

SENATE BILL 1033

F2, P3

8lr2444
CF HB 603

By: **Senators Hough, Bates, Cassilly, Hershey, Norman, Ready, Reilly, and Serafini**

Introduced and read first time: February 5, 2018

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Public Senior Higher Education Institutions – Disciplinary Proceedings –**
3 **Students and Student Organizations**

4 FOR the purpose of establishing the right to an attorney or a nonattorney advocate for a
5 student or student organization at certain disciplinary proceedings at public senior
6 higher education institutions; requiring certain represented persons to pay for the
7 attorney or nonattorney advocate; authorizing the attorney or nonattorney advocate
8 to participate throughout the disciplinary proceedings, including by performing
9 certain services; clarifying that certain persons have the sole right to determine their
10 representation; establishing a certain right of appeal; requiring that any appeal be
11 made within a certain period of time; establishing that the right to an attorney or a
12 nonattorney advocate also applies to appeal; establishing certain procedural issues
13 that may be raised on appeal; providing for certain types of evidence that may be
14 considered on appeal; providing that the grounds for overturning an initial decision
15 on appeal shall include certain properly presented evidence; providing for certain
16 procedural outcomes that may be granted on appeal; authorizing public senior higher
17 education institutions to reimburse certain persons for certain expenses under
18 certain circumstances; requiring public senior higher education institutions to
19 ensure that no conflicts of interest exist by taking certain measures and that certain
20 parties have access to certain evidence a certain period of time before the start of a
21 disciplinary proceeding; requiring public senior higher education institutions to
22 make certain efforts regarding certain evidence, but not requiring these institutions
23 to adopt certain rules of evidence; requiring public senior higher education
24 institutions to inform certain people of certain rights; requiring the Maryland Higher
25 Education Commission to adopt certain regulations; requiring a court of competent
26 jurisdiction to award a student or student organization certain relief under certain
27 circumstances; requiring a student or student organization to file an action under
28 this Act within a certain period of time; providing for the application of this Act;
29 defining a certain term; and generally relating to disciplinary proceedings at public
30 senior higher education institutions.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Education
3 Section 11–1401 through 11–1408 to be under the new subtitle “Subtitle 14.
4 Disciplinary Proceedings for Students and Student Organizations”
5 Annotated Code of Maryland
6 (2014 Replacement Volume and 2017 Supplement)

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

9 **Article – Education**

10 **SUBTITLE 14. DISCIPLINARY PROCEEDINGS FOR STUDENTS AND STUDENT**
11 **ORGANIZATIONS.**

12 **11–1401.**

13 **IN THIS SUBTITLE, “STUDENT” INCLUDES AN ACCUSER OR AN ALLEGED**
14 **VICTIM.**

15 **11–1402.**

16 **(A) THIS SUBTITLE DOES NOT APPLY TO MATTERS INVOLVING ACADEMIC**
17 **MISCONDUCT OR TO ANY MATTER THAT MAY NOT RESULT IN THE SUSPENSION,**
18 **EXPULSION, OR REMOVAL OF A STUDENT OR REVOCATION OF RECOGNITION OF A**
19 **STUDENT ORGANIZATION FOR 9 OR MORE DAYS.**

20 **(B) EXCEPT AS PROVIDED IN SUBSECTION (A) OF THIS SECTION, THIS**
21 **SUBTITLE SHALL BE EFFECTIVE NOTWITHSTANDING ANY OTHER PROVISIONS OF**
22 **LAW AFFECTING PUBLIC SENIOR HIGHER EDUCATION INSTITUTIONS.**

23 **11–1403.**

24 **(A) ANY STUDENT ENROLLED IN, OR STUDENT ORGANIZATION OFFICIALLY**
25 **RECOGNIZED AT, A PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL HAVE**
26 **THE RIGHT TO AN ATTORNEY OR A NONATTORNEY ADVOCATE DURING A**
27 **DISCIPLINARY PROCEEDING OR OTHER PROCEDURE DESIGNED TO ADDRESS A**
28 **VIOLATION OF THE INSTITUTION’S RULES.**

