

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 741

Representatives Cera, Clyde

**Cosponsors: Representatives Antonio, Ramos, Holmes, Patterson, Ingram,
Leland, Lepore-Hagan, Howse, Smith, K., Kelly, Sykes, Boyd, Miller, Ashford,
Fedor, Sheehy, Rogers**

A BILL

To amend sections 124.341, 4113.51, 4113.52, and 1
4925.10 of the Revised Code to revise Ohio's 2
whistleblower protection laws. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 124.341, 4113.51, 4113.52, and 4
4925.10 of the Revised Code be amended to read as follows: 5

Sec. 124.341. (A) ~~If an~~ (1) An employee in the classified 6
or unclassified civil service ~~becomes aware in the course of~~ 7
~~employment of a~~ may report, verbally or in writing, the 8
employee's reasonable belief of any of the following: 9

(a) A violation of a state or federal ~~statutes~~ statute, 10
~~rules~~ rule, or ~~regulations~~ regulation, or the misuse of public 11
resources, if the employee becomes aware of the violation or 12
misuse in the course of employment and the employee's supervisor 13
or appointing authority has authority to correct the violation 14
or misuse, ~~the employee may file a written report identifying~~ 15
~~the violation or misuse with the supervisor or appointing~~ 16

~~authority. In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a written report with the office of internal audit created under section 126.45 of the Revised Code or file a complaint with the auditor of state's fraud reporting system under section 117.103 of the Revised Code.~~ 17
18
19
20
21
22

~~If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report or complaint with the supervisor, appointing authority, the office of internal audit, or the auditor of state's fraud reporting system, may report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission or a prosecuting attorney, law enforcement agency, or regulatory agency has authority to correct, remedy, or prosecute the violation or misuse;~~ 23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

(b) An act of any person to aid, abet, incite, compel, or coerce the doing of any act that violates a state or federal statute, rule, or regulation, or to obstruct or prevent any person from complying with a state or federal statute, rule, or regulation, or to attempt directly or indirectly to commit a violation of a state or federal statute, rule, or regulation; 41
42
43
44
45
46

(c) An act that constitutes fraud against the state, 47
federal government, the public, or another employee; 48

(d) Misappropriation of state or federal resources; 49

(e) An act that poses a risk to the health and safety of 50
the public or other employees; 51

(f) An act constituting waste of state or federal funds, 52
abuse of authority, or gross mismanagement of a program. 53

(2) An employee in the classified or unclassified civil 54
service may refuse to participate in either of the following: 55

(a) A violation of a state or federal statute, rule, or 56
regulation or written policy or procedure; 57

(b) Any activity that poses an unreasonable risk of harm 58
to the health or safety of the employee, other employees, or the 59
public. 60

(B) Except as otherwise provided in division ~~(C)~~(D) of 61
this section, no officer or employee in the classified or 62
unclassified civil service shall take any disciplinary or 63
retaliatory action against an employee in the classified or 64
unclassified civil service for ~~making~~doing either of the 65
following: 66

(1) Making, attempting to make, or preparing to make any 67
report ~~or filing a complaint as~~ authorized by division (A) (1) of 68
this section, ~~including;~~ 69

(2) Refusing to participate in activities under division 70
(A) (2) of this section. 71

(C) For purposes of this section, disciplinary or 72
retaliatory action includes, without limitation, recommending or 73

doing any of the following:	74
(1) Removing or suspending the employee from employment;	75
(2) Withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled;	76 77
(3) Transferring or reassigning the employee;	78
(4) Denying the employee promotion that otherwise would have been received;	79 80
(5) Reducing the employee in pay or position;	81
<u>(6) Disciplining the employee;</u>	82
<u>(7) Threatening the employee;</u>	83
<u>(8) Otherwise discriminating against the employee.</u>	84
(C) <u>(D)</u> An employee in the classified or unclassified civil service shall make a reasonable effort to determine the accuracy of any information reported under division (A) of this section. The employee is subject to disciplinary action, including suspension or removal, as determined by the employee's appointing authority, for purposely, knowingly, or recklessly reporting false information under division (A) of this section.	85 86 87 88 89 90 91
(D) If an appointing authority takes any disciplinary or retaliatory action against a classified or unclassified employee as a result of the employee's having filed a report or complaint under division (A) of this section, the employee's sole and exclusive remedy, notwithstanding any other provision of law, is to file an appeal with the state personnel board of review within thirty days after receiving actual notice of the appointing authority's action. If the employee files such an appeal, the board shall immediately notify the employee's	92 93 94 95 96 97 98 99 100

