

SENATE BILL 618

K4, F2

6lr2554
CF 6lr3327

By: **Senators Klausmeier, Astle, Benson, Currie, Feldman, Guzzone, Madaleno, Manno, and Ramirez**

Introduced and read first time: February 5, 2016

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Employee Rights – Equal Employment Opportunity**
3 **Program and Maryland Whistleblower Law**

4 FOR the purpose of making certain provisions of law that relate to the Equal Employment
5 Opportunity Program and the Maryland Whistleblower Law applicable to certain
6 public institutions of higher education; providing that a certain program is under the
7 authority of certain boards of certain public institutions of higher education;
8 requiring that certain designees of certain public institutions of higher education
9 administer a certain program; providing for certain reporting and notice
10 requirements; requiring certain boards of certain public institutions of higher
11 education to adopt certain regulations; requiring that certain personnel actions be
12 made in accordance with certain provisions of law and, under certain circumstances,
13 without regard to certain factors; granting employees in certain bargaining units an
14 option to elect certain complaint or grievance procedures; prohibiting certain heads
15 of certain public institutions of higher education from taking certain personnel
16 actions under certain circumstances; requiring certain public institutions of higher
17 education to adopt certain policies; making conforming changes; defining certain
18 terms; altering certain definitions; and generally relating to employee rights for
19 personnel of public institutions of higher education in the State.

20 BY repealing and reenacting, with amendments,
21 Article – State Personnel and Pensions
22 Section 5–201, 5–202, 5–204 through 5–209, 5–213, 5–301, 5–303, 5–304, 5–305,
23 5–307, and 5–309
24 Annotated Code of Maryland
25 (2015 Replacement Volume)

26 BY repealing and reenacting, without amendments,
27 Article – State Personnel and Pensions
28 Section 5–203, 5–210 through 5–212, 5–214, 5–215, 5–302, 5–306, and 5–308

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2015 Replacement Volume)

3 BY adding to
4 Article – State Personnel and Pensions
5 Section 5–301
6 Annotated Code of Maryland
7 (2015 Replacement Volume)

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

10 **Article – State Personnel and Pensions**

11 5–201.

12 (a) In this subtitle the following words have the meanings indicated.

13 (B) **“BOARD” MEANS THE BOARD OF REGENTS OF THE UNIVERSITY**
14 **SYSTEM OF MARYLAND, THE BOARD OF REGENTS OF MORGAN STATE UNIVERSITY,**
15 **THE BOARD OF TRUSTEES OF ST. MARY’S COLLEGE OF MARYLAND, OR THE BOARD**
16 **OF TRUSTEES OF BALTIMORE CITY COMMUNITY COLLEGE.**

17 [(b)] (C) “Coordinator” means the Equal Employment Opportunity Coordinator.

18 [(c)] (D) “Program” means the Equal Employment Opportunity Program
19 established under this subtitle.

20 [(d)] (E) “Unit” means a unit of the Executive Branch of State government, **THE**
21 **UNIVERSITY SYSTEM OF MARYLAND, MORGAN STATE UNIVERSITY, ST. MARY’S**
22 **COLLEGE OF MARYLAND, OR BALTIMORE CITY COMMUNITY COLLEGE.**

23 5–202.

24 (a) There is an Equal Employment Opportunity Program, which is under the
25 authority of the Secretary **OR A BOARD.**

26 (b) The purpose of the Program is to ensure a system based on merit that provides
27 equal opportunity in employment on the basis of merit and fitness.

28 (c) The following employees and applicants for employment are included in the
29 Program:

30 (1) an employee in any unit of the Executive Branch of State government,
31 including a unit with an independent personnel system;

1 **(2) AN EMPLOYEE OF THE UNIVERSITY SYSTEM OF MARYLAND,**
2 **MORGAN STATE UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, OR**
3 **BALTIMORE CITY COMMUNITY COLLEGE; and**

4 **[(2)] (3)** an applicant for a position in the skilled service, professional
5 service, or management service, of the State Personnel Management System or a
6 comparable position in an independent personnel system in the Executive Branch of State
7 government, **THE UNIVERSITY SYSTEM OF MARYLAND, MORGAN STATE**
8 **UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, OR BALTIMORE CITY**
9 **COMMUNITY COLLEGE.**

10 5–203.

