

Chapter 730

(House Bill 1145)

AN ACT concerning

Public School Employee Whistleblower Protection Act

FOR the purpose of prohibiting a public school employer from taking or refusing to take certain personnel actions against public school employees who disclose certain behavior or refuse to participate in certain behavior; providing that certain protections under this Act apply only if certain public school employees have a good faith belief that the public school employer is engaged or has engaged in unlawful activity and that the unlawful activity poses a substantial and specific danger to public health or safety; requiring that prior to reporting to a supervisor the public school employee report the unlawful activity in writing to the public school employer and provide the employer a reasonable opportunity to correct the unlawful activity; requiring a public school employee to exhaust administrative remedies before instituting a certain civil action; authorizing certain public school employees to institute a civil action in the county where a certain violation occurred, where the employee resides, or where the public school employer maintains its principal office in the State; requiring that a public school employee file a civil action under this Act within 6 months after the retaliatory personnel action occurred or within 6 months after the employee first became aware of the retaliatory personnel action; establishing the remedies a court may impose; providing a defense that the personnel action was based on grounds other than those protected under this Act; and generally relating to the Public School Employee Whistleblower Protection Act.

BY adding to

Article – Education

Section 6–901 through 6–906 to be under the new subtitle “Subtitle 9. Public School Employee Whistleblower Protection Act”

Annotated Code of Maryland

(2014 Replacement Volume and 2016 Supplement)

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

Article – Education

SUBTITLE 9. PUBLIC SCHOOL EMPLOYEE WHISTLEBLOWER PROTECTION ACT.

6–901.

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

(B) (1) “PUBLIC SCHOOL EMPLOYEE” MEANS ANY INDIVIDUAL WHO IS EMPLOYED BY A PUBLIC SCHOOL EMPLOYER OR AN INDIVIDUAL OF EQUIVALENT STATUS IN BALTIMORE CITY.

(2) “PUBLIC SCHOOL EMPLOYEE” DOES NOT INCLUDE A STATE EMPLOYEE.

(C) “PUBLIC SCHOOL EMPLOYER” MEANS A COUNTY BOARD OF EDUCATION OR THE BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS.

(D) “SUPERVISOR” MEANS ANY INDIVIDUAL WITHIN AN EMPLOYER’S ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE WORK PERFORMANCE OF AN EMPLOYEE, OR WHO HAS MANAGERIAL AUTHORITY TO TAKE CORRECTIVE ACTION REGARDING THE VIOLATION OF A LAW, RULE, OR REGULATION OF WHICH THE EMPLOYEE COMPLAINS.

6-902.

SUBJECT TO § 6-903 OF THIS SUBTITLE, A PUBLIC SCHOOL EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE ANY PERSONNEL ACTION AS REPRISAL AGAINST A PUBLIC SCHOOL EMPLOYEE BECAUSE THE EMPLOYEE:

(1) DISCLOSES OR THREATENS TO DISCLOSE TO A SUPERVISOR AN ACTIVITY, A POLICY, OR A PRACTICE OF THE EMPLOYER THAT IS IN VIOLATION OF A LAW, RULE, OR REGULATION;

(2) PROVIDES INFORMATION TO OR TESTIFIES BEFORE ANY PUBLIC BODY CONDUCTING AN INVESTIGATION, A HEARING, OR AN INQUIRY INTO ANY VIOLATION OF A LAW, RULE, OR REGULATION BY THE EMPLOYER; OR

(3) OBJECTS TO OR REFUSES TO PARTICIPATE IN ANY ACTIVITY, POLICY, OR PRACTICE IN VIOLATION OF A LAW, RULE, OR REGULATION.

6-903.