29 **(B) THE ATTORNEY OR NONATTORNEY ADVOCATE:**

30 **(1) SHALL REPRESENT THE STUDENT OR STUDENT ORGANIZATION AT**
31 **THE STUDENT’S OR STUDENT ORGANIZATION’S EXPENSE; AND**

1 **(2) MAY FULLY PARTICIPATE DURING ANY DISCIPLINARY**
2 **PROCEEDING OR OTHER PROCEDURE INCLUDING BY:**

3 **(I) MAKING OPENING AND CLOSING STATEMENTS;**

4 **(II) EXAMINING AND CROSS-EXAMINING WITNESSES; AND**

5 **(III) PROVIDING THE STUDENT OR STUDENT ORGANIZATION**
6 **WITH SUPPORT, GUIDANCE, AND ADVICE.**

7 **(C) A STUDENT OR STUDENT ORGANIZATION SHALL HAVE THE SOLE RIGHT**
8 **TO DETERMINE WHETHER THE STUDENT OR STUDENT ORGANIZATION IS**
9 **REPRESENTED BY AN ATTORNEY OR BY A NONATTORNEY ADVOCATE.**

10 **11-1404.**

11 **(A) A STUDENT OR STUDENT ORGANIZATION THAT IS SUSPENDED,**
12 **REMOVED, OR EXPELLED FROM A PUBLIC SENIOR HIGHER EDUCATION INSTITUTION**
13 **FOR A VIOLATION OF THE RULES OR POLICIES OF THAT INSTITUTION SHALL HAVE**
14 **THE RIGHT TO APPEAL THE INSTITUTION'S INITIAL DECISION.**

15 **(B) AN APPEAL MADE UNDER THIS SECTION SHALL BE MADE WITHIN 30**
16 **DAYS AFTER THE RECEIPT OF FINAL NOTICE OF THE INSTITUTION'S DECISION.**

17 **(C) THE RIGHT OF A STUDENT OR STUDENT ORGANIZATION TO HAVE AN**
18 **ATTORNEY OR A NONATTORNEY ADVOCATE UNDER § 11-1403 OF THIS SUBTITLE**
19 **APPLIES ALSO TO THE APPEAL.**

20 **(D) ISSUES THAT MAY BE RAISED ON APPEAL INCLUDE:**

21 **(1) NEW EVIDENCE;**

22 **(2) CONTRADICTORY EVIDENCE; AND**

23 **(3) EVIDENCE THAT THE STUDENT OR STUDENT ORGANIZATION WAS**
24 **NOT AFFORDED DUE PROCESS.**

25 **(E) GROUNDS FOR OVERTURNING AN INITIAL DECISION ON APPEAL SHALL**
26 **INCLUDE PROPERLY PRESENTED EVIDENCE THAT IS NEWLY DISCOVERED OR**
27 **PREVIOUSLY UNAVAILABLE.**

28 **11-1405.**

1 **(A) THE INSTITUTIONAL ADMINISTRATOR OR BODY CONSIDERING AN**
2 **APPEAL MAY CONSIDER POLICE REPORTS, TRANSCRIPTS, AND THE OUTCOMES OF**
3 **ANY CIVIL OR CRIMINAL PROCEEDING DIRECTLY RELATED TO THE APPEAL.**

4 **(B) THE INSTITUTIONAL ADMINISTRATOR OR BODY CONSIDERING AN**
5 **APPEAL MAY:**

6 **(1) GRANT THE APPEAL;**

7 **(2) DENY THE APPEAL;**

8 **(3) ORDER A NEW HEARING; OR**

9 **(4) REDUCE OR MODIFY THE SUSPENSION OR EXPULSION.**

10 **(C) IF THE APPEAL RESULTS IN THE REVERSAL OF THE DECISION OR A**
11 **LESSENING OF THE SANCTION, THE PUBLIC SENIOR HIGHER EDUCATION**
12 **INSTITUTION MAY REIMBURSE THE STUDENT FOR ANY TUITION OR FEES PAID TO**
13 **THE INSTITUTION BY THE STUDENT OR STUDENT ORGANIZATION DURING THE**
14 **PERIOD OF SUSPENSION, REMOVAL, OR EXPULSION THAT HAVE NOT BEEN**
15 **PREVIOUSLY REFUNDED.**