11 Except as provided in § 5–209 of this subtitle, in addition to any right to file an
12 employment discrimination complaint with the Commission on Civil Rights, with the Equal
13 Employment Opportunity Commission, or in court, an employee may elect to pursue an
14 allegation of employment discrimination under the complaint resolution procedures of this
15 subtitle.

16 5–204.

17 The Secretary **OR UNIT DESIGNEE** shall:

18 (1) administer the Program in compliance with all applicable State and
19 federal laws governing equal employment opportunity;

20 (2) adopt regulations, policies, and directives to implement the Program;

21 (3) evaluate the equal employment efforts in each unit in the Program;

22 (4) take any action necessary and permitted by law to enforce this subtitle;

23 and

24 (5) at least annually report on the Program to the Governor.

25 5–205.

26 (a) In accordance with the provisions and intent of the Maryland Constitution
27 and other laws of the State, each unit shall:

28 (1) comply with all applicable regulations, policies, guidelines, and
29 directives of the Secretary **OR BOARD** to carry out this section;

30 (2) cooperate fully with the Coordinator in the investigation of complaints
31 of discrimination in violation of § 5–208 of this subtitle;

1 (3) (i) in accordance with the regulations, policies, guidelines, and
2 directives of the Secretary, annually prepare a plan that includes the development and
3 implementation of policies and programs to ensure that protected group members are
4 appropriately represented and that the personnel practices in the unit are not
5 discriminatory; and

6 (ii) submit to the Secretary the progress reports about the plan that
7 the Secretary requires;

8 (4) for each fiscal year, submit to the Coordinator by the following October
9 15 an annual report about the activities that the unit undertook in that fiscal year to
10 implement the Program, including:

11 (i) information about personnel practices within the unit;

12 (ii) a summary of complaints filed, investigated, resolved, and
13 pending; and

14 (iii) information about relations with other units of State
15 government; and

16 (5) provide a copy of the annual report to the Commission on Civil Rights.

17 (b) Notwithstanding any other provision of this subtitle, the University System
18 of Maryland, **MORGAN STATE UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND,**
19 **AND BALTIMORE CITY COMMUNITY COLLEGE** may satisfy any reporting requirement
20 required by this subtitle or by regulations adopted under this subtitle by submitting to the
21 Secretary an annual report on the [System's] **UNIT'S** equal employment opportunity
22 policies and programs in such format as is determined by the [System's Board of Regents]
23 **UNIT'S BOARD.**

24 (c) An appointing authority **OR UNIT DESIGNEE** shall provide each employee
25 subject to this subtitle with a notice of:

26 (1) the protections and remedies against employment discrimination
27 available to the employee under:

28 (i) this subtitle;

29 (ii) the laws governing the Commission on Civil Rights; and

30 (iii) the laws governing the Equal Employment Opportunity
31 Commission; and

32 (2) the applicable time limitations for filing complaints under those laws.

1 5-206.

2 (a) The Governor, with the advice of the Joint Committee on Fair Practices and
3 State Personnel Oversight, shall appoint an Equal Employment Opportunity Coordinator.

4 (b) The Coordinator shall:

5 (1) administer and enforce the Program; and

6 (2) investigate and, as appropriate, resolve complaints that involve
7 allegations of violations of this subtitle.

8 **(C) THE BOARD OF THE UNIVERSITY SYSTEM OF MARYLAND, MORGAN**
9 **STATE UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, AND BALTIMORE CITY**
10 **COMMUNITY COLLEGE SHALL ADOPT REGULATIONS IN ACCORDANCE WITH THE**
11 **REQUIREMENTS OF THIS SUBTITLE.**

12 5-207.

