

HOUSE BILL 1145

F1, P4

7lr2995

By: Delegates Tarlau, Angel, B. Barnes, D. Barnes, Ebersole, Fennell, Frush, Hayes, C. Howard, Luedtke, Morales, Mosby, Patterson, Pena-Melnyk, Sanchez, Shoemaker, Turner, Walker, A. Washington, M. Washington, Wilkins, K. Young, and Ali

Introduced and read first time: February 9, 2017

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Public School Employee Whistleblower Protection Act**

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

21 BY adding to

22 Article – Education

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

25 Annotated Code of Maryland

26 (2014 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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) 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) 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.