

As Introduced

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Representatives Cera, Scherer

Cosponsors: Representatives Kelly, Rogers, Lipps, Galonski, Miller, A., Miranda, Boggs, Crossman, Green, Patterson, O'Brien, Howse, Clites, Smith, K., Sobecki, Kent

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 to a person 9
or entity described in division (A) (2) of this section: 10

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

~~the violation or misuse with the supervisor or appointing 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
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~~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;~~ 24
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(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; 40
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(c) An act that constitutes fraud against the state, 46

<u>federal government, the public, or another employee;</u>	47
<u>(d) Misappropriation of state or federal resources;</u>	48
<u>(e) An act that poses a risk to the health and safety of the public or other employees;</u>	49
<u>(f) An act constituting waste of state or federal funds, abuse of authority, or gross mismanagement of a program.</u>	51
<u>(2) An employee in the classified or unclassified civil service may make a report under division (A)(1) of this section to either or both of the following:</u>	53
<u>(a) The employee's supervisor or appointing authority;</u>	54
<u>(b) Any of the following, if the person or entity has the authority to investigate, correct, remedy, or prosecute the violation:</u>	55
<u>(i) The inspector general;</u>	56
<u>(ii) The office of internal audit created under section 126.45 of the Revised Code;</u>	57
<u>(iii) The auditor of state's fraud-reporting system under section 117.103 of the Revised Code;</u>	58
<u>(iv) The appropriate prosecuting attorney, law enforcement agency, regulatory agency, or ethics commission.</u>	59
<u>(3) An employee in the classified or unclassified civil service may refuse to participate in either of the following:</u>	60
<u>(a) A violation of a state or federal statute, rule, or regulation or written policy or procedure;</u>	61
<u>(b) Any activity that poses an unreasonable risk of harm to the health or safety of the employee, other employees, or the</u>	62
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<u>public.</u>	73
(B) Except as otherwise provided in division (C) <u>(D)</u> of	74
this section, no officer or employee in the classified or	75
unclassified civil service shall take any disciplinary or	76
<u>retaliatory</u> action against an employee in the classified or	77
unclassified civil service for making <u>doing either of the</u>	78
<u>following:</u>	79
(1) <u>Making, attempting to make, or preparing to make any</u>	80
report or filing a complaint as authorized by division (A) <u>(1)</u> of	81
this section, including;	82
(2) <u>Refusing to participate in activities under division</u>	83
<u>(A) (3) of this section.</u>	84
(C) <u>For purposes of this section, disciplinary or</u>	85
<u>retaliatory action includes, without limitation, recommending or</u>	86
doing any of the following:	87
(1) Removing or suspending the employee from employment;	88
(2) Withholding from the employee salary increases or	89
employee benefits to which the employee is otherwise entitled;	90
(3) Transferring or reassigning the employee;	91
(4) Denying the employee promotion that otherwise would	92
have been received;	93
(5) Reducing the employee in pay or position;	94
<u>(6) Disciplining the employee;</u>	95
<u>(7) Threatening the employee;</u>	96
<u>(8) Otherwise discriminating against the employee.</u>	97
(C) <u>(D)</u> An employee in the classified or unclassified	98

civil service shall make a reasonable effort to determine the 99
accuracy of any information reported under division (A) of this 100
section. The employee is subject to disciplinary action, 101
including suspension or removal, as determined by the employee's 102
appointing authority, for purposely, knowingly, or recklessly 103
reporting false information under division (A) of this section. 104

~~(D) If an appointing authority takes any disciplinary or 105
retaliatory action against a classified or unclassified employee 106
as a result of the employee's having filed a report or complaint 107
under division (A) of this section, the employee's sole and 108
exclusive remedy, notwithstanding any other provision of law, is 109
to file an appeal with the state personnel board of review 110
within thirty days after receiving actual notice of the 111
appointing authority's action. If the employee files such an 112
appeal, the board shall immediately notify the employee's 113
appointing authority and shall hear the appeal. The board may 114
affirm or disaffirm the action of the appointing authority or 115
may issue any other order as is appropriate. The order of the 116
board is appealable in accordance with Chapter 119. of the 117
Revised Code. 118~~