13 (a) (1) The head of each principal unit shall appoint:

14 (i) a fair practices officer who:

15 1. except as provided in paragraph (3) of this subsection,
16 reports directly to the head of the unit; and

17 2. is an assistant secretary or an employee of the unit with
18 stature similar to that of an assistant secretary; and

19 (ii) an appropriate number of equal employment opportunity officers
20 for the unit.

21 (2) If necessary, the fair practices officer of a unit may also be the unit's
22 equal employment opportunity officer.

23 (3) The fair practices officer of the Department of State Police:

24 (i) shall be an expert in diversity issues and equal employment law,
25 procedures, and practices;

26 (ii) shall report directly to the Secretary of State Police; and

27 (iii) may not be a sworn law enforcement officer.

28 (4) All appointments under this subsection shall be made in accordance
29 with position descriptions approved by the Secretary **OR BOARD.**

1 (b) The Department **OR UNIT** shall provide training, assistance, and advice for
2 equal employment opportunity officers and fair practices officers.

3 (c) Each fair practices officer shall:

4 (1) implement the Program within the unit;

5 (2) investigate and, as appropriate, resolve complaints filed under § 5–211
6 of this subtitle; and

7 (3) coordinate activities of equal employment opportunity officers in the
8 unit.

9 (d) An equal employment opportunity officer shall:

10 (1) monitor all personnel actions adopted by the unit;

11 (2) attest that procedures consistent with this article, the Governor's Code
12 on Fair Practices, and other State and federal equal employment opportunity laws were
13 followed by the unit in taking a personnel action; and

14 (3) perform the duties assigned by the fair practices officer and any other
15 duty required by this article.

16 (e) An appointing authority shall delay the effective date of any adverse
17 personnel action that directly affects an equal employment opportunity officer for up to 45
18 days, pending review and resolution by the Coordinator.

19 5–208.

20 (a) All personnel actions concerning an employee in the Executive Branch of State
21 government, **THE UNIVERSITY SYSTEM OF MARYLAND, MORGAN STATE**
22 **UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, AND BALTIMORE CITY**
23 **COMMUNITY COLLEGE** shall be made in accordance with § 2–302 of this article.

24 (b) Personnel actions concerning an employee or applicant for employment in the
25 skilled service or professional service of the State Personnel Management System or
26 comparable position in an independent personnel system in the Executive Branch of State
27 government, **THE UNIVERSITY SYSTEM OF MARYLAND, MORGAN STATE**
28 **UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, AND BALTIMORE CITY**
29 **COMMUNITY COLLEGE** shall also be made without regard to:

30 (1) political affiliation, belief, or opinion; or

31 (2) any other nonmerit factor.

1 (c) All personnel actions concerning an employee or applicant in the management
2 service shall also be made without regard to the employee's political affiliation, belief, or
3 opinion.

4 (d) (1) Except as provided in paragraph (2) of this subsection, personnel
5 actions concerning special appointments or applicants for special appointment in the State
6 Personnel Management System or comparable positions in an independent personnel
7 system in the Executive Branch of State government, **THE UNIVERSITY SYSTEM OF**
8 **MARYLAND, MORGAN STATE UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND,**
9 **AND BALTIMORE CITY COMMUNITY COLLEGE** shall be made without regard to political
10 affiliation, belief, or opinion.

11 (2) For the positions that are designated by the Secretary under §
12 4-201(c)(2)(ii) of this article or by the Secretary of Transportation under § 2-103.4(b)(2) of
13 the Transportation Article, personnel actions concerning special appointments or
14 applicants for special appointment in the State Personnel Management System or
15 comparable positions in an independent personnel system in the Executive Branch of State
16 government may be made with regard to political affiliation, belief, or opinion.

17 (e) The protections of this section are in addition to whatever legal or
18 constitutional protections an employee or applicant has.

19 5-209.

