
By: **Delegates Rosenberg, Barkley, Hixson, Mitchell, and Rudolph**
Introduced and read first time: February 5, 2003
Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Whistleblower Laws**

3 FOR the purpose of requiring certain employers to provide written notice of certain
4 protections and remedies to employees; prohibiting an employer from taking or
5 refusing to take certain personnel actions against employees who disclose
6 unlawful behavior, refuse to participate in unlawful behavior, or seek certain
7 remedies following certain disclosures; providing that certain protections under
8 this Act apply only if certain employees have a good faith belief that the
9 employer is engaged in unlawful activity; authorizing certain employees to
10 institute a civil action in the county where a certain violation occurred, where
11 the employee resides, or where the employer maintains its principal office in the
12 State; requiring certain employees to file a civil action under this Act within a
13 certain period after the retaliatory personnel action occurred or within a certain
14 period after the employee first became aware of the retaliatory personnel action;
15 establishing the remedies for certain employees that a court may impose;
16 providing a defense that the personnel action was based on grounds other than
17 those protected under this Act; expanding the scope of the Maryland
18 Whistleblower Law to include employees of, and State employees who are
19 applicants for positions in, all units in the Legislative and Judicial Branches of
20 State government; authorizing employees in certain personnel systems who seek
21 relief for a violation of a certain provision of law to file certain grievances in a
22 certain manner; authorizing certain employees to file a certain complaint under
23 certain circumstances; authorizing certain individuals to take certain personnel
24 action for a violation of a certain provision of law; authorizing certain employees
25 of the Judicial Branch and Legislative Branch to file a certain civil action in a
26 certain manner for a violation of a certain provision of law; amending the
27 remedies for certain employees that a court may impose; providing for the
28 application of this Act; and generally relating to Maryland whistleblower laws.

29 BY adding to
30 Article - State Government
31 Section 10-1201 through 10-1207, inclusive, to be under the new subtitle
32 "Subtitle 12. State Contractor Employees' Whistleblower Protection"
33 Annotated Code of Maryland
34 (1999 Replacement Volume and 2002 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - State Personnel and Pensions
3 Section 5-301, 5-303, 5-307, 5-309(a)(1), and 5-311 to be under the amended
4 subtitle "Subtitle 3. Maryland Employees' Whistleblower Protection"
5 Annotated Code of Maryland
6 (1997 Replacement Volume and 2002 Supplement)

7 BY adding to
8 Article - State Personnel and Pensions
9 Section 5-301.1, 5-309.1, and 5-310.1
10 Annotated Code of Maryland
11 (1997 Replacement Volume and 2002 Supplement)

12 BY repealing
13 Article - State Personnel and Pensions
14 Section 5-309(e)
15 Annotated Code of Maryland
16 (1997 Replacement Volume and 2002 Supplement)

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

19 **Article - State Government**

20 **SUBTITLE 12. STATE CONTRACTOR EMPLOYEES' WHISTLEBLOWER PROTECTION.**

21 10-1201.

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

24 (B) (1) "EMPLOYER" MEANS A PERSON ENGAGED IN A BUSINESS, INDUSTRY,
25 PROFESSION, TRADE, OR OTHER ENTERPRISE THAT CONTRACTS WITH THE STATE TO
26 PROVIDE GOODS OR SERVICES FOR THE STATE.

27 (2) "EMPLOYER" INCLUDES AGENTS, CONTRACTORS, OR
28 SUBCONTRACTORS OF AN EMPLOYER.

29 (3) "EMPLOYER" DOES NOT INCLUDE A UNIT OF STATE GOVERNMENT
30 SUBJECT TO THE PROVISIONS OF TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL
31 AND PENSIONS ARTICLE.

32 (C) "EMPLOYEE" MEANS ANY INDIVIDUAL WHO PERFORMS SERVICES FOR, OR
33 UNDER THE CONTROL AND DIRECTION OF, AN EMPLOYER FOR WAGES OR OTHER
34 REMUNERATION.

1 (D) "SUPERVISOR" MEANS ANY INDIVIDUAL WITHIN AN EMPLOYER'S
2 ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE WORK
3 PERFORMANCE OF AN EMPLOYEE, OR WHO HAS MANAGERIAL AUTHORITY TO TAKE
4 CORRECTIVE ACTION REGARDING THE VIOLATION OF A LAW, RULE, OR REGULATION
5 OF WHICH THE EMPLOYEE COMPLAINS.

6 10-1202.

7 AN EMPLOYER SUBJECT TO THIS SUBTITLE SHALL PROVIDE EMPLOYEES WITH
8 WRITTEN NOTICE OF THE PROTECTIONS AND REMEDIES PROVIDED BY THIS
9 SUBTITLE.