THE PROTECTION PROVIDED AGAINST A VIOLATION OF § 6-902 OF THIS SUBTITLE SHALL APPLY ONLY IF:

(1) THE PUBLIC SCHOOL EMPLOYEE HAS A REASONABLE, GOOD FAITH BELIEF THAT THE PUBLIC SCHOOL EMPLOYER HAS, OR STILL IS, ENGAGED IN AN ACTIVITY, A POLICY, OR A PRACTICE THAT IS IN VIOLATION OF A LAW, RULE, OR REGULATION;

(2) THE PUBLIC SCHOOL EMPLOYEE DISCLOSES INFORMATION THAT THE EMPLOYEE REASONABLY BELIEVES EVIDENCES:

(I) AN ABUSE OF AUTHORITY, GROSS MISMANAGEMENT, OR GROSS WASTE OF MONEY;

(II) A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY; OR

(III) A VIOLATION OF LAW; AND

(3) THE PUBLIC SCHOOL EMPLOYEE HAS REPORTED THE ACTIVITY, POLICY, OR PRACTICE TO A SUPERVISOR OR AN ADMINISTRATOR OF THE PUBLIC SCHOOL EMPLOYER IN WRITING AND AFFORDED THE EMPLOYER A REASONABLE OPPORTUNITY TO CORRECT THE ACTIVITY, POLICY, OR PRACTICE.

6-904.

(A) A PUBLIC SCHOOL EMPLOYEE SHALL EXHAUST ANY ADMINISTRATIVE REMEDIES BEFORE INSTITUTING A CIVIL ACTION UNDER THIS SECTION.

(B) ANY PUBLIC SCHOOL EMPLOYEE WHO IS SUBJECT TO A PERSONNEL ACTION IN VIOLATION OF § 6-902 OF THIS SUBTITLE MAY INSTITUTE A CIVIL ACTION IN THE COUNTY WHERE:

(1) THE ALLEGED VIOLATION OCCURRED;

(2) THE EMPLOYEE RESIDES; OR

(3) THE PUBLIC SCHOOL EMPLOYER MAINTAINS ITS PRINCIPAL OFFICES IN THE STATE.

~~(B)~~ (C) THE ACTION SHALL BE BROUGHT WITHIN 6 MONTHS AFTER THE ALLEGED VIOLATION OF § 6-902 OF THIS SUBTITLE OCCURRED, OR WITHIN 6 MONTHS AFTER THE PUBLIC SCHOOL EMPLOYEE FIRST BECAME AWARE OF THE ALLEGED VIOLATION OF § 6-902 OF THIS SUBTITLE.

6-905.

IN ANY ACTION BROUGHT UNDER THIS SUBTITLE, A COURT MAY:

(1) ISSUE AN INJUNCTION TO RESTRAIN CONTINUED VIOLATION OF THIS SUBTITLE;

(2) REINSTATE THE PUBLIC SCHOOL EMPLOYEE TO THE SAME OR AN EQUIVALENT POSITION HELD BEFORE THE VIOLATION OF § 6-902 OF THIS SUBTITLE;

(3) REMOVE ANY ADVERSE PERSONNEL RECORD ENTRIES BASED ON OR RELATED TO THE VIOLATION OF § 6-902 OF THIS SUBTITLE;

(4) REINSTATE FULL FRINGE BENEFITS AND SENIORITY RIGHTS;

(5) REQUIRE COMPENSATION FOR LOST WAGES, BENEFITS, AND OTHER REMUNERATION; AND

(6) ASSESS REASONABLE ATTORNEY'S FEES AND OTHER LITIGATION EXPENSES AGAINST:

(I) THE PUBLIC SCHOOL EMPLOYER, IF THE PUBLIC SCHOOL EMPLOYEE PREVAILS; OR

(II) THE PUBLIC SCHOOL EMPLOYEE, IF THE COURT DETERMINES THAT THE ACTION WAS BROUGHT BY THE PUBLIC SCHOOL EMPLOYEE IN BAD FAITH AND WITHOUT BASIS IN LAW OR FACT.

6-906.

IN ANY ACTION BROUGHT UNDER THIS SUBTITLE, IT IS A DEFENSE THAT THE PERSONNEL ACTION WAS BASED ON GROUNDS OTHER THAN THE PUBLIC SCHOOL EMPLOYEE'S EXERCISE OF ANY RIGHTS PROTECTED UNDER THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, May 25, 2017.