

HOUSE BILL 1187

E4

5lr2735

By: **Delegates Carter and Anderson**

Introduced and read first time: February 23, 2015

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Law Enforcement Officers – Whistleblower Protections**

3 FOR the purpose of prohibiting a supervisor, an appointing authority, and the head of a
4 certain law enforcement agency from threatening or taking certain retaliatory
5 actions against a certain law enforcement officer who discloses certain information
6 or seeks a certain remedy; providing that the protections afforded under this Act
7 apply to certain disclosures only under certain circumstances; requiring a law
8 enforcement agency to provide certain law enforcement officers a copy of this Act
9 under certain circumstances; authorizing a certain law enforcement officer to file a
10 civil action against a certain law enforcement agency for certain relief; authorizing
11 the law enforcement officer to seek certain statutory damages instead of certain
12 relief; providing that, under certain circumstances, the law enforcement agency has
13 the burden of proving by clear and convincing evidence that certain personnel actions
14 would have occurred despite a certain disclosure; requiring the trier of fact to
15 consider certain factors in awarding certain statutory damages; authorizing the
16 court to award certain relief and damages to the law enforcement officer under
17 certain circumstances; requiring the court to issue a certain injunction under certain
18 circumstances; authorizing a court to award certain attorney's fees and litigation
19 expenses to a law enforcement agency under certain circumstances; providing that
20 this Act may not be construed to diminish certain rights, privileges, or remedies;
21 requiring the Attorney General to take certain actions for certain purposes;
22 providing that this Act does not preclude certain actions or prohibit certain personnel
23 actions; providing for the application of this Act; defining certain terms; and
24 generally relating to protections for disclosures of information by law enforcement
25 officers.

26 BY adding to

27 Article – Public Safety

28 Section 3–801 through 3–806 to be under the new subtitle “Subtitle 8. Whistleblower
29 Protections”

30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2011 Replacement Volume and 2014 Supplement)

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

Article – Public Safety

SUBTITLE 8. WHISTLEBLOWER PROTECTIONS.

3–801.

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

(B) “LAW ENFORCEMENT OFFICER” HAS THE MEANING STATED IN § 3–101 OF THIS TITLE.

(C) “RETALIATORY ACTION” INCLUDES ANY RECOMMENDED, THREATENED, OR ACTUAL ADVERSE EMPLOYMENT ACTION, INCLUDING:

(1) TERMINATION, DEMOTION, SUSPENSION, OR REPRIMAND;

(2) INVOLUNTARY TRANSFER, REASSIGNMENT, OR DETAIL TO AN ASSIGNMENT THAT A REASONABLE LAW ENFORCEMENT OFFICER WOULD FIND LESS FAVORABLE;

(3) FAILURE TO PROMOTE, HIRE, OR TAKE OTHER FAVORABLE PERSONNEL ACTION;

(4) ENGAGING IN ANY CONDUCT THAT WOULD DISSUADE A REASONABLE LAW ENFORCEMENT OFFICER FROM ENGAGING IN ACTIVITIES PROTECTED UNDER THIS SUBTITLE; OR

(5) RETALIATING IN ANY OTHER MANNER AGAINST A LAW ENFORCEMENT OFFICER BECAUSE THE LAW ENFORCEMENT OFFICER MAKES A DISCLOSURE PROTECTED UNDER THIS SUBTITLE.

3–802.

(A) THIS SUBTITLE DOES NOT PRECLUDE AN ACTION FOR DEFAMATION OR INVASION OF PRIVACY.

(B) THIS SUBTITLE DOES NOT PROHIBIT A PERSONNEL ACTION THAT WOULD HAVE BEEN TAKEN REGARDLESS OF A DISCLOSURE OF INFORMATION.

