
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**

Introduced and read first time: January 24, 2002

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Worker Whistleblower Protection Act**

3 FOR the purpose of prohibiting an employer from retaliating or discriminating
4 against certain licensed or certified employees who disclose unlawful behavior
5 or refuse to participate in unlawful behavior; providing that certain protections
6 under this Act apply only if certain licensed or certified employees have a good
7 faith belief that the employer is engaged in unlawful activity and that the
8 unlawful activity poses a substantial and specific danger to public health or
9 safety; requiring that prior to reporting to a health board, a licensed or certified
10 employee report the unlawful activity in writing to the employer and provide the
11 employer a reasonable opportunity to correct the unlawful activity; authorizing
12 certain licensed or certified employees to institute a civil action in the county
13 where a certain violation occurred, where the licensed or certified employee
14 resides, or where the employer maintains its principal office in the State;
15 requiring that a licensed or certified employee file a civil action under this Act
16 within 1 year after the retaliatory personnel action occurred or within 1 year
17 after the employee first became aware of the retaliatory personnel action;
18 establishing the remedies a court may impose; providing a defense that the
19 personnel action was based on grounds other than those protected under this
20 Act; providing for the waiver of certain rights or remedies under this Act;
21 exempting an employee licensed or certified by certain boards from certain
22 employee whistleblower protection provisions applicable to State employees;
23 and generally relating to the Health Care Worker Whistleblower's Protection
24 Act.

25 BY adding to

26 Article - Health Occupations

27 Section 1-401 through 1-407, inclusive, to be under the new subtitle "Subtitle 4.

28 Health Care Worker Whistleblower Protection Act"

29 Annotated Code of Maryland

1 (2000 Replacement Volume and 2001 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - State Personnel and Pensions

4 Section 5-301

5 Annotated Code of Maryland

6 (1997 Replacement Volume and 2001 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Health Occupations**

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

11 1-401.

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

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

15 (C) "EMPLOYEE" MEANS ANY INDIVIDUAL LICENSED OR CERTIFIED BY A
16 BOARD UNDER THIS ARTICLE WHO PERFORMS SERVICES FOR AND UNDER THE
17 CONTROL AND DIRECTION OF AN EMPLOYER FOR WAGES OR OTHER
18 REMUNERATION.

19 (D) "RETALIATORY PERSONNEL ACTION" MEANS THE DISCHARGE,
20 SUSPENSION, OR DEMOTION OF AN EMPLOYEE, OR AN ACTION AFFECTING
21 COMPENSATION, APPOINTMENT, PROMOTION, TRANSFER, ASSIGNMENT,
22 REASSIGNMENT, REINSTATEMENT, OR EVALUATION OF PERFORMANCE OF AN
23 EMPLOYEE.

24 (E) "SUPERVISOR" MEANS ANY INDIVIDUAL WITHIN AN EMPLOYER'S
25 ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE WORK
26 PERFORMANCE OF AN EMPLOYEE, OR WHO HAS MANAGERIAL AUTHORITY TO TAKE
27 CORRECTIVE ACTION REGARDING THE VIOLATION OF A LAW, RULE, OR REGULATION
28 OF WHICH THE EMPLOYEE COMPLAINS.

29 1-402.

30 SUBJECT TO § 1-403 OF THIS SUBTITLE, AN EMPLOYER MAY NOT RETALIATE OR
31 DISCRIMINATE IN ANY MANNER AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE:

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

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

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

6 1-403.

7 THE PROTECTION PROVIDED AGAINST RETALIATORY PERSONNEL ACTION
8 UNDER § 1-402 OF THIS SUBTITLE SHALL ONLY APPLY IF:

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

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

15 (3) BEFORE REPORTING TO THE BOARD, THE EMPLOYEE HAS REPORTED
16 THE ACTIVITY, POLICY, OR PRACTICE TO A SUPERVISOR OR ADMINISTRATOR OF THE
17 EMPLOYER IN WRITING AND AFFORDED THE EMPLOYER A REASONABLE
18 OPPORTUNITY TO CORRECT THE ACTIVITY, POLICY, OR PRACTICE.

19 1-404.

20 (A) ANY EMPLOYEE WHO IS SUBJECT TO A RETALIATORY PERSONNEL ACTION
21 IN VIOLATION OF THIS SUBTITLE MAY INSTITUTE A CIVIL ACTION IN THE COUNTY
22 WHERE:

23 (1) THE ALLEGED RETALIATORY PERSONNEL ACTION OCCURRED;

24 (2) THE EMPLOYEE RESIDES; OR

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

26 (B) THE ACTION SHALL BE BROUGHT WITHIN 1 YEAR AFTER THE ALLEGED
27 RETALIATORY PERSONNEL ACTION WAS TAKEN, OR WITHIN 1 YEAR AFTER THE
28 EMPLOYEE FIRST BECAME AWARE OF THE ALLEGED RETALIATORY PERSONNEL
29 ACTION.

30 1-405.

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

32 (1) ISSUE AN INJUNCTION TO RESTRAIN CONTINUED VIOLATION OF
33 THIS SUBTITLE;

34 (2) REINSTATE THE EMPLOYEE TO THE SAME, OR AN EQUIVALENT
35 POSITION HELD BEFORE THE RETALIATORY PERSONNEL ACTION;

1 (3) REMOVE ANY ADVERSE PERSONNEL RECORD ENTRIES BASED ON OR
2 RELATED TO THE RETALIATORY PERSONNEL ACTION;

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

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

6 (6) ASSESS REASONABLE COUNSEL FEES AND OTHER LITIGATION
7 EXPENSES AGAINST:

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

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

12 1-406.

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

16 1-407.

17 A CIVIL ACTION UNDER THIS SUBTITLE SHALL BE DEEMED A WAIVER OF THE
18 RIGHTS AND REMEDIES AVAILABLE UNDER ANY OTHER CONTRACT, COLLECTIVE
19 BARGAINING AGREEMENT, LAW, RULE, REGULATION, OR UNDER THE COMMON LAW
20 WITH RESPECT TO PROTECTION AGAINST EMPLOYER DISCRIMINATION OR
21 RETALIATION FOR EMPLOYEE DISCLOSURE OF UNLAWFUL BEHAVIOR OR
22 PARTICIPATION IN UNLAWFUL BEHAVIOR BY THE EMPLOYER.

23 **Article - State Personnel and Pensions**

24 5-301.

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

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