~~appointing authority and shall hear the appeal. The board may~~ 101
~~affirm or disaffirm the action of the appointing authority or~~ 102
~~may issue any other order as is appropriate. The order of the~~ 103
~~board is appealable in accordance with Chapter 119. of the~~ 104
~~Revised Code.~~ 105

(E) An employee injured by a violation of division (B) of 106
this section may file a civil action in a court of competent 107
jurisdiction against the person or agency who committed the 108
violation for any legal or equitable relief that will effectuate 109
the employee's rights within one year after the alleged 110
violation occurred. If the employee prevails in the action, the 111
court shall award the employee costs and reasonable attorney's 112
fees. 113

(F) If a court determines that a violation of division (B) 114
of this section was willful or malicious, involved a criminal 115
violation, or an effort to obtain personal gain, the court may 116
award the employee damages up to three times the amount of 117
actual damages. 118

(G) Remedies under this section are not exclusive of other 119
available remedies. Nothing in this section prevents an employee 120
from bringing a civil action under section 4113.52 of the 121
Revised Code. 122

(H) As used in this section: 123

~~(1) "Purposely," "purposely," "knowingly," and~~ 124
~~"recklessly" have the same meanings as in section 2901.22 of the~~ 125
~~Revised Code.~~ 126

~~(2) "Appropriate ethics commission" has the same meaning~~ 127
~~as in section 102.01 of the Revised Code.~~ 128

~~(3) "Inspector general" means the inspector general~~ 129

appointed under section 121.48 of the Revised Code.	130
Sec. 4113.51. As used in sections 4113.51 to 4113.53 of	131
the Revised Code:	132
(A) "Employee" means any person who performs a service for	133
wages or other remuneration for an employer.	134
(B) "Employer" means any person who has one or more	135
employees. "Employer" includes an agent of an employer, the	136
state or any agency or instrumentality of the state, and any	137
municipal corporation, county, township, school district, or	138
other political subdivision or any agency or instrumentality	139
thereof.	140
(C) "Person" has the same meaning as in section 1.59 of	141
the Revised Code and also includes a public agency or any other	142
legal entity.	143
(D) "Peace officer" has the same meaning as in section	144
2935.01 of the Revised Code.	145
(E) "Political subdivision" has the same meaning as in	146
division (F) of section 2744.01 of the Revised Code.	147
(F) "Prosecuting authority" means the prosecuting attorney	148
of a county or the director of law, village solicitor, or	149
similar chief legal officer of a municipal corporation.	150
(G) "Inspector general" means the inspector general	151
appointed under section 121.48 of the Revised Code.	152
<u>(E) "Illegal activities" means activities that are in</u>	153
<u>violation of the criminal or civil code of this state or the</u>	154
<u>United States or any regulation intended to protect the public</u>	155
<u>health, safety, or welfare.</u>	156

Sec. 4113.52. ~~"(A)(1)(a) If an employee becomes aware in~~ 157
~~the course of the employee's employment of an act the employee~~ 158
~~reasonably believes is a violation by the employee's employer, a~~ 159
~~fellow employee, or any other person directly or indirectly~~ 160
~~under the employer's direction, control, or supervision of any~~ 161
~~state or federal statute, rule, or regulation or any ordinance~~ 162
~~or regulation of a political subdivision ~~that the employee's~~~~ 163
~~employer has authority to correct, and the employee reasonably~~ 164
~~believes that the violation is a criminal offense that is likely~~ 165
~~to cause an imminent risk of physical harm to persons or a~~ 166
~~hazard to public health or safety, a felony, or an improper~~ 167
~~solicitation for a contribution, the employee may report the~~ 168
~~violation, orally shall notify the employee's supervisor or~~ 169
~~other responsible officer of or in writing, to the employee's~~ 170
~~employer of the violation and subsequently shall file with that~~ 171
~~supervisor or officer a written report that provides sufficient~~ 172
~~detail to identify and describe the violation. If the employer~~ 173
~~does not correct the violation or make a reasonable and good~~ 174
~~faith effort to correct the violation within twenty four hours~~ 175
~~after the oral notification or the receipt of the report,~~ 176
~~whichever is earlier, the employee may file a written report~~ 177
~~that provides sufficient detail to identify and describe the~~ 178
~~violation with the prosecuting authority of the county or~~ 179
~~municipal corporation where the violation occurred, with a peace~~ 180
~~officer, with the inspector general if the violation is within~~ 181
~~the inspector general's jurisdiction, or with any other~~ 182
~~appropriate public official or agency that has regulatory~~ 183
~~authority over the employer and the industry, trade, or business~~ 184
~~in which the employer is engaged, an appropriate prosecuting~~ 185
~~attorney, law enforcement agency, or regulatory agency with the~~ 186
~~authority to investigate, correct, remedy, or prosecute the~~ 187
~~violation, or both.~~ 188

