

HB693

Renters' Rights and Stabilization Act of 20224

FAVORABLE

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The Maryland Access to Justice Commission (A2JC) is an independent entity powered by the Maryland State Bar Association (MSBA). We unite leaders to drive reforms and innovations to make the civil justice system accessible, equitable and fair for all Marylanders. Prominent leaders from different segments of the legal community in Maryland – including the Attorney General, deans of the two Maryland law schools, law firm partners, heads of the legal services and social services providers and funders, corporate general counsel, academics, legislators, the state bar and judiciary comprise the A2JC.

A2JC's top priority this year is to ensure full and continuous state funding for the Access to Counsel in Evictions law. Thus, A2JC strongly supports HB693 and encourages a favorable committee report.

HB693 is the ONLY Source of ACE and Civil Legal Aid Funding During this Tough Budget Year

It is important to highlight that during this difficult budget year, HB693 does not appropriate any money for ACE or civil legal aid. The money for ACE and civil legal aid funding would come from the increase in the surcharge of the filing fee for eviction cases. **HB693 is the only vehicle through which to achieve ACE funding this year.** The full amount of the increase in the bill from \$15 to \$100 is necessary to achieve the needs asserted for both ACE funding and for general civil legal aid. The bill will allocate 50% of the projected \$25M - \$30M revenue from this bill to MLSC to put towards ACE and other civil legal aid funding needs. The need expressed by MLSC has been \$6M for ACE and an additional \$8.6M for civil legal aid. This amounts to MLSC receiving only between \$12.5M and \$15M in the first year, potentially not covering the full need as is. In subsequent years, the higher filing fee will reduce the amount that is available for ACE and civil legal aid funding. For this reason, it is important to maintain the filing fee increase to \$100 and not reduce it to ensure that the need for ACE and civil legal aid funding is met.

Background on ACE Funding

During the 2021 legislative session, the Maryland General Assembly passed HB 18, making Maryland only the second state in the nation to have a program that provides access to legal representation to all income-qualified persons facing eviction on a statewide basis (the Program). Maryland was part of a larger national movement which saw many state and local jurisdictions using the influx of federal emergency rental assistance (ERA) funds to adopt transformational eviction prevention measures, including a legislatively mandated access to counsel.

The resulting Access to Counsel in Evictions law, which went into effect on October 21, 2021, provides that all Marylanders who income qualify, **shall** have access to legal representation in “a judicial or administrative proceeding to evict or terminate a tenancy or housing subsidy,” including the most voluminous type of landlord/tenant case, Failure to Pay Rent. In FY 2021, landlord/ tenant cases made up 45% of the civil legal cases in Maryland in 2021, if Motor Vehicle cases are excluded.

At the start of the 2022 legislative session, the Program remained unfunded. The Access to Counsel in Evictions Task Force, which was created by HB 18 to monitor implementation of the ACE Program, strongly asserted in its inaugural report that **funding** was the ACE Program’s “**most urgent and critical need**.” The Maryland Access to Justice Commission, along with other justice partners, made Program funding its top priority during the 2022 and 2023 legislative sessions and succeeded in advocating with the General Assembly and Governor to provide base level funding until FY2027.

However, the Access to Counsel in Evictions Task Force has recommended in its annual report to the legislature that an additional \$6M of funding is needed to continue to build infrastructure of the program for FY2026.

Now, during the 2024 legislative session, the General Assembly must act to ensure stable and continuous state funding for the ACE law. Successful implementation of the ACE Program is even more urgent now as we deplete the last of the federal emergency rental assistance, which has been a key driver in keeping eviction case filings significantly lower than pre-pandemic levels. As this important safety net for landlords and tenants expires, the ACE Program is poised to serve as the strongest bulwark against evictions. The Access to Counsel in Evictions Task Force has recommended in its annual report to the legislature that an additional \$6M of funding is needed to continue to build infrastructure of the program for FY2026.

