

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 118 Session of 2013

INTRODUCED BY ELLIS, METCALFE, R. BROWN, D. COSTA, BROOKS, M. K. KELLER, SAYLOR, GINGRICH, O'NEILL, B. BOYLE, RAVENSTAHL, STURLA, REED, CAUSER, WATSON, FLECK, MAJOR, KNOWLES, HICKERNELL, ROZZI, STEPHENS, MUNDY, MILLARD, CARROLL, SCHLOSSBERG, BAKER, AUMENT, BOBACK, KAUFFMAN, PICKETT, HARKINS, MACKENZIE, MOUL, R. MILLER, SONNEY, GROVE, MARSHALL, HAHN, READSHAW, RAPP, STEVENSON, O'BRIEN, C. HARRIS, CUTLER, PYLE, OBERLANDER, REESE, MURT, P. COSTA, COHEN, SWANGER, PETRI, DEASY, GIBBONS, QUINN, CLYMER, GOODMAN, MATZIE, ROCK, GRELL, PEIFER, MOLCHANY, COX, GILLEN, GABLER, MALONEY, BENNINGHOFF, MARSICO, DeLUCA, CALTAGIRONE, NEILSON, DENLINGER, FREEMAN, KORTZ AND FARRY, JANUARY 16, 2013

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 26, 2014

AN ACT

1 Amending the act of December 12, 1986 (P.L.1559, No.169),
2 entitled "An act providing protection for employees who
3 report a violation or suspected violation of State, local or
4 Federal law; providing protection for employees who
5 participate in hearings, investigations, legislative
6 inquiries or court actions; and prescribing remedies and
7 penalties," further providing for the definitions of
8 "appropriate authority," "employee" and "employer," <--
9 "EMPLOYEE," "EMPLOYER" AND "GOOD FAITH REPORT," for <--
10 protection of employees, for enforcement and for penalties.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. ~~The definitions of "appropriate authority," <--
14 "employee" and "employer" in section 2 of the act of December
15 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law, are
16 amended to read:~~

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1 SECTION 1. THE DEFINITIONS OF "APPROPRIATE AUTHORITY,"
2 "EMPLOYEE," "EMPLOYER" AND "GOOD FAITH REPORT" IN SECTION 2 OF
3 THE ACT OF DECEMBER 12, 1986 (P.L.1559, NO.169), KNOWN AS THE
4 WHISTLEBLOWER LAW, ARE AMENDED TO READ:

5 Section 2. Definitions.

6 The following words and phrases when used in this act shall
7 have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Appropriate authority." A Federal, State or local
10 government body, agency or organization having jurisdiction over
11 criminal law enforcement, regulatory violations, professional
12 conduct or ethics, or waste; or a member, officer, agent,
13 representative or supervisory employee of the body, agency or
14 organization. The term includes, but is not limited to, the
15 Office of Inspector General, the Office of Attorney General, the
16 Department of the Auditor General, the Treasury Department, the
17 General Assembly and committees of the General Assembly having
18 the power and duty to investigate criminal law enforcement,
19 regulatory violations, professional conduct or ethics, or waste.

20 "Employee." A person who performs a service for wages or
21 other remuneration under a contract of hire, written or oral,
22 express or implied, for [a public body] an employer.

23 "Employer." [A person supervising one or more employees,
24 including the employee in question; a superior of that
25 supervisor; or an agent of a public body.] A public body or any
26 of the following which receives money from a public body to
27 perform work or provide services RELATIVE TO THE PERFORMANCE OF <--
28 WORK FOR OR THE PROVISION OF SERVICES TO A PUBLIC BODY:

29 (1) An individual.

30 (2) A partnership.

- 1 (3) An association.
- 2 (4) A corporation for profit.
- 3 (5) A corporation not for profit.

4 "GOOD FAITH REPORT." A REPORT OF CONDUCT DEFINED IN THIS ACT <--
5 AS WRONGDOING OR WASTE WHICH IS MADE WITHOUT MALICE OR
6 CONSIDERATION OF PERSONAL BENEFIT AND WHICH THE PERSON MAKING
7 THE REPORT HAS REASONABLE CAUSE TO BELIEVE IS TRUE. AN EMPLOYER
8 IS NOT BARRED FROM TAKING DISCIPLINARY ACTION AGAINST THE
9 EMPLOYEE WHO COMPLETED THE REPORT IF THE EMPLOYEE'S REPORT WAS
10 SUBMITTED IN BAD FAITH.

11 * * *

12 Section 2. Section 3(a) of the act is amended and the
13 section is amended by adding a subsection to read:

14 Section 3. Protection of employees.

15 (a) Persons not to be discharged.--No employer may
16 discharge, threaten or otherwise discriminate or retaliate
17 against an employee regarding the employee's compensation,
18 terms, conditions, location or privileges of employment because
19 the employee or a person acting on behalf of the employee makes
20 a good faith report or is about to report, verbally or in
21 writing, to the employer or appropriate authority an instance of
22 wrongdoing or waste by a public body or an instance of waste by
23 any other employer AS DEFINED IN THIS ACT. <--

24 * * *

25 (c) Disclosure prohibition.--An appropriate authority to
26 which a violation of this act was reported may not disclose the
27 identity of a whistleblower without the whistleblower's consent
28 unless disclosure is unavoidable in the investigation of the
29 alleged violation.

30 Section 3. Sections 5 and 6 of the act are amended to read:

1 Section 5. Enforcement.

2 A court, in rendering a judgment in an action brought under
3 this act, shall order, as the court considers appropriate,
4 reinstatement of the employee, the payment of back wages, full
5 reinstatement of fringe benefits and seniority rights, actual
6 damages or any combination of these remedies. A court [may]
7 shall also award the complainant all or a portion of the costs
8 of litigation, including reasonable attorney fees and witness
9 fees[, if the court determines that the award is appropriate],
10 if the complainant prevails in the civil action.

11 Section 6. Penalties.

12 A person who, under color of an employer's authority,
13 violates this act shall be liable for a civil fine of not more
14 than [\$500] \$10,000. Additionally, except where the person holds
15 an elected public office, if the court specifically finds that
16 the person, while in the employment of the Commonwealth or a
17 political subdivision, committed a violation of this act with
18 the intent to discourage the disclosure of criminal activity,
19 the court may order the person's suspension from public service
20 for not more than [six months] seven years. A civil fine which
21 is ordered under this section shall be paid to the State
22 Treasurer for deposit into the General Fund.

23 Section 4. This act shall take effect in 60 days.