(E) An employee injured by a violation of division (B) of 119
this section may file a civil action in a court of competent 120
jurisdiction against the person or agency who committed the 121
violation for any legal or equitable relief that will effectuate 122
the employee's rights within one year after the alleged 123
violation occurred. If the employee prevails in the action, the 124
court shall award the employee costs and reasonable attorney's 125
fees. 126

(F) If a court determines that a violation of division (B) 127
of this section was willful or malicious, involved a criminal 128

violation, or an effort to obtain personal gain, the court may 129
award the employee damages up to three times the amount of 130
actual damages. 131

(G) Remedies under this section are not exclusive of other 132
available remedies. Nothing in this section prevents an employee 133
from bringing a civil action under section 4113.52 of the 134
Revised Code. 135

(H) As used in this section: 136

(1) "Purposely," "knowingly," and "recklessly" have the 137
same meanings as in section 2901.22 of the Revised Code. 138

(2) "Appropriate ethics commission" has the same meaning 139
as in section 102.01 of the Revised Code. 140

(3) "Inspector general" means the inspector general 141
appointed under section 121.48 of the Revised Code. 142

Sec. 4113.51. As used in sections 4113.51 to 4113.53 of 143
the Revised Code: 144

(A) "Employee" means any person who performs a service for 145
wages or other remuneration for an employer. 146

(B) "Employer" means any person who has one or more 147
employees. "Employer" includes an agent of an employer, the 148
state or any agency or instrumentality of the state, and any 149
municipal corporation, county, township, school district, or 150
other political subdivision or any agency or instrumentality 151
thereof. 152

(C) "Person" has the same meaning as in section 1.59 of 153
the Revised Code and also includes a public agency or any other 154
legal entity. 155

(D) ~~"Peace officer" has the same meaning as in section 2935.01 of the Revised Code.~~ 156
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~~(E)~~ "Political subdivision" has the same meaning as in 158
division (F) of section 2744.01 of the Revised Code. 159

~~(F) "Prosecuting authority" means the prosecuting attorney of a county or the director of law, village solicitor, or similar chief legal officer of a municipal corporation.~~ 160
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~~(G) "Inspector general" means the inspector general appointed under section 121.48 of the Revised Code.~~ 163
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(E) "Illegal activities" means activities that are in violation of the criminal or civil code of this state or the United States or any regulation intended to protect the public health, safety, or welfare. 165
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Sec. 4113.52. ~~"(A) (1) (a) If an employee becomes aware in the course of the employee's employment of an act the employee reasonably believes is a violation by the employee's employer, a fellow employee, or any other person directly or indirectly under the employer's direction, control, or supervision of any state or federal statute, rule, or regulation or any ordinance or regulation of a political subdivision that the employee's employer has authority to correct, 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 may report the violation, orally shall notify the employee's supervisor or other responsible officer of the or in writing, to either or both of the following:~~ 169
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(a) The employee's employer of the violation and 184

~~subsequently shall file with that supervisor or officer a
written report that provides sufficient detail to identify and
describe the violation. If the employer does not correct the
violation or make a reasonable and good faith effort to correct
the violation within twenty four hours after the oral
notification or the receipt of the report, whichever is earlier,
the employee may file a written report that provides sufficient
detail to identify and describe the violation with the
prosecuting authority of the county or municipal corporation
where the violation occurred, with a peace officer, with the
inspector general if the violation is within the inspector
general's jurisdiction, or with any other appropriate public
official or agency that has regulatory authority over the
employer and the industry, trade, or business in which the
employer is engaged;~~

(b) An appropriate prosecuting attorney, law enforcement
agency, or regulatory agency, with the authority to investigate,
correct, remedy, or prosecute the violation.

