

HOUSE BILL 329

Unofficial Copy
J2

2002 Regular Session
(2r1342)

ENROLLED BILL
-- Economic Matters/Finance --

Introduced by **Delegates Mandel, Goldwater, R. Baker, Barkley, Barve, Benson, Bobo, Bronrott, Cane, Conroy, Dembrow, Donoghue, Eckardt, Franchot, Frush, Giannetti, Gordon, Griffith, Grosfeld, Healey, Heller, Hixson, Howard, Hubbard, Hubers, A. Jones, Kagan, Kopp, La Vay, Menes, Moe, Montague, Nathan-Pulliam, Patterson, Pendergrass, Pitkin, Riley, Sher, Shriver, Sophocleus, Stern, Turner, and ~~Vallario~~ Vallario, Brown, Fulton, Harrison, Hill, Kach, Kirk, Krysiak, Love, McHale, and Walkup**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Health Care Worker Whistleblower Protection Act**

3 FOR the purpose of prohibiting an employer from ~~retaliating or discriminating~~ taking
4 or refusing to take certain personnel actions against certain licensed or certified
5 employees who disclose unlawful behavior or refuse to participate in unlawful
6 behavior; providing that certain protections under this Act apply only if certain
7 licensed or certified employees have a good faith belief that the employer is
8 engaged in unlawful activity and that the unlawful activity poses a substantial
9 and specific danger to public health or safety; requiring that prior to reporting to
10 a health board, a licensed or certified employee report the unlawful activity in

1 writing to the employer and provide the employer a reasonable opportunity to
 2 correct the unlawful activity or that the licensed or certified employee follow a
 3 certain corporate compliance plan; authorizing certain licensed or certified
 4 employees to institute a civil action in the county where a certain violation
 5 occurred, where the licensed or certified employee resides, or where the
 6 employer maintains its principal office in the State; requiring that a licensed or
 7 certified employee file a civil action under this Act within 1 year after the
 8 retaliatory personnel action occurred or within 1 year after the employee first
 9 became aware of the retaliatory personnel action; establishing the remedies a
 10 court may impose; providing a defense that the personnel action was based on
 11 grounds other than those protected under this Act; ~~providing for the waiver of~~
 12 ~~certain rights or remedies under this Act; exempting an employee licensed or~~
 13 ~~certified by certain boards from certain employee whistleblower protection~~
 14 ~~provisions applicable to State employees exempting certain employees from the~~
 15 ~~provisions of this Act; and generally relating to the Health Care Worker~~
 16 ~~Whistleblower's Protection Act.~~

17 BY adding to
 18 Article - Health Occupations
 19 Section 1-401 through ~~1-407~~ 1-406, inclusive, to be under the new subtitle
 20 "Subtitle 4. Health Care Worker Whistleblower Protection Act"
 21 Annotated Code of Maryland
 22 (2000 Replacement Volume and 2001 Supplement)

23 ~~BY repealing and reenacting, with amendments,~~
 24 ~~Article - State Personnel and Pensions~~
 25 ~~Section 5-301~~
 26 ~~Annotated Code of Maryland~~
 27 ~~(1997 Replacement Volume and 2001 Supplement)~~

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

30 **Article - Health Occupations**

31 **SUBTITLE 4. HEALTH CARE WORKER WHISTLEBLOWER PROTECTION ACT.**

32 1-401.

33 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 34 INDICATED.

35 (B) "BOARD" MEANS ANY BOARD ESTABLISHED UNDER THIS ARTICLE.

36 (C) (1) "EMPLOYEE" MEANS ANY INDIVIDUAL LICENSED OR CERTIFIED BY A
 37 BOARD UNDER THIS ARTICLE WHO PERFORMS SERVICES FOR AND UNDER THE
 38 CONTROL AND DIRECTION OF AN EMPLOYER FOR WAGES OR OTHER
 39 REMUNERATION.

