

Whistleblower (Amendment) Bill, 2017

ARRANGEMENT OF SECTIONS

Section

1. Section 1 of Act 720 amended
2. Section 2 of Act 720 amended
3. Section 3 of Act 720 amended
4. Section 6 of Act 720 amended
5. Section 8 of Act 720 amended
6. Section 10 of Act 720 amended
7. Section 11 of Act 720 amended
8. Section 12 of Act 720 amended
9. Sections 12A and 12B inserted
10. Section 14 of Act 720 amended
11. Section 15 of Act 720 amended
12. Section 16 of Act 720 amended
13. Section 17 of Act 720 amended
14. Section 19 of Act 720 amended
15. Section 21 of Act 720 amended
16. Section 23 of Act 720 amended
17. Section 24 of Act 720 amended
18. Section 27 of Act 720 amended
19. Section 31A inserted
20. Section 32 of Act 720 amended

A
BILL

ENTITLED

WHISTLEBLOWER (AMENDMENT) ACT, 2017

AN ACT to amend the Whistleblower Act, 2006 (Act 720) to widen the scope of the Act and to provide for related matters.

PASSED by Parliament and assented to by the President:

Section 1 of Act 720 amended

1. The Whistleblower Act, 2006 (Act 720) referred to in this Act as the principal enactment is amended in section 1

- (a) by the substitution for paragraph (d) of subsection (1) of “(d) that there has been, there is or there is likely to be waste, misappropriation or mismanagement of resources in an institution so as to affect the public interest”;
- (b) by the deletion in paragraph (e) of subsection (1) of “or” at the end of paragraph (e);
- (c) by the insertion after paragraph (f) of subsection (1) of new paragraphs (g) and (h)
“(g) that a person or institution has engaged or is engaging in improper conduct; or

Whistleblower (Amendment) Bill, 2017

- (h) that any matter in paragraphs (a) to (g) has been, is being or is likely to be deliberately concealed”; and
- (d) by the insertion of new subsections (5) and (6)

“(5) If a specific payment is made for the disclosure in the absence of independent corroboration, that factor will be considered in assessing whether the person has good faith and reasonable cause to believe the information and alleged impropriety are substantially true.

(6) A disclosure of information in respect of which a claim to legal professional privilege can be maintained in legal proceedings is not a disclosure if the disclosure is made by a person to whom the information had been disclosed in the course of obtaining legal advice.”

Section 2 of Act 720 amended

2. The principal enactment is amended in section 2 by the insertion of
 - (a) the words “ or ex-employee” after the words “employee” and ‘employer” in paragraphs (a) and (b) of the records “or ex-employee” and ‘employer” respectively
 - (b) by the insertion of new paragraphs (d), (e), (f), and (g)
 - “(d) although the person making the disclosure is not able to identify a particular person to whom the disclosure relates;
 - (e) although the improper conduct or impropriety has occurred before the commencement of the Act;
 - (f) in respect of information acquired by a person while the person was an officer of an institution or an officer of a private body; or
 - (g) of any improper conduct of a person while that person was an officer of an institution or an officer of a private institution or body.”

Section 3 of Act 720 amended

3. The principal enactment is amended in subsection (1) of section 3 by the substitution
 - (a) “Serious Fraud Office;” in paragraph (g) of “Economic and Organised Crime Office;”; and
 - (b) “Revenue Agencies Governing Board;” in paragraph (q) of “Ghana Revenue Authority;”.

Whistleblower (Amendment) Bill, 2017

Section 6 of Act 720 amended

4. The principal enactment is amended in paragraph (c) of subsection (1) of section 6 by the insertion of the words

“and not disclosing the whistleblower’s identity or identifying information without prior consent or reasonable advance warning when disclosure is required by law.” after “impropriety”.

Section 8 of Act 720 amended

5. The principal enactment is amended in section 8 by the insertion of a new subsection (5) after subsection (4)

“(5) A person who obstructs an authorised officer in the performance of functions under this Act commits an offence under section 24 of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) and is liable on summary conviction to a fine of not more than two hundred penalty units or in default of payment, to a term of imprisonment of not more than six months or to both the fine and the imprisonment.”.

Section 10 of Act 720 amended

6. The principal enactment is amended in section 10 by the insertion of a new subsection (4) after subsection (3)

“(4) Despite subsection (1), only a person subject by law to the direction of the Attorney-General is required to report to the Attorney-General on an investigation.”.

Section 11 of Act 720 amended

7. The principal enactment is amended in section 11 by renumbering the existing provision as subsection (1) and the insertion of new subsections (2), (3), (4) and (5)

“(2) The Attorney-General or an investigating agency may provide the whistleblower with feedback on the action taken within a reasonable time where it is considered desirable and shall obtain the whistleblower’s confidential comments on the findings before closing an investigation.

(3) The comments and response of the whistleblower shall be included in the final report of the Attorney-General or the investigative agency.

Whistleblower (Amendment) Bill, 2017

(4) Where the Attorney-General considers it desirable to provide the whistleblower with feedback on the action taken, the Attorney-General shall also provide the person or head of the institution accused of impropriety with feedback.

(5) The comments and response of the accused person or head of institution shall be included in the final report of the Attorney-General or the investigating agency.”

Section 12 of Act 720 amended

8. The principal enactment is amended in section 12

- (a) in subsection (1) of “and any person related to or associated with the whistleblower” between ‘A whistleblower’ and ‘shall’; and at the end of the subsection (1) of “or because the whistleblower refuses to contravene the law”;
- (b) by the deletion in subsection 2(a) of “or” at the end of paragraph (viii);
- (c) by the insertion in subsection (2)(a) of a new paragraph (x)
“(x) prevented from receiving any payment due without reasonable explanation”;
- (d) by the substitution for subsection (3) of
“(3) A whistleblower shall not be considered as having been subjected to victimisation if
 - (a) by the preponderance of the evidence it is established that the activity protected by this Act was not a contributory factor to the alleged victimisation, or
 - (b) 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.”;
- (f) by the insertion after subsection (3) of new subsections (4), (5), (6), (7), (8) and (9)
 - “(4) The whistleblower protection conferred under section 1(4) is not affected by a disciplinary action or prosecution of the person against whom the disclosure of improper conduct is made.
 - (5) Where a whistleblower is a witness in a matter before a High Court that relates to information given by the whistleblower,