
By: **Delegates Rosenberg and Weldon**
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Assigned to: Appropriations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 16, 2004

CHAPTER 397

1 AN ACT concerning

2 **Procurement - State Contractor Employees - Whistleblower Protection**

3 FOR the purpose of requiring certain employers that enter certain State procurement
4 contracts to provide written notice of certain protections and remedies to
5 employees; prohibiting an employer from taking or refusing to take certain
6 personnel actions against employees who disclose unlawful behavior, refuse to
7 participate in unlawful behavior, or seek certain remedies following certain
8 disclosures; authorizing certain employees to institute a civil action in the
9 county where a certain violation occurred, where the employee resides, or where
10 the employer maintains its principal office in the State; requiring certain
11 employees to file a civil action under this Act within a certain period after the
12 retaliatory personnel action allegedly occurred or within a certain period after
13 the employee first became aware of the alleged retaliatory personnel action;
14 establishing the remedies for certain employees that a court may grant;
15 providing a defense that the personnel action was based on grounds other than
16 those protected under this Act; defining certain terms; providing for the
17 application of this Act; and generally relating to whistleblower protection for
18 State contractor employees.

19 BY adding to
20 Article - State Finance and Procurement
21 Section 11-301 through 11-306, inclusive, to be under the new subtitle "Subtitle
22 3. State Contractor Employees' Whistleblower Protection"
23 Annotated Code of Maryland
24 (2001 Replacement Volume and 2003 Supplement)

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

1 **Article - State Finance and Procurement**

2 SUBTITLE 3. STATE CONTRACTOR EMPLOYEES' WHISTLEBLOWER PROTECTION.

3 11-301.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) (1) "EMPLOYEE" MEANS ANY INDIVIDUAL WHO PERFORMS SERVICES
7 FOR, OR UNDER THE CONTROL AND DIRECTION OF, AN EMPLOYER FOR WAGES OR
8 OTHER REMUNERATION.9 (2) "EMPLOYEE" DOES NOT INCLUDE AN EMPLOYEE AS DEFINED IN §
10 1-501(C)(1) OF THE HEALTH OCCUPATIONS ARTICLE.11 (C) (1) "EMPLOYER" MEANS A PERSON ENGAGED IN A BUSINESS, INDUSTRY,
12 PROFESSION, TRADE, OR OTHER ENTERPRISE THAT ENTERS A PROCUREMENT
13 CONTRACT WITH A UNIT TO PROVIDE SUPPLIES OR SERVICES UNDER THIS DIVISION
14 II.15 (2) "EMPLOYER" INCLUDES AGENTS, CONTRACTORS, AND
16 SUBCONTRACTORS OF AN EMPLOYER.17 (3) "EMPLOYER" DOES NOT INCLUDE A UNIT OF STATE GOVERNMENT
18 SUBJECT TO THE PROVISIONS OF TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL
19 AND PENSIONS ARTICLE OR THE JUDICIAL BRANCH OF STATE GOVERNMENT.

20 11-302.

21 AN EMPLOYER SUBJECT TO THIS SUBTITLE SHALL PROVIDE EMPLOYEES WITH
22 WRITTEN NOTICE OF THE PROTECTIONS AND REMEDIES PROVIDED BY THIS
23 SUBTITLE.

24 11-303.

25 AN EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE ANY PERSONNEL ACTION
26 AS A REPRISAL AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE:27 (1) DISCLOSES INFORMATION THAT THE EMPLOYEE REASONABLY
28 BELIEVES EVIDENCES:29 (I) AN ABUSE OF AUTHORITY, GROSS MISMANAGEMENT, OR GROSS
30 WASTE OF MONEY;31 (II) A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR
32 SAFETY; OR

33 (III) A VIOLATION OF LAW;

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

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

5 11-304.

6 (A) ANY EMPLOYEE WHO IS SUBJECT TO A PERSONNEL ACTION IN VIOLATION
7 OF § 11-303 OF THIS SUBTITLE MAY INSTITUTE A CIVIL ACTION IN THE COUNTY
8 WHERE:

9 (1) THE ALLEGED VIOLATION OCCURRED;

10 (2) THE EMPLOYEE RESIDES; OR

11 (3) THE EMPLOYER MAINTAINS ITS PRINCIPAL OFFICE IN THE STATE.

12 (B) THE ACTION SHALL BE BROUGHT WITHIN 1 YEAR AFTER THE ALLEGED
13 VIOLATION OF § 11-303 OF THIS SUBTITLE OCCURRED OR WITHIN 1 YEAR AFTER THE
14 EMPLOYEE FIRST BECAME AWARE OF THE ALLEGED VIOLATION OF ~~§ 10-1203~~ § 11-303
15 OF THIS SUBTITLE.

16 11-305.

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

18 (1) ISSUE AN INJUNCTION TO RESTRAIN CONTINUED VIOLATION OF §
19 11-303 OF THIS SUBTITLE;

20 (2) REINSTATE THE EMPLOYEE TO THE SAME OR AN EQUIVALENT
21 POSITION HELD BEFORE THE VIOLATION OF § 11-303 OF THIS SUBTITLE;

22 (3) REMOVE ANY ADVERSE PERSONNEL RECORD ENTRIES BASED ON OR
23 RELATED TO THE VIOLATION OF § 11-303 OF THIS SUBTITLE;

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

25 (5) REQUIRE COMPENSATION FOR LOST WAGES, BENEFITS, AND OTHER
26 REMUNERATION;

27 (6) AWARD COSTS OF LITIGATION AND REASONABLE ATTORNEY'S FEES
28 TO THE PREVAILING EMPLOYEE; AND

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

30 11-306.

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply retroactively and shall be applied to and interpreted to affect any
3 personnel action allegedly taken as a reprisal against any State contractor employee
4 subject to this Act on or after February 17, 2003.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
6 effect July 1, 2004.