1 (2) ~~"EMPLOYEE" DOES NOT INCLUDE A STATE EMPLOYEE.~~

2 ~~(D) "RETALIATORY PERSONNEL ACTION" MEANS THE DISCHARGE,~~
3 ~~SUSPENSION, OR DEMOTION OF AN EMPLOYEE, OR AN ACTION AFFECTING~~
4 ~~COMPENSATION, APPOINTMENT, PROMOTION, TRANSFER, ASSIGNMENT,~~
5 ~~REASSIGNMENT, REINSTATEMENT, OR EVALUATION OF PERFORMANCE OF AN~~
6 ~~EMPLOYEE.~~

7 ~~(E)~~ (D) "SUPERVISOR" MEANS ANY INDIVIDUAL WITHIN AN EMPLOYER'S
8 ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE WORK
9 PERFORMANCE OF AN EMPLOYEE, OR WHO HAS MANAGERIAL AUTHORITY TO TAKE
10 CORRECTIVE ACTION REGARDING THE VIOLATION OF A LAW, RULE, OR REGULATION
11 OF WHICH THE EMPLOYEE COMPLAINS.

12 1-402.

13 SUBJECT TO § 1-403 OF THIS SUBTITLE, AN EMPLOYER MAY NOT ~~RETALIATE OR~~
14 ~~DISCRIMINATE IN ANY MANNER TAKE OR REFUSE TO TAKE ANY PERSONNEL ACTION~~
15 AS REPRISAL AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE:

16 (1) DISCLOSES OR THREATENS TO DISCLOSE TO A SUPERVISOR OR
17 BOARD AN ACTIVITY, POLICY, OR PRACTICE OF THE EMPLOYER THAT IS IN VIOLATION
18 OF A LAW, RULE, OR REGULATION;

19 (2) PROVIDES INFORMATION TO OR TESTIFIES BEFORE ANY PUBLIC
20 BODY CONDUCTING AN INVESTIGATION, HEARING, OR INQUIRY INTO ANY
21 VIOLATION OF A LAW, RULE, OR REGULATION BY THE EMPLOYER; OR

22 (3) OBJECTS TO OR REFUSES TO PARTICIPATE IN ANY ACTIVITY, POLICY,
23 OR PRACTICE IN VIOLATION OF A LAW, RULE, OR REGULATION.

24 1-403.

25 THE PROTECTION PROVIDED AGAINST ~~RETALIATORY PERSONNEL ACTION~~
26 UNDER A VIOLATION OF § 1-402 OF THIS SUBTITLE SHALL ONLY APPLY IF:

27 (1) THE EMPLOYEE HAS A REASONABLE, GOOD FAITH BELIEF THAT THE
28 EMPLOYER HAS, OR STILL IS, ENGAGED IN AN ACTIVITY, POLICY, OR PRACTICE THAT
29 IS IN VIOLATION OF A LAW, RULE, OR REGULATION;

30 (2) THE EMPLOYER'S ACTIVITY, POLICY, OR PRACTICE THAT IS THE
31 SUBJECT OF THE EMPLOYEE'S DISCLOSURE POSES A SUBSTANTIAL AND SPECIFIC
32 DANGER TO THE PUBLIC HEALTH OR SAFETY; AND

33 (3) BEFORE REPORTING TO THE BOARD; ;

34 (L) THE EMPLOYEE HAS REPORTED THE ACTIVITY, POLICY, OR
35 PRACTICE TO A SUPERVISOR OR ADMINISTRATOR OF THE EMPLOYER IN WRITING
36 AND AFFORDED THE EMPLOYER A REASONABLE OPPORTUNITY TO CORRECT THE
37 ACTIVITY, POLICY, OR PRACTICE; OR

1 (II) IF THE EMPLOYER HAS A CORPORATE COMPLIANCE PLAN
2 SPECIFYING WHO TO NOTIFY OF AN ALLEGED VIOLATION OF A RULE, LAW, OR
3 REGULATION, THE EMPLOYEE HAS FOLLOWED THE PLAN.

