

SENATE BILL 608

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P3

2003 Regular Session  
3r2245  
CF 3r0529

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By: **Senator McFadden (Joint Audit Committee) and Senators Astle, Hafer,  
and Hogan**

Introduced and read first time: February 6, 2003

Assigned to: Rules

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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

1 (1999 Replacement Volume and 2002 Supplement)

2 BY repealing and reenacting, with amendments,  
3 Article - State Personnel and Pensions  
4 Section 5-301, 5-303, 5-307, 5-309(a)(1), and 5-311 to be under the amended  
5 subtitle "Subtitle 3. Maryland Employees' Whistleblower Protection"  
6 Annotated Code of Maryland  
7 (1997 Replacement Volume and 2002 Supplement)

8 BY adding to  
9 Article - State Personnel and Pensions  
10 Section 5-301.1, 5-309.1, and 5-310.1  
11 Annotated Code of Maryland  
12 (1997 Replacement Volume and 2002 Supplement)

13 BY repealing  
14 Article - State Personnel and Pensions  
15 Section 5-309(e)  
16 Annotated Code of Maryland  
17 (1997 Replacement Volume and 2002 Supplement)

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

20 **Article - State Government**

21 SUBTITLE 12. STATE CONTRACTOR EMPLOYEES' WHISTLEBLOWER PROTECTION.

22 10-1201.

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

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

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

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

33 (C) "EMPLOYEE" MEANS ANY INDIVIDUAL WHO PERFORMS SERVICES FOR, OR  
34 UNDER THE CONTROL AND DIRECTION OF, AN EMPLOYER FOR WAGES OR OTHER  
35 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.