~~(b)(2) If an employee makes a report to the employee's
employer under 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,~~ 215
~~any appropriate public official or agency that has regulatory~~ 216
~~authority over the employer and the industry, trade, or business~~ 217
~~in which the employer is engaged.~~ 218

~~(3) If an employee becomes aware in the course of the~~ 219
~~employee's employment of a violation by a fellow employee of any~~ 220
~~state or federal statute, any ordinance or regulation of a~~ 221
~~political subdivision, or any work rule or company policy of the~~ 222
~~employee's employer and the employee reasonably believes that~~ 223
~~the violation is a criminal offense that is likely to cause an~~ 224
~~imminent risk of physical harm to persons or a hazard to public~~ 225
~~health or safety, a felony, or an improper solicitation for a~~ 226
~~contribution, the employee orally shall notify the employee's~~ 227
~~supervisor or other responsible officer of the employee's~~ 228
~~employer of the violation and subsequently shall file with that~~ 229
~~supervisor or officer a written report that provides sufficient~~ 230
~~detail to identify and describe the violation.~~ 231

(B) Except as otherwise provided in division ~~(C)~~ (D) of 232
this section, no employer shall take any disciplinary or 233
retaliatory action against an employee for ~~making~~ doing any of 234
the following: 235

(1) Making any report authorized by division (A) (1) ~~or (2)~~ 236
of this section, ~~or as a result of the employee's having made ;~~ 237

(2) Refusing to participate in activities the employee 238
reasonably believes are illegal activities; 239

(3) Making any inquiry or ~~taken~~ taking any other action to 240
ensure the accuracy of any information ~~reported under either~~ 241
~~such division.~~ 242

~~No employer shall take any disciplinary or retaliatory~~ 243

~~action against an employee for making any report authorized by~~ 244
~~division (A) (3) of this section if the employee made a~~ 245
~~reasonable and good faith effort to determine the accuracy of~~ 246
~~any information so reported, or as a result of the employee's~~ 247
~~having made any inquiry or taken any other action to ensure the~~ 248
~~accuracy of any information reported under that division related~~ 249
~~to activities protected under this division.~~ 250

(C) For purposes of this ~~division~~ section, disciplinary or 251
retaliatory action by the employer includes, without limitation, 252
recommending or doing any of the following: 253

- (1) Removing or suspending the employee from employment; 254
- (2) Withholding from the employee salary increases or 255
employee benefits to which the employee is otherwise entitled; 256
- (3) Transferring or reassigning the employee; 257
- (4) Denying the employee a promotion that otherwise would 258
have been received; 259
- (5) Reducing the employee in pay or position; 260
- (6) Disciplining the employee; 261
- (7) Threatening the employee; 262
- (8) Otherwise discriminating against the employee. 263

~~(C)~~ (D) An employee shall make a reasonable and good faith 264
effort to determine the accuracy of any information reported 265
under division (A) (1) ~~or (2)~~ of this section. If the employee 266
~~who makes a report under either division~~ fails to make such an 267
effort, the employee may be subject to disciplinary action by 268
the employee's employer, including suspension or removal, for 269
reporting information without a reasonable basis to do so ~~under~~ 270

~~division (A) (1) or (2) of this section.~~ 271

~~(D) (E) If an employer takes any disciplinary or~~ 272
~~retaliatory action against an employee as a result of the~~ 273
~~employee's having filed a report under violates division (A) (B)~~ 274
~~of this section, the employee against whom the disciplinary or~~ 275
~~retaliatory action was taken may bring a civil action for~~ 276
~~appropriate injunctive any legal or equitable relief or for the~~ 277
~~remedies set forth in division (E) of this section, or both,~~ 278
~~that will effectuate the employee's rights within one hundred~~ 279
~~eighty days year after the date the disciplinary or retaliatory~~ 280
~~action was taken, in a court of common pleas in accordance with~~ 281
~~the Rules of Civil Procedure. A civil action under this division~~ 282
~~is not available to an employee as a remedy for any disciplinary~~ 283
~~or retaliatory action taken by an appointing authority against~~ 284
~~the employee as a result of the employee's having filed a report~~ 285
~~under division (A) of section 124.341 of the Revised Code.~~ 286

