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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**

Introduced and read first time: January 24, 2002  
Assigned to: Environmental Matters  
Reassigned: Economic Matters, February 1, 2002

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 23, 2002

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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  
11 writing to the employer and provide the employer a reasonable opportunity to  
12 correct the unlawful activity; authorizing certain licensed or certified employees  
13 to institute a civil action in the county where a certain violation occurred, where  
14 the licensed or certified employee resides, or where the employer maintains its  
15 principal office in the State; requiring that a licensed or certified employee file a  
16 civil action under this Act within 1 year after the retaliatory personnel action  
17 occurred or within 1 year after the employee first became aware of the  
18 retaliatory personnel action; establishing the remedies a court may impose;  
19 providing a defense that the personnel action was based on grounds other than  
20 those protected under this Act; ~~providing for the waiver of certain rights or~~  
21 ~~remedies under this Act; exempting an employee licensed or certified by certain~~

1 boards from certain employee whistleblower protection provisions applicable to  
 2 State employees exempting certain employees from the provisions of this Act;  
 3 and generally relating to the Health Care Worker Whistleblower's Protection  
 4 Act.

5 BY adding to  
 6 Article - Health Occupations  
 7 Section 1-401 through ~~1-407~~ 1-406, inclusive, to be under the new subtitle  
 8 "Subtitle 4. Health Care Worker Whistleblower Protection Act"  
 9 Annotated Code of Maryland  
 10 (2000 Replacement Volume and 2001 Supplement)

11 ~~BY repealing and reenacting, with amendments,~~  
 12 ~~Article - State Personnel and Pensions~~  
 13 ~~Section 5-301~~  
 14 ~~Annotated Code of Maryland~~  
 15 ~~(1997 Replacement Volume and 2001 Supplement)~~

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

18 **Article - Health Occupations**

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

20 1-401.

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
 22 INDICATED.

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

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

28 (2) "EMPLOYEE" DOES NOT INCLUDE A STATE EMPLOYEE.

29 ~~(D) "RETALIATORY PERSONNEL ACTION" MEANS THE DISCHARGE,~~  
 30 ~~SUSPENSION, OR DEMOTION OF AN EMPLOYEE, OR AN ACTION AFFECTING~~  
 31 ~~COMPENSATION, APPOINTMENT, PROMOTION, TRANSFER, ASSIGNMENT,~~  
 32 ~~REASSIGNMENT, REINSTATEMENT, OR EVALUATION OF PERFORMANCE OF AN~~  
 33 ~~EMPLOYEE.~~

34 ~~(E)~~ (D) "SUPERVISOR" MEANS ANY INDIVIDUAL WITHIN AN EMPLOYER'S  
 35 ORGANIZATION WHO HAS THE AUTHORITY TO DIRECT AND CONTROL THE WORK  
 36 PERFORMANCE OF AN EMPLOYEE, OR WHO HAS MANAGERIAL AUTHORITY TO TAKE

1 CORRECTIVE ACTION REGARDING THE VIOLATION OF A LAW, RULE, OR REGULATION  
2 OF WHICH THE EMPLOYEE COMPLAINS.

3 1-402.

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

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

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

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

15 1-403.

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

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

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

24 (3) BEFORE REPORTING TO THE BOARD, THE EMPLOYEE HAS REPORTED  
25 THE ACTIVITY, POLICY, OR PRACTICE TO A SUPERVISOR OR ADMINISTRATOR OF THE  
26 EMPLOYER IN WRITING AND AFFORDED THE EMPLOYER A REASONABLE  
27 OPPORTUNITY TO CORRECT THE ACTIVITY, POLICY, OR PRACTICE.

28 1-404.

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

32 (1) THE ALLEGED ~~RETALIATORY PERSONNEL ACTION~~ VIOLATION  
33 OCCURRED;

34 (2) THE EMPLOYEE RESIDES; OR

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

1 (B) THE ACTION SHALL BE BROUGHT WITHIN 1 YEAR AFTER THE ALLEGED  
2 ~~RETALIATORY PERSONNEL ACTION WAS TAKEN~~ VIOLATION OF § 1-402 OF THIS  
3 SUBTITLE OCCURRED, OR WITHIN 1 YEAR AFTER THE EMPLOYEE FIRST BECAME  
4 AWARE OF THE ALLEGED ~~RETALIATORY PERSONNEL ACTION~~ VIOLATION OF §1-402  
5 OF THIS SUBTITLE.

6 1-405.

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

8 (1) ISSUE AN INJUNCTION TO RESTRAIN CONTINUED VIOLATION OF  
9 THIS SUBTITLE;

10 (2) REINSTATE THE EMPLOYEE TO THE SAME, OR AN EQUIVALENT  
11 POSITION HELD BEFORE THE ~~RETALIATORY PERSONNEL ACTION~~ VIOLATION OF §  
12 1-402 OF THIS SUBTITLE;

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

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

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

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

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

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

25 1-406.

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

29 ~~1-407.~~

30 ~~A CIVIL ACTION UNDER THIS SUBTITLE SHALL BE DEEMED A WAIVER OF THE~~  
31 ~~RIGHTS AND REMEDIES AVAILABLE UNDER ANY OTHER CONTRACT, COLLECTIVE~~  
32 ~~BARGAINING AGREEMENT, LAW, RULE, REGULATION, OR UNDER THE COMMON LAW~~  
33 ~~WITH RESPECT TO PROTECTION AGAINST EMPLOYER DISCRIMINATION OR~~  
34 ~~RETALIATION FOR EMPLOYEE DISCLOSURE OF UNLAWFUL BEHAVIOR OR~~  
35 ~~PARTICIPATION IN UNLAWFUL BEHAVIOR BY THE EMPLOYER.~~

1 ~~Article—State Personnel and Pensions~~2 ~~5-301.~~

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

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