20 (a) An employee in the skilled service, professional service, or management
21 service of the State Personnel Management System may elect to pursue an allegation of
22 employment discrimination under:

23 (1) the complaint procedures in this subtitle; or

24 (2) the grievance procedures in Title 12 of this article.

25 (b) An employee of the University System of Maryland who is eligible to file a
26 grievance under Title 13 of the Education Article may elect to pursue an allegation of
27 employment discrimination under:

28 (1) the complaint procedures in this subtitle; or

29 (2) a grievance under Title 13 of the Education Article.

30 (c) An employee of Morgan State University who is eligible to file a grievance
31 under Title 14 of the Education Article may elect to pursue an allegation of employment
32 discrimination under:

33 (1) the complaint procedures in this subtitle; or

1 (2) a grievance under Title 14 of the Education Article.

2 (D) AN EMPLOYEE IN THE BARGAINING UNIT OF ST. MARY'S COLLEGE OF
3 MARYLAND MAY ELECT TO FILE:

4 (1) A COMPLAINT UNDER THE COMPLAINT PROCEDURES IN THIS
5 SUBTITLE; OR

6 (2) A GRIEVANCE UNDER THE MEMORANDUM OF UNDERSTANDING
7 WITH THE BARGAINING UNIT.

8 (E) AN EMPLOYEE IN THE BARGAINING UNIT OF THE BALTIMORE CITY
9 COMMUNITY COLLEGE MAY ELECT TO FILE:

10 (1) A COMPLAINT UNDER THE COMPLAINT PROCEDURES IN THIS
11 SUBTITLE; OR

12 (2) A GRIEVANCE UNDER THE MEMORANDUM OF UNDERSTANDING
13 WITH THE BARGAINING UNIT.

14 5-210.

15 (a) A complainant may be represented during the complaint process by any
16 person the complainant chooses.

17 (b) (1) If a complainant fails to appeal a decision in accordance with this
18 subtitle, the complainant is considered to have accepted the decision.

19 (2) A failure to decide a complaint in accordance with this subtitle is
20 considered a denial from which an appeal may be made.

21 (c) Each party shall make every effort to resolve a complaint at the lowest level
22 possible.

23 5-211.

24 (a) An applicant or employee subject to this subtitle may file with the head of the
25 principal unit a written complaint that alleges a violation of § 5-208 of this subtitle.

26 (b) A complaint under this subtitle must be filed within 30 days after the
27 complainant first knew of or reasonably should have known of the alleged violation that is
28 the basis for the complaint.

29 5-212.

30 Within 30 days after a complaint under § 5-211 of this subtitle is received:

1 (1) an equal employment officer, under the direction of the fair practices
2 officer, shall investigate the complaint and recommend a proposed decision to the head of
3 the principal unit; and

4 (2) the head of the principal unit shall issue a written decision to the
5 complainant and may grant any appropriate relief.

6 5–213.

7 (a) Within 10 days after receiving a decision under § 5–212 of this subtitle, a
8 complainant may appeal the decision in writing to the Secretary **OR UNIT DESIGNEE**.

9 (b) Within 30 days after an appeal is received:

10 (1) the Coordinator:

11 (i) shall review the complaint and the decision being appealed;

12 (ii) may conduct any necessary investigation; and

13 (iii) shall recommend to the Secretary or designee a finding of
14 whether a violation of this subtitle has occurred; and

15 (2) the Secretary or designee shall:

16 (i) take the action described in subsection (c)(1) or (c)(2) of this
17 section; and

18 (ii) issue to the parties a written decision that includes notice of any
19 remedial action taken.

20 (c) (1) If the Secretary or designee determines that a violation has not
21 occurred, the Secretary or designee shall dismiss the complaint.

22 (2) If the Secretary or designee determines that a violation has occurred,
23 the Secretary or designee shall take appropriate remedial action.

