

(PRE-FILED)

By: **Senator Conway**
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Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
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CHAPTER _____

1 AN ACT concerning

2 **State Personnel - Disciplinary Actions - Expungement of Information from**
3 **~~Employment~~ Personnel Records**

4 FOR the purpose of requiring that ~~any~~ certain information related to a disciplinary
5 action be expunged from the ~~employment~~ personnel records of certain State
6 employees under certain circumstances; and generally relating to disciplinary
7 actions against State employees.

8 BY repealing and reenacting, with amendments,
9 Article - State Personnel and Pensions
10 Section 11-109, 11-110, 11-112, and 11-113
11 Annotated Code of Maryland
12 (1997 Replacement Volume and 2001 Supplement)

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

15 **Article - State Personnel and Pensions**

16 11-109.

17 (a) (1) Except as provided in paragraph (2) of this subsection, this section
18 applies only to employees in the skilled service or the professional service.

19 (2) This section does not apply to an employee under a special
20 appointment described in § 6-405 of this article.

1 (b) (1) Except as provided in paragraph (3) of this subsection, an employee
2 in the skilled service or the professional service may appeal a disciplinary action
3 taken while the employee is on probation only on the basis that the action was illegal
4 or unconstitutional.

5 (2) The employee has the burden of proof in an appeal under this
6 subsection.

7 (3) The limitations in paragraphs (1) and (2) of this subsection do not
8 apply to an employee in the skilled service or the professional service who is on
9 probation following a promotion or reinstatement.

10 (c) (1) An employee or an employee's representative may file with the head
11 of the principal unit a written appeal of a disciplinary action that states, to the extent
12 possible, the issues of fact and law that the employee believes would warrant
13 rescinding the disciplinary action.

14 (2) An appeal under this subtitle must be filed within 15 days after the
15 employee receives notice of the appointing authority's action.

16 (d) The head of the principal unit may confer with the employee before making
17 a decision.

18 (e) (1) The head of the principal unit may:

19 (i) uphold the disciplinary action; or

20 (ii) rescind or modify the disciplinary action taken and restore to
21 the employee any lost time, compensation, status, or benefits.

22 (2) Within 15 days after receiving an appeal, the head of the principal
23 unit shall issue to the employee a written decision that addresses each point raised in
24 the appeal.

25 (F) WITHIN 15 DAYS AFTER ISSUANCE OF A DECISION TO RESCIND A
26 DISCIPLINARY ACTION, ~~ANY INFORMATION RELATED TO THE DISCIPLINARY ACTION~~
27 SHALL BE EXPUNGED FROM THE EMPLOYEE'S ~~EMPLOYMENT~~ PERSONNEL RECORDS.

28 11-110.

29 (a) (1) Within 10 days after receiving a decision under § 11-109 of this
30 subtitle, an employee or an employee's representative may appeal the decision in
31 writing to the Secretary.

32 (2) An appeal shall state, to the extent possible, the issues of fact and
33 law that are the basis for the appeal.

34 (b) Within 30 days after receiving an appeal, the Secretary or designee shall:

35 (1) (i) mediate a settlement between the employee and the unit; or

1 (ii) refer the appeal to the Office of Administrative Hearings; and

2 (2) advise the employee in writing of the Secretary's action.

3 (c) (1) Within 30 days after receiving the appeal, the Office of
4 Administrative Hearings shall schedule a hearing and notify the parties of the
5 hearing date.

6 (2) The Office of Administrative Hearings shall dispose of the appeal or
7 conduct a hearing on each appeal in accordance with Title 10, Subtitle 2 of the State
8 Government Article. The Office is bound by any regulation, declaratory ruling, prior
9 adjudication, or other settled, preexisting policy, to the same extent as the
10 Department is or would have been bound if it were hearing the case.

11 (d) (1) Except as otherwise provided by this subtitle, the Office of
12 Administrative Hearings may:

13 (i) uphold the disciplinary action;

14 (ii) rescind or modify the disciplinary action taken and restore to
15 the employee any lost time, compensation, status, or benefits; or

16 (iii) order:

17 1. reinstatement to the position that the employee held at
18 dismissal;

19 2. full back pay; or

20 3. both 1 and 2.

21 (2) Within 45 days after the close of the hearing record, the Office of
22 Administrative Hearings shall issue to the parties a written decision.

23 (3) The decision of the Office of Administrative Hearings is the final
24 administrative decision.