The True Cost of Evictions

The need for the Access to Counsel in Evictions law in Maryland acknowledged the personal and societal costs of evictions, citing the following:

- Evictions are a detriment to public health.
- In addition to the loss of a home, evictions come with collateral consequences that may have generational impact.
- Evictions also cost state and local governments a significant amount of money, including costs associated with shelters, education, transportation for homeless youth, foster care, and health care provided in hospitals rather than community based care.

- Evictions have a disparate impact on Black and Brown households and those led by women.
- Evictions are a high stakes legal process where access to legal representation is markedly uneven between landlords and tenants.

The General Assembly sought to address the myriad of personal and societal challenges posed by evictions by adopting a recognized and cost-effective eviction prevention strategy - *access to legal representation* - that had been proven in other jurisdictions to reduce disruptive displacement of families as well as the attendant social, economic and public health costs to society at large.

The Effectiveness of Legal Counsel in Reducing Eviction

Indeed, jurisdictions that have enacted right-to-counsel laws before the pandemic, like New York City, saw drastic reductions in evictions – without any of the other factors that have aided in eviction prevention since the pandemic – including moratoriums and rental assistance. In New York City, 86% of represented tenants remained in their homes and eviction filings decreased by 30% just through the provision of counsel.

Stable and Continuous Funding is the Lynchpin to Successful ACE Implementation

It is not an understatement to say that successful Program implementation hinges on continued and stable funding. While over the past couple of years, the legislature has understood the importance of the ACE program and have steadily worked to acquire funding for it, this year, the funding hinges on achieving an increase in filing fees of eviction cases without passing the cost of the fee to the tenant.

Fluctuations that come from intermittent funding sources will have deleterious impacts on staffing levels, outreach and evaluation efforts, and more. Without sufficient funding on an on-going basis, full implementation of the Program will not be possible, resulting in many low-income Marylanders needing to navigate complex eviction cases on their own, without legal representation.

Stakes are high for vulnerable Marylanders facing eviction and the ACE Program has the potential to be game-changing and transformative. The Maryland General Assembly was a leader in establishing a state-wide right to access to counsel in eviction proceedings. It must now provide a stable and continuous source of state funding for the ACE Program in order to make this ground-breaking law effective at keeping Marylanders housed.

High Eviction Filing Rates

One of the key challenges the Task Force identified to implement the Program is the exceedingly high number of case filings in Maryland. In addition to putting tenants to a continuous churn of insecurity and stress that traps tenants in a cycle of debt, the number of case filings also increases the cost to implement HB18, which provides counsel to anyone facing an eviction in Maryland.

HB693 aims to reduce evictions by disincentivizing serial filings. Currently, the barriers to entry for an eviction filing are too low and allow for hundreds of thousands of cases to be filed and churned through the courts unnecessarily. Filing fees in Maryland are one of the lowest in the country and could be increased to both reduce evictions and address the funding gap for the Access to Counsel in Eviction Fund.

The Prohibition on the Pass Through Must be Maintained

While we support HB693 as drafted, if the bill is amended to allow landlords or the court to pass the increase in filing fee surcharge to the tenant under any circumstances, the purpose of the bill is eviscerated. There would no longer be any disincentive for the landlord to file an eviction action if the landlord or the court can pass that surcharge onto the tenant. We would vocally oppose any surcharge increase in which that surcharge may be passed onto the tenant under any circumstances.

Even an amendment that would allow landlords to pass through the fee to tenants only after the 3rd failure-to-pay-rent filing in a year would still fall disproportionately on the renters who are least able to pay the increased fee because they are often on the brink of eviction.

For the reasons stated, the Maryland Access to Justice Commission requests the House Environment and Transportation Committee to issue a FAVORABLE report HB693. **We support HB693 as is and would encourage the rise in the filing fee to remain at \$100 so that it can meet the need for ACE funding and civil legal aid funding. We oppose any amendments to allow the increased surcharge to be passed on to tenants under any circumstances.** For more information, please contact Reena K. Shah, Executive Director of the Maryland Access to Justice Commission, at reena@msba.org.