24 (d) As remedial action for a violation of § 5–208 of this subtitle, the Secretary or
25 designee may:

26 (1) order the removal of detrimental information from the complainant's
27 State personnel records;

28 (2) require the head of the principal unit to:

- 1 (i) hire, promote, or reinstate the complainant or end the
2 complainant's suspension from employment;
- 3 (ii) award the complainant back pay up to the day of the violation;
- 4 (iii) grant the complainant leave or seniority;
- 5 (iv) take appropriate disciplinary action against any individual who
6 caused the violation; or
- 7 (v) take any other remedial action that the Secretary or designee
8 considers appropriate.
- 9 (e) The decision of the Secretary or designee is final.

10 5-214.

11 Information obtained as part of an investigation conducted under this subtitle is
12 confidential within the meaning of Title 4 of the General Provisions Article.

13 5-215.

14 An employee who violates or fails to comply with this subtitle is subject to
15 disciplinary action, including termination of employment.

16 **5-301.**

17 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
18 **INDICATED.**

19 **(B) "BOARD" MEANS THE BOARD OF REGENTS OF THE UNIVERSITY**
20 **SYSTEM OF MARYLAND, THE BOARD OF REGENTS OF MORGAN STATE UNIVERSITY,**
21 **THE BOARD OF TRUSTEES OF ST. MARY'S COLLEGE OF MARYLAND, AND THE**
22 **BOARD OF TRUSTEES OF BALTIMORE CITY COMMUNITY COLLEGE.**

23 **(C) "INSTITUTION" MEANS THE UNIVERSITY SYSTEM OF MARYLAND,**
24 **MORGAN STATE UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, OR**
25 **BALTIMORE CITY COMMUNITY COLLEGE.**

26 [5-301.] **5-301.1.**

27 This subtitle applies to all employees and State employees who are applicants for
28 positions in the Executive Branch of State government, including a unit with an
29 independent personnel system, **THE UNIVERSITY SYSTEM OF MARYLAND, MORGAN**

1 STATE UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, AND BALTIMORE CITY
2 COMMUNITY COLLEGE.

3 5-302.

4 (a) This subtitle does not preclude action for defamation or invasion of privacy.

5 (b) This subtitle does not prohibit a personnel action that would have been taken
6 regardless of a disclosure of information.

7 5-303.

8 The Secretary **OR BOARD** shall adopt regulations for processing and resolving
9 complaints brought under this subtitle.

10 5-304.

11 The head of each principal unit **OR INSTITUTION** shall provide the employees of the
12 unit with written notice of the protections and remedies provided by this subtitle.

13 5-305.

14 Subject to the limitations of § 5-306 of this subtitle, a supervisor, appointing
15 authority, or the head of a principal unit **OR INSTITUTION** may not take or refuse to take
16 any personnel action as a reprisal against an employee who:

17 (1) discloses information that the employee reasonably believes evidences:

18 (i) an abuse of authority, gross mismanagement, or gross waste of
19 money;

20 (ii) a substantial and specific danger to public health or safety; or

21 (iii) a violation of law; or

22 (2) following a disclosure under item (1) of this section seeks a remedy
23 provided under this subtitle or any other law or policy governing the employee's unit.

24 5-306.

25 Section 5-305 of this subtitle applies to a disclosure that is specifically prohibited by
26 law only if that disclosure is made exclusively to the Attorney General in the manner
27 allowed in § 5-313 of this subtitle.

28 5-307.

1 (a) An employee in the State Personnel Management System who seeks relief for
2 a violation of § 5–305 of this subtitle may elect to file:

3 (1) a complaint under § 5–309 of this subtitle; or

4 (2) a grievance under Title 12 of this article.

5 (b) An employee of the University System of Maryland who is eligible to file a
6 grievance under Title 13 of the Education Article and seeks relief for a violation of § 5–305
7 of this subtitle may elect to file:

8 (1) a complaint under § 5–309 of this subtitle; or

9 (2) a grievance under Title 13 of the Education Article.