~~(b) If an employee makes a report to the employee's
employer under this division ~~(A) (1) (a) of this section,~~ the
employer, within twenty-four hours after the ~~oral notification~~
~~was made or the~~ report was received or by the close of business
on the next regular business day following the day on which ~~the~~
~~oral notification was made or the~~ report was received, whichever
is later, shall notify the employee, in writing, of any effort
of the employer to correct the alleged violation or hazard or of
the absence of the alleged violation or hazard.~~

~~(2) If an employee becomes aware in the course of the
employee's employment of a violation of chapter 3704., 3734.,
6109., or 6111. of the Revised Code that is a criminal offense,
the employee directly may notify, either orally or in writing,
any appropriate public official or agency that has regulatory
authority over the employer and the industry, trade, or business
in which the employer is engaged.~~

~~(3) If an employee becomes aware in the course of the
employee's employment of a violation by a fellow employee of any
state or federal statute, any ordinance or regulation of a
political subdivision, or any work rule or company policy of the
employee's employer and the employee reasonably believes that
the violation is a criminal offense that is likely to cause an
imminent risk of physical harm to persons or a hazard to public
health or safety, a felony, or an improper solicitation for a
contribution, the employee orally shall notify the employee's
supervisor or other responsible officer of the employee's
employer of the violation and subsequently shall file with that
supervisor or officer a written report that provides sufficient
detail to identify and describe the violation.~~

(B) Except as otherwise provided in division ~~(C)~~ (D) of 218

this section, no employer shall take any disciplinary or 219
retaliatory action against an employee for ~~making~~ doing any of 220
the following: 221

(1) Making any report authorized by division (A) ~~(1) or (2)~~ 222
of this section, ~~or as a result of the employee's having made;~~ 223

(2) Refusing to participate in activities the employee 224
reasonably believes are illegal activities; 225

(3) Making any inquiry or ~~taken~~ taking any other action to 226
ensure the accuracy of any information ~~reported under either~~ 227
~~such division.~~ 228

~~No employer shall take any disciplinary or retaliatory~~ 229
~~action against an employee for making any report authorized by~~ 230
~~division (A) (3) of this section if the employee made a~~ 231
~~reasonable and good faith effort to determine the accuracy of~~ 232
~~any information so reported, or as a result of the employee's~~ 233
~~having made any inquiry or taken any other action to ensure the~~ 234
~~accuracy of any information reported under that division related~~ 235
~~to activities protected under this division.~~ 236

(C) For purposes of this ~~division section,~~ disciplinary or 237
retaliatory action by the employer includes, without limitation, 238
~~recommending or~~ doing any of the following: 239

(1) Removing or suspending the employee from employment; 240

(2) Withholding from the employee salary increases or 241
employee benefits to which the employee is otherwise entitled; 242

(3) Transferring or reassigning the employee; 243

(4) Denying the employee a promotion that otherwise would 244
have been received; 245

(5) Reducing the employee in pay or position;	246
<u>(6) Disciplining the employee;</u>	247
<u>(7) Threatening the employee;</u>	248
<u>(8) Otherwise discriminating against the employee.</u>	249
(C) (D) An employee shall make a reasonable and good faith effort to determine the accuracy of any information reported under division (A) (1) or (2) of this section. If the employee who makes a report under either division fails to make such an effort, the employee may be subject to disciplinary action by the employee's employer, including suspension or removal, for reporting information without a reasonable basis to do so under division (A) (1) or (2) of this section.	250 251 252 253 254 255 256 257
(D) (E) If an employer takes any disciplinary or retaliatory action against an employee as a result of the employee's having filed a report under <u>violates</u> division (A) (B) of this section, the employee <u>against whom the disciplinary or retaliatory action was taken</u> may bring a civil action for <u>appropriate injunctive any legal or equitable relief</u> or for the remedies set forth in division (E) of this section, or both, <u>that will effectuate the employee's rights</u> within one hundred eighty days <u>year</u> after the date the disciplinary or retaliatory action was taken, in a court of common pleas in accordance with the Rules of Civil Procedure. <u>A civil action under this division is not available to an employee as a remedy for any disciplinary or retaliatory action taken by an appointing authority against the employee as a result of the employee's having filed a report under division (A) of section 124.341 of the Revised Code.</u>	258 259 260 261 262 263 264 265 266 267 268 269 270 271 272
(E) The court, in rendering a judgment for the employee in an action brought pursuant to division (D) of this section, may	273 274