~~(E) The court, in rendering a judgment for the employee in~~ 287
~~an action brought pursuant to division (D) of this section, may~~ 288
~~order, as it determines appropriate, reinstatement of the~~ 289
~~employee to the same position that the employee held at the time~~ 290
~~of the disciplinary or retaliatory action and at the same site~~ 291
~~of employment or to a comparable position at that site, the~~ 292
~~payment of back wages, full reinstatement of fringe benefits and~~ 293
~~seniority rights, or any combination of these remedies.~~ 294

~~The court also may award the prevailing party all or a~~ 295
~~portion of the costs of litigation and, if the employee who~~ 296
~~brought the action prevails in the action, may award the~~ 297
~~prevailing employee reasonable attorney's fees, witness fees,~~ 298
~~and fees for experts who testify at trial, in an amount the~~ 299
~~court determines appropriate. If the court determines that an~~ 300

~~employer deliberately has violated division (B) of this section,~~ 301
~~the court, in making an award of back pay, may include interest~~ 302
~~at the rate specified in section 1343.03 of the Revised Code.~~ 303

~~(F) Any report filed with the inspector general under this~~ 304
~~section shall be filed as a complaint in accordance with section~~ 305
~~121.46 of the Revised Code.~~ 306

~~(G) As used in this section:~~ 307

~~(1) "Contribution" has the same meaning as in section~~ 308
~~3517.01 of the Revised Code.~~ 309

~~(2) "Improper solicitation for a contribution" means a~~ 310
~~solicitation for a contribution that satisfies all of the~~ 311
~~following:~~ 312

~~(a) The solicitation violates division (B), (C), or (D) of~~ 313
~~section 3517.092 of the Revised Code;~~ 314

~~(b) The solicitation is made in person by a public~~ 315
~~official or by an employee who has a supervisory role within the~~ 316
~~public office;~~ 317

~~(c) The public official or employee knowingly made the~~ 318
~~solicitation, and the solicitation violates division (B), (C),~~ 319
~~or (D) of section 3517.092 of the Revised Code;~~ 320

~~(d) The employee reporting the solicitation is an employee~~ 321
~~of the same public office as the public official or the employee~~ 322
~~with the supervisory role who is making the solicitation. If the~~ 323
~~employee prevails in the action, the court shall award the~~ 324
~~employee costs and reasonable attorney's fees.~~ 325

~~(F) Remedies under this section are not exclusive of other~~ 326
~~available remedies. Nothing in this section prevents an employee~~ 327
~~who brings an action under this section from bringing a civil~~ 328

action under section 124.341 of the Revised Code. 329

Sec. 4925.10. (A) Chapters 4111., 4121., 4123., 4141., and 330
sections 4113.15 and 4113.16 of the Revised Code do not apply to 331
transportation network companies with regard to transportation 332
network company drivers and transportation network company 333
drivers are not employees for purposes of those chapters or 334
sections, except where agreed to by written contract. If the 335
parties agree to the application of one or more of these laws in 336
a written contract, the transportation network company shall 337
notify the appropriate agency of the election to cover the 338
driver. If the parties subsequently change this election, the 339
transportation network company shall notify the appropriate 340
agency of the change. 341

(B) Except where agreed to by written contract, a 342
transportation network company driver is not an agent of a 343
transportation network company. 344

(C) A driver may bring an action and recover under section 345
4113.52 of the Revised Code if a transportation network company 346
has discontinued or otherwise removed the driver's access to the 347
transportation network company's digital network because of the 348
driver making a report under that section. ~~If a driver brings an~~ 349
~~action under that section, the driver shall comply with the~~ 350
~~procedures for employees established in that section to receive~~ 351
~~the relief and remedies listed in division (E) of that section.~~ 352

A driver is not an employee for purposes of sections 353
4113.51 and 4113.52 of the Revised Code. Nothing in this 354
division shall be construed to create an employer and employee 355
relationship between a transportation network company driver and 356
a transportation network company. 357

Section 2. That existing sections 124.341, 4113.51, 358
4113.52, and 4925.10 of the Revised Code are hereby repealed. 359