

REPUBLIC OF LIBERIA,
IN THE LEGISLATURE ASSEMBLED

*An Act of the National Legislature:
To Amend Certain Provisions of the Amendment to the Penal Law and to provide for a Whistleblower.*

AN ACT

TO PROTECT WHISTLEBLOWER

WHISTLEBLOWER ACT OF 2021

DRAFT PROPOSAL

PREAMBLE

WHEREAS, corruption and other criminal conducts in public institutions and private organizations undermine democratic rule and good corporate governance, which in turn affect individuals and society, thereby leading to dissatisfaction and instability;

WHEREAS, criminal activities such as corruption, drug trafficking, human-trafficking, terrorism and other serious and organized crimes tend to undermine peace, rule of law, humane social order, human security and development;

WHEREAS, it is generally recognized that the full disclosure of corruption and other criminal conducts is essential for the comprehensive investigation of corruption and other criminal conducts in public institutions and private organizations;

WHEREAS, the existence of strong laws that protect both persons who have the courage to become whistleblowers and witnesses in fully disclosing to investigators and prosecutors the perpetration of corruption and criminal conduct is the most appropriate and effective way to combat corruption and criminal conduct in public institutions and private organizations;

WHEREAS, Liberia considers it necessary to take measures for the protection of whistleblowers and witnesses during the periods of investigation, trial and as long as necessary, after trial, in order to strengthen the criminal justice system of Liberia in effectively combatting corruption, criminal conduct and impunity, in general.

WHEREAS, in order to encourage whistleblowers to make full disclosure, it is extremely important to institute measures that include psychological counseling, physical protection;

WHEREAS, measures taken for the protection of whistleblowers and witnesses should be sufficient to create an atmosphere free of intimidation and any fear of physical injury or any other form of harm; and

CONVINCED that the existence of laws for the protection of whistleblowers, witnesses and victims of corruption and other criminal conducts is the best and most effective way to promote a successful fight against corruption and other serious crimes;

NOW THEREFORE;

It is enacted by the Legislature of the Republic of Liberia in Legislature Assembled:

SECTION 1.1 SHORT TITLE

This Act shall be cited as the Whistleblowers Act of 2021.

SECTION 2. DEFINITIONS

- a. **“Attorney General”** refers to the Minister of Justice, Republic of Liberia

- b. **“Blacklist”** means to inform others that a public or private employee acted in a manner that endangered a whistleblower or a witness with the intention of hindering such public or private employee’s ability to obtain employment.
- c. **“Detriment”** means to do harm, to hurt and damage.
- d. **“Employee”** means any person, including an independent contractor, who works for another person or for the government of Liberia and who receive or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying out or conducting the business of an employer.
- e. **“Employer”** means any person who hires the services of another person or group of person and pays them wages, salaries, fees and or anything of value.
- f. **“Good faith”** means the reasonable belief of the informant that the information given is true and correct to the best of his/her certain knowledge.
- g. **“Maladministration”** means administrative action that is unlawful, arbitrary, unjust, oppressive and or discriminatory.
- h. **“Official Authority”** means the exercise of power by virtue of one’s position in a public or private entity.
- i. **“Participation”** refers to a person who is being protected or was protected as a witness or a whistleblower under the witness protection program.
- j. **“Person”** refers to a legal or natural person.
- k. **“Public interest discourse”** means disclosure for the general benefit of the public.
- l. **“Public good”** means an item whose consumption is not decided by one individual but by the society as a whole and which is financed by taxation.
- m. **“Retaliatory action”** means reprisal, payback or revenge, or any other action taken because of protected activity that places the whistleblower at a disadvantage.
- n. **“Whistleblower”** is anyone who is disclosing, about to disclose, or assisting in disclosure of information that the person reasonably believes evidences action of impropriety perpetrated against the public interest or public good that is occurring, has occurred, or will occur in any public or private institution, without respect to formality, whether voluntary or involuntary, or made as part of job duties.

- o. **“Witness”** means a person who has made a statement, or who has given or agreed to give evidence in relation to the commission or possible commission of a serious offence, whether or not voluntarily, part of job duties, or under compulsory legal action; and for any other reason, may require protection or other assistance under this Act;

SECTION 3. OBJECTIVE

The objective of this act is to protect persons employed in both public and private institutions that disclose information or give evidence about action against the public interest or good in any public or private institution, unless otherwise provided by law, to allow such person to seek legal redress. The protection of whistleblower is essential for the integrity of prosecution and the person making a disclosure.

SECTION 4. APPLICATION

This Act shall apply to any protected public interest disclosures which is made after the date on which the Act comes into force. This act shall bind all person(s) scope of disclosure.

