

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 292

*An Act to amend and reenact §§ 2.2-3009, 2.2-3010, 2.2-3010.1, 2.2-3012, and 2.2-3014 of the Code of Virginia, relating to the Fraud and Abuse Whistle Blower Protection Act; applicability to local governmental entities.*

[H 821]

Approved March 7, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3009, 2.2-3010, 2.2-3010.1, 2.2-3012, and 2.2-3014 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-3009. Policy.**

It shall be the policy of the Commonwealth that citizens of the Commonwealth and employees of ~~state government~~ *governmental agencies* be freely able to report instances of wrongdoing or abuse committed by ~~state~~ *governmental agencies* or independent contractors of ~~state~~ *governmental agencies*.

**§ 2.2-3010. Definitions.**

As used in this chapter:

"Abuse" means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.

"Appropriate authority" means a federal ~~or~~, state, *or local* agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse; or a member, officer, agent, representative, or supervisory employee of the agency or organization. The term also includes the Office of the Attorney General, the Office of the State Inspector General, and the General Assembly and its committees having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse.

"Employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of and whose compensation is payable, no more often than biweekly, in whole or in part, by a ~~state~~ *governmental agency*.

"Employer" means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the ~~state~~ *governmental agency*.

"Good faith report" means a report of conduct defined in this chapter as wrongdoing or abuse ~~which that~~ is made without malice and ~~which that~~ the person making the report has reasonable cause to believe is true.

"Governmental agency" means (i) any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act and any independent agency; (ii) any county, city, or town or local or regional governmental authority; and (iii) any local school division as defined in § 22.1-280.2:2.

"Misconduct" means conduct or behavior by an employee that is inconsistent with state, local, or agency standards for which specific corrective or disciplinary action is warranted.

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of ~~state government in the executive branch listed in the appropriation act and any independent agency~~.

"Whistle blower" means an employee who witnesses or has evidence of wrongdoing or abuse and who makes or demonstrates by clear and convincing evidence that he is about to make a good faith report of, or testifies or is about to testify to, the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority. "Whistle blower" includes a citizen of the Commonwealth who witnesses or has evidence of wrongdoing or abuse and who makes or demonstrates by clear and convincing evidence that he is about to make a good faith report of, or testifies or is about to testify to, the wrongdoing or abuse to an appropriate authority.

"Wrongdoing" means a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation, *local ordinance*, or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee.

**§ 2.2-3010.1. Discrimination and retaliatory actions against citizen whistle blowers prohibited; good faith required; other remedies.**

A. No ~~state governmental agency~~ may threaten or otherwise discriminate or retaliate against a citizen whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.

B. To be protected by the provisions of this chapter, a citizen of the Commonwealth who discloses information about suspected wrongdoing or abuse shall do so in good faith and upon a reasonable belief

that the information is accurate. Disclosures that are reckless or that the citizen knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be protected.

C. Any citizen whistle blower disclosing information of wrongdoing or abuse under this chapter where the disclosure results in a recovery of at least \$5,000 may file a claim for reward under the Fraud and Abuse Whistle Blower Reward Fund established in § 2.2-3014.

D. Except for the provisions of subsection F of § 2.2-3011, nothing in this chapter shall be construed to limit the remedies provided by the Virginia Fraud Against Taxpayers Act (§ 8.01-216.1 et seq.).

**§ 2.2-3012. Application of state or local grievance procedure; other remedies.**

A. Any whistle blower covered by the state grievance procedure (§ 2.2-3000 et seq.) *or a local grievance procedure established under § 15.2-1506* may initiate a grievance alleging retaliation and requesting relief through that procedure.

B. Any whistle blower disclosing information of wrongdoing or abuse under this chapter where the disclosure results in a savings of at least ~~\$10,000~~ \$5,000 may file a claim for reward under the Fraud and Abuse Whistle Blower Reward Fund established in § 2.2-3014.

C. Except for the provisions of subsection F of § 2.2-3011, nothing in this chapter shall be construed to limit the remedies provided by the Virginia Fraud Against Taxpayers Act (§ 8.01-216.1 et seq.).

**§ 2.2-3014. Fraud and Abuse Whistle Blower Reward Fund.**

A. From such funds as may be authorized by the General Assembly, there is hereby created in the state treasury a special nonreverting fund to be known as the Fraud and Abuse Whistle Blower Reward Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the State Inspector General. All moneys recovered by the State Inspector General as the result of whistle blower activity and alerts originating with the Office of the State Inspector General shall be deposited in the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Except as provided in subsection B, any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to (i) provide monetary rewards to persons who have disclosed information of wrongdoing or abuse under this chapter and the disclosure results in a recovery of at least \$5,000 or (ii) support the administration of the Fund, defray Fund advertising costs, or subsidize the operation of the Fraud, Waste and Abuse Hotline (previously known as the State Employee Fraud, Waste and Abuse Hotline).

B. By the end of each calendar quarter and upon authorization of the State Inspector General, 85 percent of all sums recovered shall be remitted to the institutions or *governmental* agencies on whose behalf the recovery was secured by the State Inspector General unless otherwise directed by a court of law. Each such institution or *governmental* agency on whose behalf the recovery was secured by the State Inspector General shall receive an amount equal to 85 percent of the actual amount recovered by the State Inspector General on its behalf.

C. The amount of the reward shall be up to 10 percent of the actual sums recovered by the Commonwealth as a result of the disclosure of the wrongdoing or abuse. Regardless of the sums recovered, at no time shall the amount of any reward, even if less than 10 percent, exceed the balance of the Fund. Reward disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the State Inspector General. In the event that multiple whistle blowers contemporaneously report the same qualifying incident or occurrence of wrongdoing or abuse, the State Inspector General in his sole discretion may split the reward of up to 10 percent among the multiple whistle blowers. The decision of the State Inspector General regarding the allocation of the rewards shall be final and binding on all parties and shall not be appealable.

D. Five percent of all sums recovered shall be retained in the Fund to support the administration of the Fund, defray advertising costs, and subsidize the operation of the Fraud, Waste and Abuse Hotline. Expenditures for administrative costs for management of the Fund shall be managed as approved by the State Inspector General.

E. The Office of the State Inspector General shall promulgate regulations for the proper administration of the Fund including eligibility requirements and procedures for filing a claim. The Office of the State Inspector General shall submit an annual report to the General Assembly summarizing the activities of the Fund.