

WHISTLEBLOWER ACT, ACT 2006 (ACT 720)

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REPUBLIC OF GHANA

**THE SEVEN HUNDRED AND TWENTIETH
ACT
OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED**

THE WHISTLEBLOWER ACT, 2006

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 corrupt practices of others; to provide for the protection against victimisation of persons who make these disclosures; to provide for a Fund to reward individuals who make the disclosures and to provide for related matters.

DATE OF ASSENT: 16th October, 2006.

ENACTED by the President and Parliament:

PART I—INFORMATION THE DISCLOSURE OF WHICH IS PROTECTED

Section 1 —Disclosure of Impropriety

(1) A person may make a disclosure of information where that person has reasonable cause to believe that the information tends to show

(a) an economic crime has been committed, is about to be committed or is likely to be committed;

(b) another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person;

(c) a miscarriage of justice has occurred, is occurring or is likely to occur;

(d) in a public institution there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources;

(e) the environment has been degraded, is being degraded or is likely to be degraded; or

(f) the health or safety of an 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) Despite any other law to the contrary, a disclosure of an impropriety is protected if

(a) the disclosure is made in good faith,

(b) the whistleblower has reasonable cause to believe that the information disclosed and an allegation of impropriety contained in it are substantially true, and

(c) the disclosure is made to one or more of the persons or institutions specified in section 3.

Section 2—Person who qualifies to make disclosure of impropriety

Disclosure of impropriety may 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 3—Person to whom or institution to which disclosure of impropriety may be made

(1) Disclosure of impropriety may be made to anyone or more of the following:

(a) an employer of the whistleblower;

(b) a police officer;

(c) the Attorney-General;

(d) the Auditor-General;

(e) a 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;

(l) the head or an elder of the family of the whistleblower;

(m) a head of a recognised religious body;

(n) a member of a District Assembly;

- (o) a Minister of State;
- (p) the Office of the President;
- (q) the Revenue Agencies Governing Board; or
- (r) a District Chief Executive.

(2) A whistleblower may take into account

- (a) a reasonable belief or fear on the part of the whistleblower that the whistleblower may be subjected to dismissal, suspension, harassment, discrimination or intimidation;
 - (b) a 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) that the impropriety is of an exceptionally serious nature and that expeditious action must be taken to deal with it;
 - (e) the place where and the prevailing circumstances under which the whistleblower lives;
- in determining to whom the disclosure may be made.

PART II—PROCEDURES FOR DISCLOSURE OF IMPROPRIETY AND RELATED ACTION

Section 4—Procedures for making a disclosure

- (1) A disclosure may be made in writing or orally.
- (2) The disclosure shall contain as far as practicable
 - (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, who is committing or is 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 a person who witnessed the commission of the impropriety if there is such a person;
 - (f) whether the whistleblower has made a disclosure of the same or of some other impropriety on a 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 that person's employer or a fellow employee, whether the whistleblower remains in the same employment.

Section 5—Reduction of disclosure into writing

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

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

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

Section 6—Action by person who receives disclosure of impropriety

(1) When a disclosure of impropriety is made to a 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, head of a recognised religious body or a head or an 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 the disclosure is made fails to keep confidential the disclosure, the person commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than four years or to both.

Section 7—Submission of copy of written disclosure to the Attorney-General

Where a disclosure is made to a 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 seven working days after receipt of the disclosure.

Section 8—Investigation

(1) Where a disclosure 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 another body as directed by the Attorney-General for investigation within seven working days after receipt of the disclosure.

(2) Despite subsection (1), the Attorney-General may on 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 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.

(4) A person who undertakes an investigation in respect of an impropriety and in the cause of that investigation conceals or suppresses evidence, commits an offence and is liable on summary conviction to a term of imprisonment of not less than two years and not more than five years.

Section 9—Application to court for assistance

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, concealed, tampered with or,

(b) that a person willing to provide information relevant to the investigation is being subjected to pressure, inducement 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.

Section 10—Submission of report of investigation to the Attorney-General

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

(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) 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) an obstacle encountered in the course of the investigation and the nature of the obstacle, and

(e) the recommendations of the investigator.

Section 11—Action by the Attorney-General

The Attorney-General may on receipt of a report under subsection (3) of section 10, take 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

Section 12—Protection of Whistleblowers

(1) A whistleblower shall not be subjected to victimisation by the employer of the whistleblower or by a fellow employee or by another person because a disclosure has been made.

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

(a) the whistleblower, being an employer, is

(i) dismissed,

(ii) suspended,

(iii) declared redundant,

(iv) denied promotion,

(v) transferred against the whistleblower's will,

(vi) harassed,

(vii) intimidated,

(viii) threatened with any of the matters set out in subparagraph (i) to (vii), or

(ix) subjected to a discriminatory or other adverse measure by the employer or a fellow employee, or

(b) not being an employee, the whistleblower is subjected to discrimination, intimidation or harassment by a person or an institution.

(3) A whistleblower shall not be considered as having been subjected to victimisation 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.

Section 13—Report to Commission on Human Rights and Administrative Justice

(1) A whistleblower who honestly and reasonably believes that that whistleblower has been subjected to victimisation or learns of a likely subsection to victimisation because a disclosure has been made, may in the first instance make a complaint to the Commission.