4 1-404.

5 (A) ANY EMPLOYEE WHO IS SUBJECT TO A ~~RETALIATORY PERSONNEL ACTION~~
6 IN VIOLATION OF § 1-402 OF THIS SUBTITLE MAY INSTITUTE A CIVIL ACTION IN THE
7 COUNTY WHERE:

8 (1) THE ALLEGED ~~RETALIATORY PERSONNEL ACTION~~ VIOLATION
9 OCCURRED;

10 (2) THE EMPLOYEE RESIDES; OR

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

12 (B) THE ACTION SHALL BE BROUGHT WITHIN 1 YEAR AFTER THE ALLEGED
13 ~~RETALIATORY PERSONNEL ACTION WAS TAKEN~~ VIOLATION OF § 1-402 OF THIS
14 SUBTITLE OCCURRED, OR WITHIN 1 YEAR AFTER THE EMPLOYEE FIRST BECAME
15 AWARE OF THE ALLEGED ~~RETALIATORY PERSONNEL ACTION~~ VIOLATION OF §1-402
16 OF THIS SUBTITLE.

17 1-405.

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

19 (1) ISSUE AN INJUNCTION TO RESTRAIN CONTINUED VIOLATION OF
20 THIS SUBTITLE;

21 (2) REINSTATE THE EMPLOYEE TO THE SAME, OR AN EQUIVALENT
22 POSITION HELD BEFORE THE ~~RETALIATORY PERSONNEL ACTION~~ VIOLATION OF §
23 1-402 OF THIS SUBTITLE;

24 (3) REMOVE ANY ADVERSE PERSONNEL RECORD ENTRIES BASED ON OR
25 RELATED TO THE ~~RETALIATORY PERSONNEL ACTION~~ VIOLATION OF § 1-402 OF THIS
26 SUBTITLE;

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

28 (5) REQUIRE COMPENSATION FOR LOST WAGES, BENEFITS, AND OTHER
29 REMUNERATION; AND

30 (6) ASSESS REASONABLE ~~COUNSEL~~ ATTORNEY'S FEES AND OTHER
31 LITIGATION EXPENSES AGAINST:

32 (I) THE EMPLOYER, IF THE EMPLOYEE PREVAILS; OR

33 (II) THE EMPLOYEE, IF THE COURT DETERMINES THAT THE
34 ACTION WAS BROUGHT BY THE EMPLOYEE IN BAD FAITH AND WITHOUT BASIS IN
35 LAW OR FACT.

1 1-406.

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

5 ~~1-407.~~

6 ~~A CIVIL ACTION UNDER THIS SUBTITLE SHALL BE DEEMED A WAIVER OF THE~~
7 ~~RIGHTS AND REMEDIES AVAILABLE UNDER ANY OTHER CONTRACT, COLLECTIVE~~
8 ~~BARGAINING AGREEMENT, LAW, RULE, REGULATION, OR UNDER THE COMMON LAW~~
9 ~~WITH RESPECT TO PROTECTION AGAINST EMPLOYER DISCRIMINATION OR~~
10 ~~RETALIATION FOR EMPLOYEE DISCLOSURE OF UNLAWFUL BEHAVIOR OR~~
11 ~~PARTICIPATION IN UNLAWFUL BEHAVIOR BY THE EMPLOYER.~~

12 **~~Article - State Personnel and Pensions~~**

13 ~~5-301.~~

14 ~~This subtitle applies to all employees and State employees who are applicants~~
15 ~~for positions in the Executive Branch of State government, including a unit with an~~
16 ~~independent personnel system, EXCEPT THOSE EMPLOYEES LICENSED OR CERTIFIED~~
17 ~~BY A BOARD UNDER THE HEALTH OCCUPATIONS ARTICLE.~~

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2002.