10 10-1203.

11 SUBJECT TO § 10-1204 OF THIS SUBTITLE, AN EMPLOYER MAY NOT TAKE OR
12 REFUSE TO TAKE ANY PERSONNEL ACTION AS REPRISAL AGAINST AN EMPLOYEE
13 BECAUSE THE EMPLOYEE:

14 (1) DISCLOSES INFORMATION THAT THE EMPLOYEE REASONABLY
15 BELIEVES EVIDENCES:

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

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

20 (III) A VIOLATION OF LAW;

21 (2) OBJECTS TO OR REFUSES TO PARTICIPATE IN ANY ACTIVITY, POLICY,
22 OR PRACTICE IN VIOLATION OF LAW; OR

23 (3) FOLLOWING A DISCLOSURE UNDER ITEM (1) OF THIS SECTION SEEKS
24 A REMEDY PROVIDED UNDER THIS SUBTITLE.

25 10-1204.

26 THE PROTECTION PROVIDED AGAINST A VIOLATION IN § 10-1203 OF THIS
27 SUBTITLE SHALL ONLY APPLY IF THE EMPLOYEE HAS A REASONABLE GOOD FAITH
28 BELIEF THAT THE EMPLOYER HAS BEEN, OR STILL IS, ENGAGED IN AN ACTIVITY,
29 POLICY, OR PRACTICE THAT IS IN VIOLATION OF LAW.

30 10-1205.

31 (A) ANY EMPLOYEE WHO IS SUBJECT TO A PERSONNEL ACTION IN VIOLATION
32 OF § 10-1203 OF THIS SUBTITLE MAY INSTITUTE A CIVIL ACTION IN THE COUNTY
33 WHERE:

34 (1) THE ALLEGED VIOLATION OCCURRED;

35 (2) THE EMPLOYEE RESIDES; OR

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

2 (B) THE ACTION SHALL BE BROUGHT WITHIN 1 YEAR AFTER THE ALLEGED
3 VIOLATION OF § 10-1203 OF THIS SUBTITLE OCCURRED, OR WITHIN 1 YEAR AFTER
4 THE EMPLOYEE FIRST BECAME AWARE OF THE ALLEGED VIOLATION OF § 10-1203 OF
5 THIS SUBTITLE.

6 10-1206.

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

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

10 (2) REINSTATE THE EMPLOYEE TO THE SAME OR AN EQUIVALENT
11 POSITION HELD BEFORE THE VIOLATION OF § 10-1203 OF THIS SUBTITLE;

12 (3) REMOVE ANY ADVERSE PERSONNEL RECORD ENTRIES BASED ON OR
13 RELATED TO THE VIOLATION OF § 10-1203 OF THIS SUBTITLE;

14 (4) REINSTATE FULL FRINGE BENEFITS AND SENIORITY RIGHTS;

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

17 (6) AWARD COSTS OF LITIGATION AND REASONABLE ATTORNEY'S FEES
18 TO THE PREVAILING COMPLAINANT; AND

19 (7) AWARD ANY OTHER APPROPRIATE DAMAGES AND RELIEF.

20 10-1207.

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

24 **Article - State Personnel and Pensions**

25 Subtitle 3. Maryland EMPLOYEES' Whistleblower PROTECTION [Law in the
26 Executive Branch of State Government].

27 5-301.

28 This subtitle applies to all employees OF, and State employees who are
29 applicants for positions in, ALL UNITS IN the Executive, LEGISLATIVE, AND JUDICIAL
30 [Branch] BRANCHES of State government, including [a] ANY unit with an
31 independent personnel system.

1 5-301.1.

2 IN THIS SUBTITLE, "COMPLAINANT" MEANS AN EMPLOYEE OF THE STATE
3 PERSONNEL MANAGEMENT SYSTEM, THE UNIVERSITY SYSTEM OF MARYLAND, OR
4 MORGAN STATE UNIVERSITY WHO IS AUTHORIZED TO FILE A COMPLAINT UNDER §
5 5-307 OF THIS SUBTITLE.

6 5-303.

7 The Secretary shall adopt regulations for processing and resolving complaints
8 brought under § 5-309 OF this subtitle.

9 5-307.

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

12 (1) a complaint under § 5-309 of this subtitle; or

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

14 (B) AN EMPLOYEE IN THE PERSONNEL SYSTEM OF THE JUDICIAL BRANCH
15 WHO SEEKS RELIEF FOR A VIOLATION OF § 5-305 OF THIS SUBTITLE MAY ELECT TO
16 FILE A GRIEVANCE UNDER THE PERSONNEL POLICIES ESTABLISHED BY THE
17 JUDICIAL BRANCH.