25 (E)

26 (1) IF A WRITTEN DECISION ISSUED UNDER SUBSECTION (D) OF THIS
27 SECTION IS NOT APPEALED IN ACCORDANCE WITH § 10-222 OF THE STATE
28 GOVERNMENT ARTICLE, WITHIN 45 45 DAYS AFTER ISSUANCE OF A DECISION TO
29 RESCIND A DISCIPLINARY ACTION, ANY INFORMATION RELATED TO THE
30 DISCIPLINARY ACTION SHALL BE EXPUNGED FROM THE EMPLOYEE'S EMPLOYMENT
31 PERSONNEL RECORDS.

32 (2) IF A WRITTEN DECISION ISSUED UNDER SUBSECTION (D) OF THIS
33 SECTION IS APPEALED IN ACCORDANCE WITH § 10-222 OF THE STATE GOVERNMENT
34 ARTICLE, WITHIN 45 DAYS AFTER THE ISSUANCE OF A FINAL DECISION ON APPEAL
35 TO RESCIND A DISCIPLINARY ACTION, THE DISCIPLINARY ACTION SHALL BE
36 EXPUNGED FROM THE EMPLOYEE'S PERSONNEL RECORDS.

1 11-112.

2 (a) If the principal unit has established a peer review panel for disciplinary
3 actions in accordance with regulations adopted by the Secretary, the employee and
4 the principal unit may agree in writing to submit the appeal to the peer review panel,
5 instead of using the appeal procedures in §§ 11-109 and 11-110 of this subtitle.

6 (b) The peer review panel may take action as set forth in § 11-110(d)(1).

7 (c) (1) Within the time required by regulation, the peer review panel shall
8 issue to the parties a written decision.

9 (2) The decision of the peer review panel is the final administrative
10 decision.

11 (D) (1) IF A WRITTEN DECISION ISSUED UNDER SUBSECTION (C) OF THIS
12 SECTION IS NOT APPEALED IN ACCORDANCE WITH § 10-222 OF THE STATE
13 GOVERNMENT ARTICLE, WITHIN 45 45 DAYS AFTER ISSUANCE OF A DECISION TO
14 RESCIND A DISCIPLINARY ACTION, ANY INFORMATION RELATED TO THE
15 DISCIPLINARY ACTION SHALL BE EXPUNGED FROM THE EMPLOYEE'S EMPLOYMENT
16 PERSONNEL RECORDS.

17 (2) IF A WRITTEN DECISION ISSUED UNDER SUBSECTION (C) OF THIS
18 SECTION IS APPEALED IN ACCORDANCE WITH § 10-222 OF THE STATE GOVERNMENT
19 ARTICLE, WITHIN 45 DAYS AFTER THE ISSUANCE OF A FINAL DECISION ON APPEAL
20 TO RESCIND A DISCIPLINARY ACTION, THE DISCIPLINARY ACTION SHALL BE
21 EXPUNGED FROM THE EMPLOYEE'S PERSONNEL RECORDS.

22 11-113.

23 (a) This section only applies to an employee:

24 (1) in the management service;

25 (2) in executive service; or

26 (3) under a special appointment described in § 6-405 of this article.

27 (b) (1) An employee or an employee's representative may file a written
28 appeal of a disciplinary action with the head of the principal unit.

29 (2) An appeal:

30 (i) must be filed within 15 days after the employee receives notice
31 of the disciplinary action; and

32 (ii) may only be based on the grounds that the disciplinary action is
33 illegal or unconstitutional.

34 (3) The employee has the burden of proof in an appeal under this section.

1 (c) The head of the principal unit may confer with the employee before making
2 a decision.

3 (d) (1) The head of the principal unit may:

4 (i) uphold the disciplinary action; or

5 (ii) rescind or modify the disciplinary action and restore to the
6 employee any lost time, compensation, status, or benefits.

7 (2) Within 15 days after receiving an appeal, the head of the principal
8 unit shall issue the employee a written decision.

9 (3) The decision of the head of the principal unit is the final
10 administrative decision.

11 (E) WITHIN 15 DAYS AFTER ISSUANCE OF A DECISION TO RESCIND A
12 DISCIPLINARY ACTION, ~~ANY INFORMATION RELATED TO THE DISCIPLINARY ACTION~~
13 SHALL BE EXPUNGED FROM THE EMPLOYEE'S ~~EMPLOYMENT~~ PERSONNEL RECORDS.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2002.