

# HOUSE BILL 221

E4  
HB 1187/15 – JUD

6lr0310

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By: **Delegates Carter, Conaway, Glenn, B. Robinson, and C. Wilson**

Introduced and read first time: January 22, 2016

Assigned to: Judiciary

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## 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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2011 Replacement Volume and 2015 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 (C) IN A CIVIL ACTION BROUGHT AGAINST A LAW ENFORCEMENT AGENCY IN  
13 ACCORDANCE WITH § 3-805 OF THIS SUBTITLE, A LAW ENFORCEMENT OFFICER  
14 AGGRIEVED BY A VIOLATION OF THIS SECTION MAY BE AWARDED DAMAGES IN THE  
15 AMOUNT OF \$5,000 FOR EACH VIOLATION OF THIS SECTION.

16 **3-805.**

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

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

28 (C) (1) IN A CIVIL ACTION BROUGHT UNDER SUBSECTION (A) OF THIS  
29 SECTION, THE LAW ENFORCEMENT OFFICER MAY SEEK, INSTEAD OF  
30 REINSTATEMENT AND BACK PAY, STATUTORY DAMAGES IN THE AMOUNT OF NOT  
31 LESS THAN \$5,000 FOR EACH INSTANCE OF RETALIATORY ACTION.

32 (2) IN AWARDED STATUTORY DAMAGES UNDER PARAGRAPH (1) OF  
33 THIS SUBSECTION, THE TRIER OF FACT SHALL CONSIDER THE SEVERITY OF THE  
34 PROHIBITED RETALIATORY ACTION AND THE PURPOSES OF THIS SUBTITLE.

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

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

6 (2) (I) ORDER THE LAW ENFORCEMENT AGENCY TO REINSTATE  
7 THE LAW ENFORCEMENT OFFICER TO THE SAME OR EQUIVALENT EMPLOYMENT  
8 WITH ANY APPLICABLE BENEFITS AND SENIORITY RIGHTS; OR

9 (II) AWARD THE LAW ENFORCEMENT OFFICER STATUTORY  
10 DAMAGES UNDER SUBSECTION (C) OF THIS SECTION; AND

11 (3) AWARD THE LAW ENFORCEMENT OFFICER:

12 (I) COMPENSATION FOR ALL LOST REMUNERATION; AND

13 (II) REASONABLE ATTORNEY'S FEES AND COSTS.

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

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

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

26 **3-806.**

27 FOR PURPOSES OF THIS SUBTITLE, THE ATTORNEY GENERAL SHALL:

28 (1) DESIGNATE AN ASSISTANT ATTORNEY GENERAL TO RECEIVE  
29 FROM LAW ENFORCEMENT OFFICERS ANY INFORMATION THE DISCLOSURE OF  
30 WHICH IS OTHERWISE PROTECTED BY LAW;

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

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

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

7           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2016.