

SENATE BILL 1114

P4

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By: **Senator Jones**

Introduced and read first time: March 8, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **State Personnel – Equal Employment Opportunity Program – Revisions**

3 FOR the purpose of requiring the Secretary of Budget and Management to establish a
4 certain equal employment opportunity unit in the Department of Budget and
5 Management to oversee the administration of the Equal Employment
6 Opportunity Program in a certain manner; requiring the unit to report directly
7 to the Equal Employment Opportunity Coordinator; requiring the Secretary, in
8 consultation with the Joint Committee on Fair Practices and State Personnel
9 Oversight, to establish by regulation a certain mediation or arbitration process;
10 requiring certain units of State government to cooperate with certain
11 commissions in the investigation of certain complaints, prepare a certain plan,
12 develop and implement certain programs, and provide certain training; altering
13 the process for appointing the Coordinator; requiring a fair practices officer or
14 an equal employment opportunity officer to refer a certain complaint to the
15 Coordinator under certain circumstances; requiring the Coordinator to take
16 certain actions within a certain period of time after receiving the complaint;
17 authorizing a person aggrieved by a decision of the Secretary or designee to
18 appeal the decision to the Office of Administrative Hearings; making certain
19 conforming changes; and generally relating to the Equal Employment
20 Opportunity Program.

21 BY repealing and reenacting, without amendments,
22 Article – State Personnel and Pensions
23 Section 5–201 and 5–211
24 Annotated Code of Maryland
25 (2009 Replacement Volume and 2009 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – State Personnel and Pensions
28 Section 5–202, 5–204, 5–205(a), 5–206, 5–212, and 5–213
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2009 Replacement Volume and 2009 Supplement)

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

4 **Article – State Personnel and Pensions**

5 5–201.

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

7 (b) “Coordinator” means the Equal Employment Opportunity Coordinator.

8 (c) “Program” means the Equal Employment Opportunity Program
9 established under this subtitle.

10 (d) “Unit” means a unit of the Executive Branch of State government.

11 5–202.

12 (a) There is an Equal Employment Opportunity Program, which is under the
13 authority of the Secretary.

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

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

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

20 (2) an applicant for a position in the skilled service, professional
21 service, or management service, of the State Personnel Management System or a
22 comparable position in an independent personnel system in the Executive Branch of
23 State government.

24 **(D) (1) THE SECRETARY SHALL ESTABLISH AN INDEPENDENT EQUAL**
25 **EMPLOYMENT OPPORTUNITY UNIT IN THE DEPARTMENT TO OVERSEE THE**
26 **ADMINISTRATION OF THE PROGRAM CONSISTENT WITH THE REQUIREMENTS OF**
27 **ALL APPLICABLE STATE AND FEDERAL LAWS GOVERNING EQUAL EMPLOYMENT**
28 **OPPORTUNITY.**

29 **(2) THE EQUAL EMPLOYMENT OPPORTUNITY UNIT SHALL**
30 **REPORT DIRECTLY TO THE COORDINATOR.**

31 5–204.

1 **(A)** The Secretary shall:

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

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

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

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

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

10 **(B) THE SECRETARY, IN CONSULTATION WITH THE JOINT COMMITTEE**
11 **ON FAIR PRACTICES AND STATE PERSONNEL OVERSIGHT, SHALL ESTABLISH**
12 **BY REGULATION, AS PART OF THE COMPLAINT RESOLUTION PROCEDURES**
13 **PROVIDED IN THIS SUBTITLE, A MEDIATION OR ARBITRATION PROCESS TO**
14 **RESOLVE COMPLAINTS FILED UNDER THIS SUBTITLE.**

15 5–205.

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

18 (1) comply with all applicable regulations, policies, guidelines, and
19 directives of the Secretary to carry out this section;

20 (2) cooperate fully with:

21 **(I)** the Coordinator in the investigation of complaints of
22 discrimination in violation of § 5–208 of this subtitle; **AND**

23 **(II) THE MARYLAND COMMISSION ON HUMAN RELATIONS**
24 **AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN THE**
25 **INVESTIGATION OF COMPLAINTS OF DISCRIMINATION;**

26 (3) (i) in accordance with the regulations, policies, guidelines, and
27 directives of the Secretary, annually prepare a plan that includes the development and
28 implementation of policies and programs to **PROMOTE EQUAL EMPLOYMENT**
29 **OPPORTUNITY AND WORKFORCE DIVERSIFICATION REFLECTIVE OF THE**
30 **AVAILABILITY OF WOMEN, MINORITIES, AND INDIVIDUALS WITH DISABILITIES**
31 **AND** ensure [that protected group members are appropriately represented and] that
32 the personnel practices in the unit are not discriminatory; and

