IGNORANCE OF:**

13                           **1. THE RIGHTS OF CITIZENS AND GOVERNMENT**  
14 **LIMITATIONS UNDER THE MARYLAND CONSTITUTION AND THE MARYLAND**  
15 **DECLARATION OF RIGHTS; AND**

16                           **2. STATUTORY LAW OR THE COMMON LAW; AND**

17                   **(III) GOOD FAITH ACTION.**

18           **(C) A LAW ENFORCEMENT OFFICER WHO, UNDER COLOR OF LAW, DEPRIVES**  
19 **AN INDIVIDUAL OF OR INFRINGES ON OR ALLOWS ANOTHER TO DEPRIVE AN**  
20 **INDIVIDUAL OF OR INFRINGE ON AN INDIVIDUAL RIGHT SECURED BY THE**  
21 **MARYLAND DECLARATION OF RIGHTS OR THE MARYLAND CONSTITUTION IS**  
22 **LIABLE FOR DAMAGES BROUGHT IN A CIVIL ACTION AGAINST THE LAW**  
23 **ENFORCEMENT OFFICER.**

24           **(D) (1) (I) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES**  
25 **AND COSTS TO A PREVAILING PLAINTIFF UNDER THIS SECTION.**

26                   **(II) IF A SUIT UNDER THIS SECTION SEEKS INJUNCTIVE RELIEF,**  
27 **THE PLAINTIFF SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES AND COSTS**  
28 **IF THE PLAINTIFF'S SUIT WAS A SIGNIFICANT FACTOR IN THE STATE TAKING OR**  
29 **CEASING ACTION REGARDLESS OF WHETHER OR NOT AN INJUNCTION WAS ISSUED**  
30 **BY THE COURT IN FAVOR OF THE PLAINTIFF.**

1           **(2) THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND**  
2 **COSTS TO A PREVAILING DEFENDANT IF THE COURT FINDS THAT A PLAINTIFF HAS**  
3 **BROUGHT A FRIVOLOUS CLAIM.**

4           **(E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHILE GOOD**  
5 **FAITH ACTION IS NOT A DEFENSE AGAINST A CLAIM UNDER THIS SECTION:**

6           **(1) IF A COURT DETERMINES THAT A LAW ENFORCEMENT OFFICER**  
7 **ACTED ON A GOOD FAITH, REASONABLE BELIEF THAT THE ACTIONS OF THE OFFICER**  
8 **WERE LAWFUL, THE OFFICER'S EMPLOYER SHALL ENTIRELY INDEMNIFY THE**  
9 **OFFICER FOR ANY JUDGMENT OR SETTLEMENT ENTERED AGAINST THE OFFICER**  
10 **UNDER THIS SECTION; OR**

11           **(2) EXCEPT AS PROVIDED IN SUBSECTIONS (F) AND (G) OF THIS**  
12 **SECTION, IF THE COURT DETERMINES THAT A LAW ENFORCEMENT OFFICER DID NOT**  
13 **ACT ON A GOOD FAITH, REASONABLE BELIEF THAT THE ACTIONS OF THE OFFICER**  
14 **WERE LAWFUL, THE OFFICER SHALL BE PERSONALLY LIABLE AND MAY NOT BE**  
15 **INDEMNIFIED FOR \$25,000 OR 5% OF ANY JUDGMENT OR SETTLEMENT ENTERED**  
16 **AGAINST THE OFFICER UNDER THIS SECTION, WHICHEVER IS LESSER, AND THE**  
17 **REMAINDER SHALL BE PAID BY THE OFFICER'S EMPLOYER.**

18           **(F) IF THE AMOUNT FOR WHICH A LAW ENFORCEMENT OFFICER IS**  
19 **PERSONALLY RESPONSIBLE UNDER SUBSECTION (E)(2) OF THIS SECTION IS**  
20 **UNCOLLECTABLE, THE OFFICER'S EMPLOYER OR ANY AVAILABLE INSURANCE**  
21 **SHALL SATISFY THE JUDGMENT OR SETTLEMENT IN FULL.**

22           **(G) THE EMPLOYER OF A LAW ENFORCEMENT OFFICER IS NOT**  
23 **RESPONSIBLE FOR INDEMNIFYING THE OFFICER UNDER THIS SECTION IF THE**  
24 **OFFICER WAS CONVICTED OF A CRIME FOR THE CONDUCT THAT GAVE RISE TO A**  
25 **CLAIM UNDER THIS SECTION.**

26           **(H) A CIVIL ACTION UNDER THIS SECTION SHALL BE FILED WITHIN 2 YEARS**  
27 **AFTER THE CAUSE OF ACTION ACCRUES.**

28           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2021.