SECTION 5. SCOPE OF DISCLOSURE

(1) PROTECTED DISCLOSURES:

A protected disclosure is any disclosure of information which in the reasonable belief of the person making the disclosure is evidence for one or more of the following:

- a) That a criminal offense has been committed, is being committed or is likely to be committed as defined by the penal law.
- b) That a person has failed, is failing or is likely to fail to comply with any legal obligation.
- c) That a miscarriage of justice has occurred, is occurring or is likely to occur.
- d) That the health or safety of an individual has been, is being or is likely to be endangered.
- e) That corruption, dishonesty or serious maladministration in a governmental body or private institution or on the part of an official of that body or private institution has taken place, is taking place or is likely to take place and without limiting the generality of this subsection includes
 - (i) An abuse of power by a governmental body or private institution or an official thereof, or
 - (ii) An improper or unauthorized use of the funds or other assets of the State or a governmental body or private institution.

- f) A negligent administration, resulting or likely to result into substantial waste of resources, danger to the health or safety of an individual or the public, or an offence referred to in section 5(a);
- g) The environment has been degraded, is being degraded or is likely to be degraded as a result of illegal or improper conduct and has negative impacts on the society.
- h) Price-fixing or other anti-competitive conduct.
- i) Misleading or unfair practices against consumers.
- j) For the purpose of this act, it is immaterial whether the impropriety occurred, occurs or will occur in the Republic of Liberia or elsewhere but has an effect on Liberia, and whether the law applying to that of the Republic of Liberia or of another country, where the subject is a Liberian; or where the activity was done in Liberia or directly affects Liberia whether the subject, legal or natural, is a Liberian and or of another nationality.
- k) Any provision in an agreement to which this section applies is void in so far as it purports to preclude the person making the disclosure from making a protected disclosure, and any laws including the labor laws of Liberia, vesting authority in an employer to dismiss employee for divulging confidential information, shall not affect the public interest disclosure of this act and an employee making such disclosure shall not be subject to dismissal or any other retaliatory action.
- l) This section applies to any agreement between an employee and his or her employer, public or private (whether in the employee's contract or not) including an agreement to refrain from instituting or continuing any proceeding under this act or any other law.

(2) Non-Protected Disclosures

A disclosure of information is not a protected disclosure if the person making the disclosure is in violation of the criminal law or other statutory prohibitions; or the person does not have reasonable belief that the information is evidence of misconduct under this Act.

SECTION 6. WHO MAY MAKE A PTOTECTED DISCLOSURE

A protected disclosure under section 5 can be made

- a. By an employee in respect of an employer
- b. By an employee in respect of another employee or
- c. By a person in respect of another person, or an institution

SECTION 7. PERSONS TO WHOM DISCLOSURES MAY BE MADE

Disclosure of information may be made to one or more of the following;

- a. Law enforcement agencies
- b. Public and private institutions
- c. Civil Society Organizations and
- d. Other persons who are capable of acting and investigating the disclosure.

SECTION 8. INTERFERENCE WITH DISCLOSURES (Steps to Disclosure)

- a. It is unlawful to directly or indirectly use or attempt to use official authority or influence for the purpose of intimidating, threatening, coercing or commanding any person for the purpose of interfering with the right of that person to disclose all matters within the scope of this act.
- b. A person who receives a disclosure whether oral or written shall be required to protect the identity and identifying information of the person making the disclosure, except as required by law in which case the person receiving the disclosure shall provide advance notice to the whistleblower or witness. In keeping with section 11 of this act there shall be no external interference intended to influence the conduct of the person receiving the disclosure.

SECTION 9. GENERAL REQUIREMENTS FOR RECEIVING AND PROCESSING DISCLOSURES

Every public and private entity shall establish procedures, regulations and /or rule consistent with this Act for receiving and processing public interest disclosure(s) as well as protecting the person making the disclosure.

SECTION 10. ACTION WHEN DISCLOSURE IS RECEIVED

When a disclosure is made pursuant to the act the person receiving it shall:

- a. Make a record of the disclosure including the identity of the person making the disclosure provided that the record is made in the form that protects the identity and identifying information of the person making the disclosure and be available only to individuals clothed with the legal authority to view such disclosure.
- b. Make acknowledgement to the whistleblower of the receipt of the disclosure, provided that such acknowledgment shall not expose the identity of the person making the disclosure.

- c. Keep the disclosure in the manner that will clearly protect the confidentiality of the content thereof and of the person making the disclosure pending investigation of the matter.
- d. Submit written copy of the disclosure to the Minister of Justice, LACC or any appropriate authority.

