

# **WHISTLE BLOWER BILL**

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**BILL**

**ENTITLED**

## **THE WHISTLE BLOWER ACT 2003**

AN ACT to provide for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or practices of others; to provide for the protection against victimisation of persons who make such disclosures; to provide for a Fund to compensate individuals who make such disclosures and to provide for matters related to these.

BE IT ENACTED by Parliament as follows:

### **PART I – INFORMATION THE DISCLOSURE OF WHICH IS PROTECTED**

#### **Disclosure of impropriety**

1. (1) A person may make a disclosure of information where that person reasonably believes that the information tends to show any or all of the following:
  - (a) that a crime has been committed, is about to be committed or is likely to be committed;
  - (b) that a person has not complied with a law or is in the process of breaking a law or likely to break a law which imposes an obligation on that person;
  - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
  - (d) that in a public institution there has been, there is or there is likely to be waste or mismanagement of public resources;
  - (e) that the environment has been degraded, is being degraded or is likely to be degraded; or

- (f) that the health or safety of any individual or a community is endangered has been endangered or is likely to be endangered.

(2) A conduct which falls within any of the matters specified in subsection (1) is in this Act referred to as an "impropriety".

(3) A person who makes a disclosure of impropriety is in this Act referred to as a "whistleblower".

(4) Notwithstanding any other law to the contrary a disclosure of an impropriety is protected under this Act if

- (a) the disclosure is made in good faith;
- (b) the whistleblower reasonably believes that the information disclosed and any allegation of impropriety contained in it are substantially true;
- (c) the disclosure is not made for personal gain;
- (d) the disclosure is not made with the intent to benefit from the Whistleblower Fund established under section 20; and
- (e) the disclosure is made to one or more of the persons or institutions specified in section 3 of this Act.

### **Person who qualifies to make disclosure of impropriety**

2. Disclosure of impropriety may be made

- (a) by an employee of an employer;
- (b) by an employee of another employee; or
- (c) by any person of another person, the absence of a contractual relationship notwithstanding.

### **Person to whom disclosure of impropriety may be made**

3. (1) Disclosure of impropriety may be made to any one or more of the following:

- (a) an employer of the whistleblower;

- (b) a police officer at any police station;
- (c) the Attorney-General;
- (d) the Auditor-General;
- (e) any staff of the Intelligence Agencies;
- (f) a member of Parliament;
- (g) the Serious Fraud Office;
- (h) the Commission on Human Rights and Administrative Justice;
- (i) the National Media Commission;
- (j) the Narcotic (Control) Board;
- (k) a chief; or
- (l) the head or an elder of the family of the whistleblower.

(2) A whistleblower may in determining to whom the disclosure should be made take into account the following:

- (a) any reasonable belief or fear on the part of the whistleblower that he or she will be subjected to dismissal, suspension, harassment, discrimination or intimidation;
- (b) reasonable belief or fear that evidence relevant to the impropriety may be concealed or destroyed;
- (c) that the person to whom the disclosure is made will not frustrate the objective;
- (d) the impropriety is of such an exceptionally serious nature that expeditious action must be taken to deal with it;
- (e) the place where and the circumstances under which the whistleblower lives.

## **PART II – PROCEDURES FOR DISCLOSURE OF IMPROPRIETY AND RELATED ACTION**

### **Procedures for making a disclosure**

4. (1) A disclosure of impropriety may be made in writing or orally by the whistleblower.

(2) The disclosure shall contain as far as practicable the following particulars:

- (a) the full name, address and occupation of the whistleblower;
- (b) the nature of the impropriety in respect of which the disclosure is made;
- (c) the person alleged to have committed or about to commit the impropriety;
- (d) the time and place where the alleged impropriety is taking place, took place or is likely to take place;
- (e) the full name, address and description of any person who witnessed the commission of the impropriety;
- (f) whether the whistleblower has made a disclosure of the same or of some other impropriety on any previous occasion and if so, about whom and to whom the disclosure was made; and
- (g) if the person is an employee making a disclosure about his or her employer or a fellow employee, whether he or she remains in the same employment.

### **Reduction of disclosure into writing**

5. (1) Where a whistleblower makes a disclosure orally, the person to whom the disclosure is made shall cause the disclosure to be reduced to writing containing the same particulars as are specified in subsection (2) of section 4.

(2) Where the whistleblower is non-literate, the writing required to be made under subsection (1) shall be read over, interpreted and explained to the whistleblower in a language he or she understands and he or she shall approve of it before making his or her mark to it and a certificate to this effect shall be attached to the writing.

