

(PRE-FILED)

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By: **Senator Conway**  
Requested: September 24, 2001  
Introduced and read first time: January 9, 2002  
Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

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

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

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

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

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

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

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

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

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

13 (i) uphold the disciplinary action; or

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

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

19 (F) WITHIN 15 DAYS AFTER ISSUANCE OF A DECISION TO RESCIND A  
20 DISCIPLINARY ACTION, ANY INFORMATION RELATED TO THE DISCIPLINARY ACTION  
21 SHALL BE EXPUNGED FROM THE EMPLOYEE'S EMPLOYMENT RECORDS.

22 11-110.

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

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

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

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

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

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

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

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

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

8                   (i)     uphold the disciplinary action;

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

11                  (iii)   order:

12                           1.     reinstatement to the position that the employee held at  
13 dismissal;

14                           2.     full back pay; or

15                           3.     both 1 and 2.

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

18           (3)     The decision of the Office of Administrative Hearings is the final  
19 administrative decision.

20           (E)     WITHIN 15 DAYS AFTER ISSUANCE OF A DECISION TO RESCIND A  
21 DISCIPLINARY ACTION, ANY INFORMATION RELATED TO THE DISCIPLINARY ACTION  
22 SHALL BE EXPUNGED FROM THE EMPLOYEE'S EMPLOYMENT RECORDS.

23 11-112.

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

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

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

31                   (2)     The decision of the peer review panel is the final administrative  
32 decision.

33           (D)     WITHIN 15 DAYS AFTER ISSUANCE OF A DECISION TO RESCIND A  
34 DISCIPLINARY ACTION, ANY INFORMATION RELATED TO THE DISCIPLINARY ACTION  
35 SHALL BE EXPUNGED FROM THE EMPLOYEE'S EMPLOYMENT RECORDS.

1 11-113.

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

3 (1) in the management service;

4 (2) in executive service; or

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

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

8 (2) An appeal:

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

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

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

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

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

17 (i) uphold the disciplinary action; or

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

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

22 (3) The decision of the head of the principal unit is the final  
23 administrative decision.

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

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