1 **3-803.**

2 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A SUPERVISOR, AN
3 APPOINTING AUTHORITY, OR THE HEAD OF A LAW ENFORCEMENT AGENCY MAY NOT
4 THREATEN OR TAKE A RETALIATORY ACTION AGAINST A LAW ENFORCEMENT
5 OFFICER WHO:

6 (1) DISCLOSES INFORMATION THAT THE LAW ENFORCEMENT
7 OFFICER REASONABLY BELIEVES EVIDENCES:

8 (I) AN ABUSE OF AUTHORITY, GROSS MISMANAGEMENT, OR A
9 GROSS WASTE OF MONEY;

10 (II) A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH
11 OR SAFETY; OR

12 (III) A VIOLATION OF LAW; OR

13 (2) FOLLOWING A DISCLOSURE UNDER ITEM (1) OF THIS SUBSECTION,
14 SEEKS A REMEDY PROVIDED UNDER THIS SUBTITLE OR ANY OTHER LAW OR POLICY
15 GOVERNING THE LAW ENFORCEMENT AGENCY.

16 (B) SUBSECTION (A) OF THIS SECTION APPLIES TO A DISCLOSURE THAT IS
17 OTHERWISE PROHIBITED BY LAW OR A DISCLOSURE OF INFORMATION THAT IS
18 CONFIDENTIAL BY LAW ONLY IF THE DISCLOSURE:

19 (1) IS MADE EXCLUSIVELY TO THE ATTORNEY GENERAL;

20 (2) IS IN WRITING; AND

21 (3) CONTAINS:

22 (I) THE DATE OF THE DISCLOSURE;

23 (II) THE NAME OF THE LAW ENFORCEMENT OFFICER MAKING
24 THE DISCLOSURE;

25 (III) THE NATURE OF THE ALLEGED VIOLATION OF LAW, ABUSE
26 OF AUTHORITY, MISMANAGEMENT, WASTE OF MONEY, OR DANGER; AND

1 (IV) IF POSSIBLE, THE DATE OR RANGE OF DATES ON WHICH THE
2 ALLEGED VIOLATION OF LAW, ABUSE OF AUTHORITY, MISMANAGEMENT, WASTE OF
3 MONEY, OR DANGER OCCURRED.

4 **3-804.**

5 (A) ON REQUEST OF A LAW ENFORCEMENT OFFICER, THE LAW
6 ENFORCEMENT AGENCY SHALL PROVIDE THE LAW ENFORCEMENT OFFICER A COPY
7 OF THIS SUBTITLE.

8 (B) IF A LAW ENFORCEMENT OFFICER ALLEGES THAT A RETALIATORY
9 ACTION HAS OCCURRED, THE LAW ENFORCEMENT AGENCY SHALL PROVIDE THE LAW
10 ENFORCEMENT OFFICER WHO IS SUBJECT TO THE ALLEGED RETALIATORY ACTION
11 A COPY OF THIS SUBTITLE.

12 **3-805.**

13 (A) A LAW ENFORCEMENT OFFICER AGGRIEVED BY A VIOLATION OF § 3-803
14 OF THIS SUBTITLE MAY BRING A CIVIL ACTION AGAINST THE LAW ENFORCEMENT
15 AGENCY FOR EQUITABLE RELIEF OR DAMAGES.

16 (B) IN A CIVIL ACTION BROUGHT UNDER SUBSECTION (A) OF THIS SECTION,
17 IF THE LAW ENFORCEMENT OFFICER DEMONSTRATES BY A PREPONDERANCE OF
18 THE EVIDENCE THAT THE DISCLOSURE OF INFORMATION WAS A CONTRIBUTING
19 FACTOR IN THE ALLEGED RETALIATORY ACTION AGAINST THE LAW ENFORCEMENT
20 OFFICER, THE LAW ENFORCEMENT AGENCY HAS THE BURDEN OF PROVING BY
21 CLEAR AND CONVINCING EVIDENCE THAT THE PERSONNEL ACTION WOULD HAVE
22 OCCURRED FOR LEGITIMATE REASONS EVEN IF THE LAW ENFORCEMENT OFFICER
23 HAD NOT MADE THE DISCLOSURE.

