

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2149 Session of
1991

INTRODUCED BY VEON, DeWEESE, COHEN, KUKOVICH, KOSINSKI,
MIHALICH, TRELLO, GIGLIOTTI, SALOOM, KRUSZEWSKI, FEE,
LAUGHLIN, BILLOW, ACOSTA, FAJT, VAN HORNE, ULIANA, DALEY,
LEVANSKY, JOSEPHS, LESCOVITZ, LAWLESS, FREEMAN, BROUJOS AND
BELARDI, NOVEMBER 13, 1991

REFERRED TO COMMITTEE ON LABOR RELATIONS, NOVEMBER 13, 1991

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," extending the act to include private employers.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The definitions of "employee," "employer,"
11 "waste" and "whistleblower" in section 2 of the act of December
12 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law, are
13 amended and the section is amended by adding definitions to
14 read:

15 Section 2. Definitions.

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

19 * * *

1 "Employee." A person who performs a service for wages or
2 other remuneration under a contract of hire, written or oral,
3 express or implied, for a public body or a private employer.

4 ["Employer." A person supervising one or more employees,
5 including the employee in question; a superior of that
6 supervisor; or an agent of a public body.]

7 * * *

8 "Government employer." A person supervising one or more
9 employees, including the employee in question; a superior of
10 that supervisor; or an agent of a public body.

11 "Private employer." A natural person, partnership,
12 unincorporated association, joint stock company, corporation or
13 receiver, trustee or similar officer of a court who employs one
14 or more employees. The term includes a person supervising one or
15 more employees on behalf of, or an agent of, a natural person,
16 partnership, unincorporated association, joint stock company,
17 corporation or receiver, trustee or similar officer of a court.

18 * * *

19 "Waste." [An employer's conduct] Conduct or omissions
20 occurring within a public body which result in substantial
21 abuse, misuse, destruction or loss of funds or resources
22 belonging to or derived from Commonwealth or political
23 subdivision sources.

24 "Whistleblower." A person who witnesses or has evidence of
25 wrongdoing or waste in the case of an employee of a public body,
26 or wrongdoing in the case of an employee of a private employer,
27 while employed and who makes a good faith report of the
28 wrongdoing or waste, in the case of an employee of a public
29 body, or wrongdoing in the case of an employee of a private
30 employer, verbally or in writing, to one of the person's

1 superiors, to an agent of the employer or to an appropriate
2 authority.

3 * * *

4 Section 2. Sections 3, 4, 6, 7 and 8 of the act are amended
5 to read:

6 Section 3. Protection of employees.

7 (a) Persons not to be discharged.--

8 (1) No government employer may discharge, threaten or
9 otherwise discriminate or retaliate against an employee
10 regarding the employee's compensation, terms, conditions,
11 location or privileges of employment because the employee or
12 a person acting on behalf of the employee makes a good faith
13 report or is about to report, verbally or in writing, to the
14 employer or appropriate authority an instance of wrongdoing
15 or waste.

16 (2) No private employer may discharge, threaten or
17 otherwise discriminate or retaliate against an employee
18 regarding the employee's compensation, terms, conditions,
19 location or privileges of employment because the employee or
20 a person acting on behalf of the employee makes a good faith
21 report or is about to report, verbally or in writing, to the
22 employer or appropriate authority an instance of wrongdoing.

23 (b) Discrimination prohibited.--No government employer or
24 private employer may discharge, threaten or otherwise
25 discriminate or retaliate against an employee regarding the
26 employee's compensation, terms, conditions, location or
27 privileges of employment because the employee is requested by an
28 appropriate authority to participate in an investigation,
29 hearing or inquiry held by an appropriate authority or in a
30 court action.

1 Section 4. Remedies.

2 (a) Civil action.--A person who alleges a violation of this
3 act may bring a civil action in a court of competent
4 jurisdiction for appropriate injunctive relief or damages, or
5 both, within 180 days after the occurrence of the alleged
6 violation.

7 (b) Necessary showing of evidence.--

8 (1) An employee of a public body alleging a violation of
9 this act must show by a preponderance of the evidence that,
10 prior to the alleged reprisal, the employee or a person
11 acting on behalf of the employee had reported or was about to
12 report in good faith, verbally or in writing, an instance of
13 wrongdoing or waste to the government employer or an
14 appropriate authority.

15 (2) An employee of a private employer alleging a
16 violation of this act must show by a preponderance of the
17 evidence that, prior to the alleged reprisal, the employee or
18 a person acting on behalf of the employee had reported or was
19 about to report in good faith, verbally or in writing, an
20 instance of wrongdoing to the private employer or an
21 appropriate authority.

22 (c) Defense.--It shall be a defense to an action under this
23 section if the defendant proves by a preponderance of the
24 evidence that the action by the government employer or private
25 employer occurred for separate and legitimate reasons, which are
26 not merely pretextual.

27 (d) Civil service employees.--An employee covered by civil
28 service who contests a civil service action, believing it to be
29 motivated by his having made a good faith report, verbally or in
30 writing, of an instance of wrongdoing or waste, may submit as

1 admissible evidence any or all material relating to the action
2 as whistleblower and to the resulting alleged reprisal.

3 Section 6. Penalties.

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

16 Section 7. Construction.

17 This act shall not be construed to require [an] a government
18 or a private employer to compensate an employee for
19 participation in an investigation, hearing or inquiry held by an
20 appropriate authority, or impair the rights of any person under
21 a collective bargaining agreement.

22 Section 8. Notice.

23 [An employer] Government employers and private employers
24 shall post notices and use other appropriate means to notify
25 employees and keep them informed of protections and obligations
26 under this act.

27 Section 3. This act shall take effect in 60 days.