(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 the whistleblower to victimisation or might subject the whistleblower to victimisation, and

(c) the specific acts complained of as constituting victimisation.

Section 14—Action by the Commission and enforcement of its orders

(1) The Commission shall, on receipt of a complaint, conduct an enquiry 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 enquiry under subsection (1) may make an interim order that it considers fit.

(3) After hearing the parties and other persons considered necessary by the Commission the Commission shall make an order considered just in the circumstances including an order for

(a) reinstatement,

(b) reversal of a transfer, or

(c) transfer of the whistleblower to another establishment where applicable.

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

(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 are in addition to the powers exercisable by the Commission under the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456).

Section 15—Right of action for victimisation

A whistleblower who has been subjected to victimisation may bring an action in the High Court to claim damages for breach of contract or for another relief or remedy to which the whistleblower may be entitled, except that an action shall not be commenced in a court unless the complaint has first been submitted to the Commission under section 13.

Section 16—Legal assistance

Where the Commission in the course of an 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 another institution that the Commission may specify in the certificate.

Section 17—Police protection

(1) A whistleblower who makes a disclosure and who has reasonable cause to believe that

(a) the whistleblower's life or property, or

(b) the life or property of a member of the whistleblower's family is endangered or likely to be endangered as a result of the disclosure, may request police protection and the police shall provide the protection considered adequate.

(2) Despite subsection (1), the Commission or the Attorney-General as appropriate may in relation to a disclosure of impropriety made or about to be made 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.

Section 18—Protection against civil and criminal action

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

Section 19—Void employment contracts

(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,

(b) has the effect of discouraging an employee from making a disclosure,

(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 an institution to claim relief or remedy in respect of victimisation.

(2) Subsection (1) also applies to a contract of employment or agreement in existence on the commencement of this Act.

PART IV—WHISTLEBLOWER REWARD FUND

Section 20—Establishment of Whistleblower Reward Fund

There is established by this Act a Whistleblower Reward Fund.

Section 21—Sources of money for the Fund

The moneys for the Fund consists of

(a) voluntary contributions to the Fund, and

(b) other moneys that may be allocated by Parliament to the Fund.

Section 22—Object of the Fund

The object of the Fund is to provide funds for payment of monetary rewards to whistleblowers.

Section 23—Reward on conviction

A whistleblower who makes a disclosure that leads to the arrest and conviction of an accused person shall be rewarded with money from the Fund.

Section 24—Reward on recovery of money

A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded from the Fund with

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

Section 25—Bank account of the Fund

Moneys 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.

Section 26—Management of the Fund

- (1) The Fund shall be managed and administered by the Board which shall include for this purpose the Inspector-General of Police or a representative of the Inspector-General of Police.
- (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 moneys from the Fund, and
 - (e) perform other functions as are incidental to the achievement of the object of the Fund.

Section 27—Disbursement of Fund

- (1) The disbursement of moneys from the Fund shall be determined by the Board.
- (2) The Board shall within thirty days on receipt of the submission of a claim for payment out of the Fund, approve
 - (a) payment of a reward from the Fund,
 - (b) the reimbursement of expenses incurred by a whistleblower whose disclosure resulted in an investigation for which that person incurred those expenses, and
 - (c) the payment of other relevant expenses that the Board may determine.
- (3) An amount payable under paragraphs (a) and (b) of subsection (2) shall be paid within a period of not more than fourteen days from the date the payment of the money is approved.
- (4) Each payment issued from the Fund shall be signed for by the chairperson of the Board and the Inspector-General of Police.

PART V—MISCELLANEOUS PROVISIONS

Section 28—Accounts and Audit

(1) The Board shall keep in respect of the Fund, books of accounts and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Fund to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall not later than three months after the receipt of the accounts, audit the accounts and submit the audit report to Parliament.

(4) 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.

(5) The financial year of the Fund shall be the same as the financial year of the Government.

Section 29—Annual report

(1) The Board shall within one month after receipt of the audit report submit an annual report to the Minister covering activities and the operations of the Board in relation to the Fund for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

Section 30—Regulations

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 this Act.

Section 31—Modification of existing laws

Existing enactments shall be construed with modifications as are necessary to give effect to this Act.

Section 32—Interpretation

In this Act unless the context otherwise requires;

"Board" means the Legal Service Board established under section 8 of the Legal Service Law, 1993 (P.N.D.C.L. 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;

"economic crime" includes an act which involves the loss, mismanagement or misappropriation of public funds or causes the loss, mismanagement or misappropriation of public funds;

"employee" means a person who works for another person, company or organization or for the Republic and who is paid or entitled to be paid for organization services rendered but does not include an independent contactor,

"employer" includes an individual, a body corporate or unincorporated of 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 Reward Fund established under section 20;

"person" includes an individual, a body of persons, an institution or a corporation;

"religious body" means an association, a body or organization which professes adherence to a belief in a system of faith or worship or which is established in pursuance of a religious objective;

"Republic" means the Republic of Ghana;

"reward" includes a sum of money payable from the Fund to a person who makes a disclosure in accordance with this Act; and

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

Date of Gazette notification: 20th October, 2006.