18 (C) AN EMPLOYEE IN THE PERSONNEL SYSTEM OF THE LEGISLATIVE BRANCH
19 WHO SEEKS RELIEF FOR A VIOLATION OF § 5-305 OF THIS SUBTITLE MAY ELECT TO
20 FILE A GRIEVANCE UNDER THE PERSONNEL POLICIES ESTABLISHED BY THE
21 LEGISLATIVE BRANCH.

22 [(b)] (D) An employee of the University System of Maryland who is eligible to
23 file a grievance under Title 13 of the Education Article and seeks relief for a violation
24 of § 5-305 of this subtitle may elect to file:

25 (1) a complaint under § 5-309 of this subtitle; or

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

27 [(c)] (E) An employee of Morgan State University who is eligible to file a
28 grievance under Title 14 of the Education Article and seeks relief for a violation of §
29 5-305 of this subtitle may elect to file:

30 (1) a complaint under § 5-309 of this subtitle; or

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

32 5-309.

33 (a) (1) An employee [subject to this subtitle] OF THE STATE PERSONNEL
34 MANAGEMENT SYSTEM, THE UNIVERSITY SYSTEM OF MARYLAND, OR MORGAN

1 STATE UNIVERSITY may file with the Secretary a complaint that alleges a violation of
2 § 5-305 of this subtitle.

3 [(e) As a remedial action for a violation of § 5-305 of this subtitle, the Secretary
4 or 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 5-309.1.

17 AS A REMEDIAL ACTION FOR A VIOLATION OF § 5-305 OF THIS SUBTITLE, THE
18 SECRETARY OR DESIGNEE, A DESIGNATED EMPLOYEE OF THE JUDICIAL BRANCH, OR
19 A DESIGNATED EMPLOYEE OF THE LEGISLATIVE BRANCH MAY:

20 (1) ORDER THE REMOVAL OF ANY RELATED DETRIMENTAL
21 INFORMATION FROM THE EMPLOYEE'S STATE PERSONNEL RECORDS; OR

22 (2) REQUIRE THE HEAD OF THE PRINCIPAL UNIT TO:

23 (I) HIRE, PROMOTE, OR REINSTATE THE COMPLAINANT OR END
24 THE EMPLOYEE'S SUSPENSION FROM EMPLOYMENT;

25 (II) AWARD THE EMPLOYEE BACK PAY TO THE DAY OF THE
26 VIOLATION;

27 (III) GRANT THE EMPLOYEE LEAVE OR SENIORITY;

28 (IV) TAKE APPROPRIATE DISCIPLINARY ACTION AGAINST ANY
29 INDIVIDUAL WHO CAUSED THE VIOLATION; AND

30 (V) TAKE ANY OTHER REMEDIAL ACTION CONSISTENT WITH THE
31 PURPOSES OF THIS SUBTITLE.

1 5-310.1.

2 AFTER EXHAUSTING ALL AVAILABLE REMEDIES UNDER THE PERSONNEL
3 POLICIES OF THE JUDICIAL BRANCH OR LEGISLATIVE BRANCH AS APPLICABLE, AN
4 EMPLOYEE IN THE PERSONNEL SYSTEM OF THE JUDICIAL BRANCH OR LEGISLATIVE
5 BRANCH WHO IS SUBJECT TO A PERSONNEL ACTION IN VIOLATION OF § 5-305 OF
6 THIS SUBTITLE MAY INSTITUTE A CIVIL ACTION IN THE CIRCUIT COURT OF THE
7 COUNTY IN WHICH THE EMPLOYEE RESIDES OR WHERE THE VIOLATION OCCURRED.

8 5-311.

9 After reviewing a final decision under this subtitle, the court may:

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

12 (2) REQUIRE THE APPROPRIATE ACTION BE TAKEN UNDER § 5-309.1 OF
13 THIS SUBTITLE;

14 (3) award costs of litigation and reasonable attorney's fees to a prevailing
15 [complainant] EMPLOYEE; and

16 (4) AWARD any other appropriate DAMAGES AND relief.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
18 construed to apply retroactively and shall be applied to and interpreted to affect any
19 personnel action taken as a reprisal against any State employee or State contractor
20 employee who discloses information that the employee reasonably believes evidences
21 an abuse of authority, gross mismanagement, gross waste of money, a substantial and
22 specific danger to public health or safety, or a violation of the law that occurred on or
23 after January 1, 2003.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
25 effect July 1, 2003.