(3) In the case of a literate person who is blind or with some other physical disability, a certificate as required in subsection (2) shall be made with the necessary modification.

### **Action by person who receives disclosure of impropriety**

6 (1) When a disclosure of impropriety is made to any person specified in section 3, the person shall

- (a) make a record of the time and place where the disclosure is made;
- (b) give to the whistleblower an acknowledgment in writing of receipt of the disclosure; and
- (c) keep the writing in which the disclosure is made confidential and in safe custody pending investigation of the impropriety.

(2) Where the disclosure is made to a chief or a head or elder of a family, the chief, head or elder may instead of recording the disclosure as required under subsection (1), assist the whistleblower to make the disclosure to the police or to some other authority specified in section 3.

(3) Where a person to whom disclosure is made fails to keep confidential the disclosure contrary to subsection (1) (c), the person commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 2 years or to both.

### **Submission of copy of written disclosure to the Attorney-General**

7. Where a disclosure is made to any person specified under section 3, other than the Attorney-General, the person shall submit a copy of the written disclosure to the Attorney-General within five days of receipt of the disclosure.

## **Investigation**

8. (1) Where a disclosure of impropriety is made to a person specified under section 3, the person shall investigate the matter except that where the person to whom the disclosure is made does not have the capability to undertake the investigation, the person shall refer the disclosure as recorded to the Attorney-General or such body as the Attorney-General may direct for investigation.

(2) Notwithstanding subsection (1), the Attorney-General may upon receipt of a copy of a written disclosure under section 7, cause investigation to be conducted into the disclosure.

(3) Investigation undertaken in respect of any impropriety shall be carried out as expeditiously as possible and shall in any event be completed within sixty days of receipt of the disclosure or directives to undertake the investigation.

## **Application to court for assistance**

9. Where in the course of an investigation under section 8, it appears to the investigator,

- (a) that evidence or documents relevant to the investigation are likely to be destroyed or concealed; or
- (b) that a person willing to provide information relevant to the investigation is being subjected to pressure or intimidation to withhold the information,

the investigator may apply to the court for an order to preserve the evidence or documents or to restrain the intimidation of the person willing to provide the information.

## **Submission of report of investigation to the Attorney-General**

10. (1) A report on investigation conducted pursuant to section 8 shall be submitted to the Attorney-General immediately the investigation is completed, for the directives of the Attorney-General.

(2) Where the completion of the investigation is delayed beyond the sixty day period specified in subsection (3) of section 8, a report shall be submitted to the Attorney-General stating,

- (a) the reasons for the delay;
- (b) measures that are proposed to expedite the investigation; and
- (c) any further assistance required to complete the investigation.

(3) A report of an investigation which is submitted to the Attorney-General shall contain particulars of

- (a) the manner in which the investigation was conducted;
- (b) the names and particulars of persons who provided information in the course of the investigation;
- (c) any facts obtained which either confirm or dispute the truth or accuracy of the information contained in the disclosure and the person who provided the facts;
- (d) any obstacle encountered in the course of the investigation and the nature of the obstacle; and
- (e) the recommendations of the investigator.

### **Action by the Attorney-General**

11. The Attorney-General may upon receipt of a report under subsection (3) of section 10, take any of the following steps:

- (a) accept the recommendations contained in the report and act on it;
- (b) ask for further investigations by the same person or institution that conducted the investigations or by some other person or institution; or
- (c) reject the report and the recommendations for stated reasons which shall be communicated to the investigator.

## **PART III – PROTECTION FOR MAKING DISCLOSURE OF IMPROPRIETY**

### **Protection against victimisation**

12. (1) A whistleblower shall not to be subjected to victimisation by his or her employer or by a fellow employee or by any other person because of having made the disclosure.

(2) A whistleblower shall be considered as having been subjected to victimisation if because of making the disclosure,

- (a) the whistleblower, being an employee, is
  - (i) dismissed;
  - (ii) suspended;
  - (iii) declared redundant;
  - (iv) denied promotion;
  - (v) transferred against his or her will;
  - (vi) harassed;
  - (vii) intimidated;
  - (viii) threatened with any of the matters set out in subparagraph (i) to (vii); or
  - (ix) subjected to any discriminatory or other adverse measure

by his or her employer or a fellow employee; or

- (b) not being an employee, the whistleblower is subjected to discrimination or intimidation by any person or establishment affected by the disclosure.