~~order, as it determines appropriate, reinstatement of the~~ 275
~~employee to the same position that the employee held at the time~~ 276
~~of the disciplinary or retaliatory action and at the same site~~ 277
~~of employment or to a comparable position at that site, the~~ 278
~~payment of back wages, full reinstatement of fringe benefits and~~ 279
~~seniority rights, or any combination of these remedies.~~ 280

~~The court also may award the prevailing party all or a~~ 281
~~portion of the costs of litigation and, if the employee who~~ 282
~~brought the action prevails in the action, may award the~~ 283
~~prevailing employee reasonable attorney's fees, witness fees,~~ 284
~~and fees for experts who testify at trial, in an amount the~~ 285
~~court determines appropriate. If the court determines that an~~ 286
~~employer deliberately has violated division (B) of this section,~~ 287
~~the court, in making an award of back pay, may include interest~~ 288
~~at the rate specified in section 1343.03 of the Revised Code.~~ 289

~~(F) Any report filed with the inspector general under this~~ 290
~~section shall be filed as a complaint in accordance with section~~ 291
~~121.46 of the Revised Code.~~ 292

~~(G) If the employee prevails in the action, the court~~ 293
~~shall award the employee costs and reasonable attorney's fees.~~ 294

~~(F) Remedies under this section are not exclusive of other~~ 295
~~available remedies. Nothing in this section prevents an employee~~ 296
~~who brings an action under this section from bringing a civil~~ 297
~~action under section 124.341 of the Revised Code.~~ 298

~~As used in this section:~~ 299

~~(1) "Contribution" has the same meaning as in section~~ 300
~~3517.01 of the Revised Code.~~ 301

~~(2) "Improper solicitation for a contribution" means a~~ 302
~~solicitation for a contribution that satisfies all of the~~ 303

following: 304

~~(a) The solicitation violates division (B), (C), or (D) of section 3517.092 of the Revised Code;~~ 305
306

~~(b) The solicitation is made in person by a public official or by an employee who has a supervisory role within the public office;~~ 307
308
309

~~(c) The public official or employee knowingly made the solicitation, and the solicitation violates division (B), (C), or (D) of section 3517.092 of the Revised Code;~~ 310
311
312

~~(d) The employee reporting the solicitation is an employee of the same public office as the public official or the employee with the supervisory role who is making the solicitation.~~ 313
314
315

Sec. 4925.10. (A) Chapters 4111., 4121., 4123., 4141., and sections 4113.15 and 4113.16 of the Revised Code do not apply to transportation network companies with regard to transportation network company drivers and transportation network company drivers are not employees for purposes of those chapters or sections, except where agreed to by written contract. If the parties agree to the application of one or more of these laws in a written contract, the transportation network company shall notify the appropriate agency of the election to cover the driver. If the parties subsequently change this election, the transportation network company shall notify the appropriate agency of the change. 316
317
318
319
320
321
322
323
324
325
326
327

(B) Except where agreed to by written contract, a transportation network company driver is not an agent of a transportation network company. 328
329
330

(C) A driver may bring an action and recover under section 4113.52 of the Revised Code if a transportation network company 331
332

has discontinued or otherwise removed the driver's access to the 333
transportation network company's digital network because of the 334
driver making a report under that section. ~~If a driver brings an~~ 335
~~action under that section, the driver shall comply with the~~ 336
~~procedures for employees established in that section to receive~~ 337
~~the relief and remedies listed in division (E) of that section.~~ 338

A driver is not an employee for purposes of sections 339
4113.51 and 4113.52 of the Revised Code. Nothing in this 340
division shall be construed to create an employer and employee 341
relationship between a transportation network company driver and 342
a transportation network company. 343

Section 2. That existing sections 124.341, 4113.51, 344
4113.52, and 4925.10 of the Revised Code are hereby repealed. 345