24 (C) (1) IN A CIVIL ACTION BROUGHT UNDER SUBSECTION (A) OF THIS
25 SECTION, AN EMPLOYEE MAY SEEK, INSTEAD OF REINSTATEMENT AND BACK PAY,
26 STATUTORY DAMAGES IN THE AMOUNT OF NOT LESS THAN \$5,000 FOR EACH
27 INSTANCE OF RETALIATORY ACTION.

28 (2) IN AWARDING STATUTORY DAMAGES UNDER PARAGRAPH (1) OF
29 THIS SUBSECTION, THE TRIER OF FACT SHALL CONSIDER THE SEVERITY OF THE
30 PROHIBITED RETALIATORY ACTION AND THE PURPOSES OF THIS SUBTITLE.

31 (D) IF THE TRIER OF FACT DETERMINES THAT THE LAW ENFORCEMENT
32 OFFICER IS ENTITLED TO EQUITABLE RELIEF OR DAMAGES IN A CIVIL ACTION
33 BROUGHT UNDER THIS SECTION, THE COURT MAY:

1 **(1) ORDER THE REMOVAL OF ANY RELATED DETRIMENTAL**
2 **INFORMATION FROM THE LAW ENFORCEMENT OFFICER'S PERSONNEL RECORDS;**

3 **(2) (I) ORDER THE LAW ENFORCEMENT AGENCY TO REINSTATE**
4 **THE LAW ENFORCEMENT OFFICER TO THE SAME OR EQUIVALENT EMPLOYMENT**
5 **WITH ANY APPLICABLE BENEFITS AND SENIORITY RIGHTS; OR**

6 **(II) AWARD THE LAW ENFORCEMENT OFFICER STATUTORY**
7 **DAMAGES UNDER SUBSECTION (C) OF THIS SECTION; AND**

8 **(3) AWARD THE LAW ENFORCEMENT OFFICER:**

9 **(I) COMPENSATION FOR ALL LOST REMUNERATION; AND**

10 **(II) REASONABLE ATTORNEY'S FEES AND COSTS.**

11 **(E) IN ADDITION TO THE RELIEF GRANTED UNDER SUBSECTION (D) OF THIS**
12 **SECTION, THE COURT SHALL ISSUE AGAINST THE LAW ENFORCEMENT AGENCY AN**
13 **INJUNCTION AGAINST ANY CONTINUING VIOLATIONS OF THIS SUBTITLE.**

14 **(F) IF THE COURT DETERMINES THAT A CIVIL ACTION UNDER SUBSECTION**
15 **(A) OF THIS SECTION WAS BROUGHT BY A LAW ENFORCEMENT OFFICER IN BAD FAITH**
16 **OR WITHOUT SUBSTANTIAL JUSTIFICATION, THE COURT MAY AWARD REASONABLE**
17 **ATTORNEY'S FEES AND OTHER LITIGATION EXPENSES TO THE LAW ENFORCEMENT**
18 **AGENCY.**

19 **(G) THIS SECTION MAY NOT BE CONSTRUED TO DIMINISH THE RIGHTS,**
20 **PRIVILEGES, OR REMEDIES OF A LAW ENFORCEMENT OFFICER PROVIDED UNDER**
21 **ANY FEDERAL, STATE, OR LOCAL LAW OR UNDER A COLLECTIVE BARGAINING**
22 **AGREEMENT.**

23 **3-806.**

24 **FOR PURPOSES OF THIS SUBTITLE, THE ATTORNEY GENERAL SHALL:**

25 **(1) DESIGNATE AN ASSISTANT ATTORNEY GENERAL TO RECEIVE**
26 **FROM LAW ENFORCEMENT OFFICERS ANY INFORMATION THE DISCLOSURE OF**
27 **WHICH IS OTHERWISE PROTECTED BY LAW;**

28 **(2) INVESTIGATE EACH ALLEGATION OF ILLEGALITY OR**
29 **IMPROPRIETY; AND**

30 **(3) TAKE APPROPRIATE LEGAL ACTION.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
2 apply only prospectively and may not be applied or interpreted to have any effect on or
3 application to any cause of action arising before the effective date of this Act.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2015.