

HOUSE BILL 393

D3
HB 283/15 – JUD

6lr2140
CF 6lr2198

By: **Delegates Carter, Anderson, B. Barnes, Dumais, Lierman, Moon, Morales, Rosenberg, and Smith**

Introduced and read first time: January 28, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Award of Attorney's Fees and Expenses – Violation of Maryland Constitutional**
3 **Right**

4 FOR the purpose of authorizing a court to award to a prevailing plaintiff reasonable
5 attorney's fees and expenses in certain actions seeking to remedy a violation of a
6 Maryland constitutional right; authorizing a court to award reasonable attorney's
7 fees and expenses to a prevailing defendant under certain circumstances;
8 establishing that certain limits on attorney's fees under the Maryland Tort Claims
9 Act do not apply to a certain award of attorney's fees and expenses; providing for the
10 application of this Act; and generally relating to awarding attorney's fees and
11 expenses in certain actions seeking to remedy a violation of a Maryland
12 constitutional right.

13 BY adding to

14 Article – Courts and Judicial Proceedings
15 Section 3–2101 and 3–2102 to be under the new subtitle “Subtitle 21. Award of
16 Attorney's Fees and Expenses – Violation of Maryland Constitutional Right”
17 Annotated Code of Maryland
18 (2013 Replacement Volume and 2015 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – State Government
21 Section 12–109
22 Annotated Code of Maryland
23 (2014 Replacement Volume and 2015 Supplement)

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

26 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **SUBTITLE 21. AWARD OF ATTORNEY'S FEES AND EXPENSES – VIOLATION OF**
2 **MARYLAND CONSTITUTIONAL RIGHT.**

3 **3–2101.**

4 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY
5 AWARD TO A PREVAILING PLAINTIFF REASONABLE ATTORNEY'S FEES AND
6 EXPENSES FOR ANY CLAIM FOR RELIEF AGAINST THE STATE, ANY POLITICAL
7 SUBDIVISION OF THE STATE, OR AN EMPLOYEE OR AGENT OF THE STATE OR ANY
8 POLITICAL SUBDIVISION OF THE STATE IF THE CLAIM FOR RELIEF SEEKS TO
9 REMEDY A VIOLATION OF A RIGHT THAT IS SECURED BY THE MARYLAND
10 CONSTITUTION OR THE MARYLAND DECLARATION OF RIGHTS.

11 (B) A COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND EXPENSES
12 TO A PREVAILING DEFENDANT ONLY ON A FINDING THAT THE CLAIM FOR RELIEF
13 BROUGHT BY THE PLAINTIFF TO REMEDY A VIOLATION OF A RIGHT THAT IS SECURED
14 BY THE MARYLAND CONSTITUTION OR THE MARYLAND DECLARATION OF RIGHTS
15 WAS MAINTAINED IN BAD FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION.

16 **3–2102.**

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

20 **Article – State Government**

21 **12–109.**

22 [Counsel] EXCEPT AS PROVIDED IN § 3–2101 OF THE COURTS ARTICLE,
23 COUNSEL may not charge or receive fees that exceed:

24 (1) 20% of a settlement made under this subtitle; or

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

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

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2016.