SECTION 11. INVESTIGATION

- a. Whereas a disclosure is made to a person specified under Section 7.0 such person shall conduct a preliminary investigation of the alleged impropriety disclosure by the whistleblower and submit a report of that investigation to the Minister of Justice, LACC or any appropriate authority, except in cases where the person or entity to whom the disclosure is made does not have the authority to undertake the investigation. In such event, the person or entity within five (5) days shall submit the disclosure to the Minister of Justice, LACC or any appropriate authority for the sole purpose of speedy investigation.
- b. Investigation undertaken in respect of a protected disclosure shall be carried out as expeditiously as possible and shall in any event be completed within thirty (30) days of receipt of the disclosure or directive to undertake the investigation.
- c. A person or entity who undertakes an investigation of a protected disclosure, shall conduct such investigation with utmost care and integrity, and in keeping with procedures for disclosure; and preserve all relevant records and evidence.
- d. A person or entity who undertakes an investigation in respect of a protected disclosure and in the course of that investigation conceals or suppresses evidence commits an offence; which offense shall be equivalent to a second degree felony punishable by a prison term of not less than five years.
- e. A person to whom a disclosure is made who fails to keep confidential the disclosure, commits an offense equivalent to second degree felony and punishable consistent with section 11(d) of this Act.
- f. The whistleblower shall be entitled to participate in the investigation to comment on evidence responding to the disclosure, and upon completion of the investigation shall be entitled to submit comments on the draft report, which comments shall be included as part of the final report.
- g. Following the investigation, the Minister of Justice, LACC or any appropriate authority shall determine whether the impropriety requires civil, criminal or administrative action by the Government; and shall explain the reasons and act accordingly. The report and findings shall be placed in a public file, consistent with law.

SECTION 12. RETALIATION AGAINST WHISTLEBLOWER PROHIBITED

- a. A whistleblower meeting the criteria set forth in this Act shall not be subjected to retaliatory action by the employer, a fellow employee or another person because a disclosure has been made.
- b. Retaliation is unlawful and is an indictable offence where the person making the disclosure has acted consistent with this Act. Therefore, an employer or person who retaliates against a person properly making a public interest disclosure commits a second degree felony and punishable consistent with section 11(d) of this Act.
- c. A whistleblower who is an employee, director, officer or member of an institution shall be considered a victim of retaliatory action, if because of making a disclosure he/she is dismissed, suspended declared redundant, denied promotion, or subject to any discriminatory or other adverse measures by the employer or a fellow employee.
- d. A whistleblower who discloses information for the public good in respect of an institution of which he or she is not an employee, director, officer or member, shall be considered a victim of retaliatory action if because of such disclosure he/she is subjected to discriminatory action, such as being blacklisted or denied opportunities that are otherwise applicable to member of the public, suffer termination of existing relationship or any other action that is traceable to the disclosure made by the whistleblower.
- e. No employee shall be dismissed, reassigned, denied any right or privilege or otherwise discriminated against for being a whistleblower.
- f. An employee may appeal for a change of assignment on grounds that it is likely that he/she will suffer retaliation, if the most effective way to remove or substantially remove the danger is to reassign him or her. A person making a disclosure shall not be reassigned or relocated without his or her consent.
- g. If retaliation is proven, the employee, director or officer shall not be reassigned relocated or dismissed by the employer unless there is clear evidence that the action was not as a result of the disclosure.

SECTION 13. PROTECTION AGAINST LIABILITY

- a. A person is not liable, civilly, criminally or under an administrative process, for making a public interest disclosure if he or she acting within the criteria set forth in this Act believed and has reason to believe that the information disclosed was substantially true, even if it is later determined that the matter is incorrect.

- b. In a proceeding for defamation, the person has an affirmative defense that the information disclosed was done in good faith, met the criteria of the Act, and was for the public good and therefore privileged.

SECTION 14. CIVIL CLAIMS

- a. The person who is dismissed or suffers a detriment in breach of this Act shall be entitled to bring a claim for re-employment or compensation of any loss or damage he/she suffered as a result thereof for temporary injunctive or any other appropriate permanent relief. Relief shall include all measures necessary to make the whistleblower whole by eliminating all direct and indirect effects of discrimination, including reassignment with the whistleblower's consent, costs for the lawsuit including attorney fees, and an injunction against renewed retaliation. In any civil action of damage for retaliation, once it has been demonstrated that there is a connection between the whistleblower, the adverse action and a protected disclosure, the whistleblower shall receive temporary relief by a reversal of the retaliatory action pending the conclusion of the proceedings, provided that the party denying the existence of retaliation shall have the burden of proof to demonstrate that said action was not a retaliatory action.

SECTION 15. OTHER PROTECTIONS OF THE ACT

This Act does not limit the protection given by another law to a person who makes disclosures of any type or affect another remedy available to the person.

SECTION 16. REWARDS OR RECOVERY OF MONEY

A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded with five (5) percent of the amount of money recovered.

SECTION 17. POSTING OF LAW AND INFORMATION

Every employer shall keep posted in a conspicuous place on the employer's premises notice of the whistleblower Act and other relevant information.

THIS ACT SHALL TAKE EFFECT IMMEDIATELY UPON PUBLICATION INTO HAND-BILLS.

ANY LAW TO THE CONTRARY NOTWITHSTANDING