



## THE MARYLAND HOUSE OF DELEGATES ANNAPOLIS, MARYLAND 21401

January 31, 2023

### **HB112 State Personnel - Whistleblower Law - Procedures and Remedies (First Amendment and Public Employee Protection Act)**

Good afternoon Mr. Chair, Mr. Vice Chair, and members of the Appropriations Committee. Thank you for the opportunity to speak to you about House Bill 112.

In 1778, the Continental Congress passed what is widely considered the first whistleblower protection law in the world after a group of ten sailors and marines risked their military careers to file a complaint against their commanding officer after documenting his wrongdoings below the deck of the USS Warren.<sup>1</sup> Eighty-five years later, in 1863, Congress further strengthened whistleblower protections by passing the False Claims Act (FCA), which is still used today in whistleblower litigation suits.

Otherwise known as Lincoln's Law, the FCA was enacted during the American Civil War to address widespread fraud committed by contractors who sold the Union Army sawdust instead of gunpowder, horses and mules known to be in poor health, and faulty firearms and ammunition.<sup>2</sup>

In the 21st Century, fraud and employer wrongdoings are still alive and well. In a 2018 survey conducted by the Ethics & Compliance Initiative, a best practice community of three nonprofit organizations, 69% of employees had reported workplace misconduct they had observed. In the same survey, 44% who reported workplace misconduct suffered retaliation, 72% of which experienced the retaliation within the first three weeks of their initial report.<sup>3</sup> A 2019 survey concluded that, nearly 45% of employees worldwide had observed at least one type of misconduct, with 34% not reporting any of the incidents observed.<sup>4</sup>

Currently, Federal whistleblower protection laws protect a wider scope of employees and a wider span of disclosures than Maryland's laws, with the FCA still being one of the primary tools used. Maryland's whistleblower protection laws are not as effective as they need to be, and are only for people in certain jobs, for people working for specific employers, or for people reporting certain kinds of misconduct. For example, the Health Care Worker Whistleblower Protection Act protects licensed or board-certified health care workers, but excludes State employees.<sup>5</sup> Maryland has fallen behind in protecting our communities.

In order to prioritize accountability, transparency, and trust in our state and state departments, it is imperative to protect our own state employees who have knowledge of wrongdoings that can and have harmed Marylanders. House Bill 112 expands the scope of employees protected by Maryland's whistleblowing laws, broadens the prohibited retaliatory actions taken by employers against whistleblowers, provides an opportunity for the employer to resolve the complaint(s) made by an employee, and if resolution is not reached, provides that the Office of the Attorney General shall investigate the complaints.

Most whistleblowers do not come forward even when they have observed misconduct. This bill ensures our state employees are protected against retaliation for speaking out on wrongdoings so that we can all be better-informed as Marylanders. Whistleblowing protection is built into the foundation of the American experiment. We all deserve a more detailed insight into our state, better communication, and more trust.

I respectfully request a favorable report on House Bill 112.

1 <https://www.history.com/news/whistleblowers-law-founding-fathers>;

<https://constantinecannon.com/whistleblower/whistleblower-insider-blog/the-first-whistleblower-protection-law/>

2 [https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS\\_FCA\\_Primer.pdf](https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf)

3 Ethics & Compliance Initiative, The State of Ethics & Compliance in the Workplace, March 2018, available upon request at [www.ethics.org](http://www.ethics.org)

4 <https://www.ethics.org/wp-content/uploads/2019-ECI-GBES-Workplace-Misconduct-and-Reporting.pdf>

5 Md. Code, Health Occupations Title 1, Subtitle 5. § 1-501. Definitions ( c )(2)