(3) A whistleblower shall not be considered as having been subjected to victimisation under subsection (2) if the person against whom the complaint is directed has the right in law to take the action complained of and the action taken is shown to be unrelated to the disclosure made.



(4) Notwithstanding subsection (3) the person against whom the complaint is directed shall postpone any lawful action against the whistleblower until after the complaint has been dealt with by the Commission and at least sixty days have passed after the Commission's decision.

### **Report to Commission on Human Rights and Administrative Justice**

13. (1) A whistleblower who honestly and reasonably believes that he or she has been subjected to victimisation or learns that he or she will be subjected to victimisation because of having made a disclosure of impropriety may in the first instance make a complaint to the Commission on Human Rights and Administrative Justice.

(2) A complaint made under subsection (1) shall contain the following particulars:

- (a) the name, description and address of the whistleblower;
- (b) the name, description and address of the whistleblower's employer or of any other person who the whistleblower claims has subjected him or her to victimisation or might subject him or her to victimisation; and
- (c) the specific acts complained of as constituting victimisation.

### **Action by the Commission and enforcement of its orders**

14. (1) The Commission shall, on receipt of a complaint made pursuant to section 13 conduct as soon as practicable an inquiry into the complaint at which the whistleblower and the person against whom the complaint is made shall be heard.

(2) The Commission in the course of conducting an inquiry under subsection (1) may make such interim orders as it considers fit.

(3) After hearing the parties and such other persons as the Commission and the parties consider necessary, the Commission shall make an order it considers just in the circumstances including an order for,

- (a) reinstatement;
- (b) reversal of any transfer; or
- (c) transfer to another establishment where applicable of the whistleblower.

(4) The Commission may where it considers it just in the circumstances of the case make an order for payment of compensation from the Fund established under section 20 of this Act.

(5) An order of the Commission under this section shall be of the same effect as a judgment or an order of the High Court and is enforceable in the same manner as a judgment or an order of the High Court.

(6) The powers conferred on the Commission under this Act is in addition to the powers exercisable by the Commission under the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456).

### **Right of action for victimisation**

15. A whistleblower who has been subjected to victimisation may bring an action in the court to claim damages for breach of contract or for such other relief or remedy to which the whistleblower may be entitled, except that no action shall be commenced in a court unless the complaint has first been submitted to the Commission under section 13.

### **Legal assistance**

16. Where the Commission in the course of any inquiry or hearing before it under section 14, is of the opinion that the whistleblower is in need of legal assistance, the Commission shall issue a certificate to the whistleblower to obtain legal aid from the Legal Aid Board or such other institution as the Commission may specify in the certificate.

### **Police protection**

17. (1) A whistleblower who makes a disclosure and who reasonably believes that,

(a) his or her life or property; or

(b) the life or property of any member of his or her family

is endangered or likely to be endangered as a result of the disclosure of impropriety may request police protection and the police shall provide such protection as it considers adequate.

(2) Notwithstanding subsection (1) the Commission or the Attorney-General as appropriate may in relation to a disclosure of impropriety made or

about to be made under this Act, direct that the person who has made or is about to make the disclosure and the person's family be given police protection.

(3) "Family" for the purposes of this section means spouse, father, mother, child, grandchild, brother and sister

### **Protection against civil and criminal action**

18. A whistleblower is not liable to any civil or criminal proceedings in respect of the disclosure unless it is proved that he or she knew that the information contained in the disclosure is false and the disclosure was made with malicious intent.

### **Void employment contracts**

19. (1) A provision in a contract of employment or other agreement between an employer and an employee is void if it

- (a) seeks to prevent the employee from making a disclosure of impropriety;
- (b) has the effect of discouraging an employee from making a disclosure of impropriety;
- (c) precludes the employee from making a complaint in respect of victimisation; or
- (d) prevents an employee from bringing an action in court or before any institution to claim relief or remedy in respect of victimisation.

(2) Subsection (1) also applies to any contract of employment or agreement in existence on the date of the coming into force of this Act.

## **PART IV – WHISTLEBLOWER COMPENSATION FUND**

### **Establishment of Whistleblower Compensation Fund**

20. There is established by this Act a Whistleblower Compensation Fund.

### **Sources of the Fund**

21. The monies for the Fund shall consist of

- (a) an amount of ₵100 million [being seed money contributed by Ghanaians resident in the United States]
- (b) voluntary contributions to the Fund from individuals resident in the country and abroad; and
- (c) such other monies as may be allocated by Parliament for the Fund.