1 (ii) submit to the Secretary the progress reports about the plan
2 that the Secretary requires;

3 (4) DEVELOP AND IMPLEMENT PROGRAMS ABOUT DIVERSITY AND
4 CULTURAL DIFFERENCES;

5 (5) PROVIDE TRAINING TO MANAGERS, SUPERVISORS, AND
6 EMPLOYEES ABOUT THE PROTECTIONS AND REMEDIES AGAINST EMPLOYMENT
7 DISCRIMINATION AVAILABLE UNDER THIS SUBTITLE;

8 (6) PROVIDE TRAINING TO MANAGERS AND SUPERVISORS ABOUT
9 REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES;

10 [(4)] (7) for each fiscal year, submit to the Coordinator by the
11 following October 15 an annual report about the activities that the unit undertook in
12 that fiscal year to implement the Program, including:

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

14 (ii) a summary of complaints filed, investigated, resolved, and
15 pending; and

16 (iii) information about relations with other units of State
17 government; and

18 [(5)] (8) provide a copy of the annual report to the Maryland Human
19 Relations Commission.

20 5–206.

21 (a) The Governor, with the advice of the Joint Committee on Fair Practices
22 and State Personnel Oversight AND THE SECRETARY, shall appoint an Equal
23 Employment Opportunity Coordinator.

24 (b) The Coordinator shall:

25 (1) administer and enforce the Program; and

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

28 5–211.

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

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

4 5–212.

5 (A) [Within] **SUBJECT TO SUBSECTION (B) OF THIS SECTION, WITHIN 30**
6 days after a complaint under § 5–211 of this subtitle is received:

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

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

12 (B) (1) **IF THE COMPLAINT FILED UNDER § 5–211 OF THIS SUBTITLE**
13 **IS AGAINST THE HEAD OF THE PRINCIPAL UNIT, APPOINTING AUTHORITY,**
14 **MANAGER, OR SUPERVISOR OF A FAIR PRACTICES OFFICER OR AN EQUAL**
15 **EMPLOYMENT OPPORTUNITY OFFICER, THE FAIR PRACTICES OFFICER OR**
16 **EQUAL EMPLOYMENT OPPORTUNITY OFFICER SHALL REFER THE COMPLAINT**
17 **TO THE COORDINATOR FOR ACTION IN ACCORDANCE WITH PARAGRAPH (2) OF**
18 **THIS SUBSECTION.**

19 (2) **WITHIN 30 DAYS AFTER A COMPLAINT IS RECEIVED, THE**
20 **COORDINATOR SHALL REVIEW THE COMPLAINT, CONDUCT ANY NECESSARY**
21 **INVESTIGATION, ISSUE A WRITTEN DECISION TO THE COMPLAINANT, AND MAKE**
22 **A RECOMMENDATION TO THE SECRETARY OR DESIGNEE IN ACCORDANCE WITH**
23 **§ 5–213(B)(1)(III) OF THIS SUBTITLE.**

24 5–213.

25 (a) Within 10 days after receiving a decision under § 5–212 of this subtitle, a
26 complainant may appeal the decision in writing to the Secretary.

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

28 (1) **EXCEPT FOR A COMPLAINT REFERRED TO THE COORDINATOR**
29 **UNDER § 5–212(B) OF THIS SUBTITLE, the Coordinator:**

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

31 (ii) may conduct any necessary investigation; and

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

3 (2) the Secretary or designee shall:

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

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

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

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

12 (d) As remedial action for a violation of § 5-208 of this subtitle, the Secretary
13 or designee may:

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

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

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

19 (ii) award the complainant back pay up to the day of the
20 violation;

21 (iii) grant the complainant leave or seniority;

22 (iv) take appropriate disciplinary action against any individual
23 who caused the violation; or

24 (v) take any other remedial action that the Secretary or
25 designee considers appropriate.

26 (e) [The decision of the Secretary or designee is final.] **A PERSON**
27 **AGGRIEVED BY A DECISION OF THE SECRETARY OR DESIGNEE MAY APPEAL THE**
28 **DECISION TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR A HEARING IN**
29 **ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT**
30 **ARTICLE.**

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2010.