16 **11-1406.**

17 **(A) THE PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL ENSURE**
18 **THAT NO CONFLICTS OF INTEREST EXIST BY ENSURING THAT NONE OF THE**
19 **FOLLOWING ROLES ARE CARRIED OUT BY THE SAME PERSON:**

20 **(1) REPRESENTATIVE FOR A STUDENT OR STUDENT ORGANIZATION;**

21 **(2) INVESTIGATOR;**

22 **(3) INSTITUTIONAL PROSECUTOR;**

23 **(4) ADJUDICATOR OF THE DISCIPLINARY HEARING; AND**

24 **(5) APPELLATE ADJUDICATOR.**

25 **(B) (1) THE PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL**
26 **ENSURE THAT ALL PARTIES TO A DISCIPLINARY HEARING OR OTHER PROCEDURE**
27 **DESIGNED TO ADDRESS A VIOLATION OF THE INSTITUTION'S RULES HAVE ACCESS**
28 **TO ALL MATERIAL EVIDENCE KNOWN TO THE INSTITUTION NOT LATER THAN 1 WEEK**

1 BEFORE THE START OF THE DISCIPLINARY HEARING.

2 (2) THE EVIDENCE MAY INCLUDE:

3 (I) COMPLAINT STATEMENTS;

4 (II) THIRD-PARTY WITNESS STATEMENTS;

5 (III) ELECTRONICALLY STORED INFORMATION;

6 (IV) WRITTEN COMMUNICATIONS;

7 (V) SOCIAL MEDIA POSTS; AND

8 (VI) DEMONSTRATIVE EVIDENCE.

9 (C) THE PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL MAKE
10 GOOD-FAITH EFFORTS TO INCLUDE RELEVANT EVIDENCE AND EXCLUDE EVIDENCE
11 THAT IS NEITHER RELEVANT NOR PROBATIVE, BUT IS NOT REQUIRED TO USE
12 FORMAL RULES OF EVIDENCE.

13 (D) THE PUBLIC SENIOR HIGHER EDUCATION INSTITUTION SHALL INFORM
14 ANY STUDENT OR STUDENT ORGANIZATION IN WRITING OF THE STUDENT'S OR
15 STUDENT ORGANIZATION'S RIGHTS UNDER THIS SUBTITLE BEFORE A DISCIPLINARY
16 PROCEEDING OR OTHER PROCEDURE IS SCHEDULED.

17 11-1407.

18 THE COMMISSION SHALL ADOPT REGULATIONS FOR DISCIPLINARY
19 PROCEDURES THAT AFFECT ALL PUBLIC SENIOR HIGHER EDUCATION INSTITUTIONS
20 IN ACCORDANCE WITH THIS SUBTITLE.

21 11-1408.

22 (A) A COURT OF COMPETENT JURISDICTION SHALL AWARD A STUDENT OR
23 STUDENT ORGANIZATION DAMAGES, INJUNCTIVE RELIEF, COURT COSTS, OR
24 ATTORNEY'S FEES AGAINST A PUBLIC SENIOR HIGHER EDUCATION INSTITUTION IF
25 ANY OF THE RIGHTS OF THE STUDENT OR STUDENT ORGANIZATION ARE VIOLATED
26 UNDER THIS SUBTITLE.

27 (B) A STUDENT OR STUDENT ORGANIZATION INITIATING A LAWSUIT BASED
28 ON A VIOLATION OF THIS SUBTITLE SHALL FILE AN ACTION WITHIN 1 YEAR AFTER
29 THE ALLEGED VIOLATION OF THIS SUBTITLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2018.