### **Object of the Fund**

22. The object of the Fund is to provide funds for payment of monetary compensation to whistleblowers under this Act.

### **Compensation upon conviction**

23. (1) A whistleblower who makes a disclosure of impropriety that leads to the arrest and conviction of an accused person must be compensated with money from the Fund

### **Compensation on recovery of money**

24. A whistleblower whose disclosure results in the recovery of any amount of money must be compensated from the Fund with

- (a) ten percent of the amount of money recovered; or
- (b) such other amount of money as the Attorney-General shall, in consultation with the Inspector-General of Police, determine.

### **Bank account of the Fund**

25. Monies for the Fund shall, on the directions of the Legal Service Board established under section 8 of the Legal Service Law, 1993 (PNDCL 320), be paid into a bank account opened for the purpose by the Board with the approval of the Accountant-General.

### **Management of the Fund**

26. (1) The Fund shall be managed and administered by the Board which shall include for this purpose the Inspector-General of Police or his or her representative.

(2) For purposes of subsection (1), the Board shall

- (a) pursue and ensure the achievement of the object of the Fund;
- (b) ensure accountability for the Fund by defining appropriate procedures for its management;
- (c) initiate activities to generate money for the Fund
- (d) publish in the media the criteria for the disbursement of monies from the Fund; and
- (e) perform such other functions as are incidental to the achievement of the object of the Fund.

### **Disbursement of Fund**

27. (1) The disbursement of monies from the Fund shall be determined by the Board.

(2) The Board shall approve

- (a) payment of compensation from the Fund;
- (a) the reimbursement of any expenses incurred by a whistleblower whose disclosure resulted in an investigation for which that person incurred those expenses; and

(b) the payment of any other relevant expenses as the Board may determine.

(3) Any amount payable under paragraph (b) of subsection (1) shall be paid within a period of not more than 14 days from the date the payment of the money is approved.

(4) Every payment issued from the Fund shall be signed by the chairperson of the Board and the Inspector General of Police.

## **PART V - MISCELLANEOUS PROVISIONS**

### **Accounts and audit**

28. (1) The Board shall keep in respect of the Fund books of accounts and proper records in relation to them and the books of account and records shall be in such form as the Auditor-General may approve.

(2) The books of account shall be audited by the Auditor-General or by an auditor appointed by the Auditor-General within six months after the end of each financial year.

(3) In addition to the annual audit, technical audits shall be conducted on selective basis by the Auditor-General or by an auditor appointed by the Auditor-General on recommendations of the Board.

### **Financial year**

29. The financial year of the Fund shall be the same as the financial year of the Government.

### **Annual report**

30. (1) The Board shall submit to the Minister not later than eight months after the end of each financial year a report dealing generally with the activities and operation of the Board and the Fund during the year to which the report relates and shall include

- (a) the audited accounts of the Fund and the Auditor-General's report on the accounts of the Fund; and
- (b) such other information as the Board may consider necessary.

(2) The Minister shall within two months after the receipt of the annual report submit the report to Parliament with such statement as the Minister considers necessary.

### **Regulations**

31. The Attorney-General may by legislative instrument make Regulations prescribing

- (a) further disclosure procedures;
- (b) other persons to whom disclosures may be made; and
- (c) measures generally for the effective implementation of the provisions of this Act.

### **Modification of existing laws**

32. The existing enactments shall be construed with such modifications as are necessary to give effect to the provisions of this Act.

### **Interpretation**

33. In this Act unless the context otherwise requires,

“Board” means the Legal Service Board established under section 8 of the Legal Service Law, 1993 (PNDCL 320);

“chief” means a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queenmother in accordance with the relevant customary law and usage;

“Commission” means the Commission on Human Rights and Administrative Justice;

“disclosure” means disclosure of impropriety under this Act;

“employee” means a person who works for another person, company or organisation or for the Republic and who is paid or entitled to be paid for his or her services but does not include an independent contractor;

“employer” includes an individual, a body corporate or unincorporated or the Republic who or which engages the services of or provides work for any other person and pays for the services, and a person acting on behalf of or on the authority of the employer;

“Fund” means the Whistleblowers Compensation Fund established under section 20.

“impropriety” means any conduct or act which falls within the category referred to in subsection (1) of section 1;

“Republic” means the Republic of Ghana;

“victimisation” means acts which fall within any of the matters specified in subsection (2) of section 12.