10 (c) An employee of Morgan State University who is eligible to file a grievance
11 under Title 14 of the Education Article and seeks relief for a violation of § 5–305 of this
12 subtitle may elect to file:

13 (1) a complaint under § 5–309 of this subtitle; or

14 (2) a grievance under Title 14 of the Education Article.

15 **(D) AN EMPLOYEE IN THE BARGAINING UNIT OF ST. MARY’S COLLEGE OF**
16 **MARYLAND MAY ELECT TO FILE:**

17 **(1) A COMPLAINT UNDER § 5–309 OF THIS SUBTITLE; OR**

18 **(2) A GRIEVANCE UNDER THE MEMORANDUM OF UNDERSTANDING**
19 **WITH THE BARGAINING UNIT.**

20 **(E) AN EMPLOYEE IN THE BARGAINING UNIT OF THE BALTIMORE CITY**
21 **COMMUNITY COLLEGE MAY ELECT TO FILE:**

22 **(1) A COMPLAINT UNDER § 5–309 OF THIS SUBTITLE; OR**

23 **(2) A GRIEVANCE UNDER THE MEMORANDUM OF UNDERSTANDING**
24 **WITH THE BARGAINING UNIT.**

25 5–308.

26 (a) (1) A complainant may be represented during the complaint process by any
27 person the complainant chooses.

28 (2) Either party may be represented at a hearing by counsel.

1 (b) (1) If a complainant fails to appeal a decision in accordance with this
2 subtitle, the complainant is considered to have accepted the decision.

3 (2) A failure to decide a complaint in accordance with this subtitle is
4 considered a denial from which an appeal may be made.

5 (c) Each party shall make every effort to resolve a complaint at the lowest level
6 possible.

7 5–309.

8 (a) (1) An employee subject to this subtitle may file with the Secretary **OR**
9 **INSTITUTION DESIGNEE** a complaint that alleges a violation of § 5–305 of this subtitle.

10 (2) A complaint under this subtitle must be filed within 6 months after the
11 complainant first knew of or reasonably should have known of the violation.

12 (b) When a complaint is received, the Secretary or designee promptly shall:

13 (1) send a copy of the complaint to the head of the principal unit named in
14 the complaint; and

15 (2) advise the head of the principal unit to respond in writing to the
16 complaint within 20 days after receiving the copy.

17 (c) Within 60 days after a complaint is received:

18 (1) the complaint shall be investigated to determine whether a violation of
19 § 5–305 of this subtitle has occurred:

20 (i) by the Secretary or designee of the Secretary **OR INSTITUTION**
21 **DESIGNEE**; or

22 (ii) if the Department is charged in the complaint, by a designee of
23 the Governor; and

24 (2) the Secretary or designee or the Governor's designee shall:

25 (i) take the action described in subsection (d)(1) or (2) of this section;
26 and

27 (ii) issue to the complainant and head of the principal unit a written
28 decision that includes any remedial action taken.

29 (d) (1) If the Secretary or designee or the Governor's designee determines that
30 a violation has not occurred, the Secretary or Governor's designee shall dismiss the
31 complaint.

1 (2) If the Secretary or designee or the Governor's designee determines that
2 a violation has occurred, the Secretary or designee shall take appropriate remedial action.

3 (e) As a remedial action for a violation of § 5-305 of this subtitle, the Secretary or
4 designee may:

5 (1) order the removal of any related detrimental information from the
6 complainant's State personnel records;

7 (2) require the head of the principal unit to:

8 (i) hire, promote, or reinstate the complainant or end the
9 complainant's suspension from employment;

10 (ii) award the complainant back pay to the day of the violation;

11 (iii) grant the complainant leave or seniority;

12 (iv) take appropriate disciplinary action against any individual who
13 caused the violation; and

14 (v) take any other remedial action consistent with the purposes of
15 this subtitle.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the University System of
17 Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City
18 Community College shall adopt policies to comply with the provisions of this Act.

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