

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 284**Session of  
1985

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INTRODUCED BY WAMBACH, IRVIS, MANDERINO, NOYE, HAYES, COHEN, PITTS, CESSAR, O'DONNELL, BOWSER, D. R. WRIGHT, McCLATCHY, DOMBROWSKI, ITKIN, FEE, PIEVSKY, ARTY, DeLUCA, ANGSTADT, ACOSTA, BURNS, AFFLERBACH, BIRMELIN, BORTNER, BOOK, BELARDI, BURD, BLAUM, BUNT, BELFANTI, BUSH, BOWLEY, BARLEY, BARBER, BOYES, BATTISTO, BLACK, CAWLEY, CLYMER, CAPPABIANCA, CIVERA, CLARK, CORNELL, COWELL, CARLSON, COLAFELLA, CIMINI, COY, COSLETT, CALTAGIRONE, DISTLER, COLE, DININNI, CARN, DURHAM, CORDISCO, DAVIES, DeWEESE, DIETZ, DONATUCCI, DORR, DALEY, DeVERTER, DEAL, FOX, DUFFY, FARGO, DAWIDA, A. C. FOSTER, JR., EVANS, FREIND, FRYER, FLICK, FREEMAN, GALLEN, FATTAH, GEIST, GAMBLE, GLADECK, GALLAGHER, GODSHALL, GEORGE, GREENWOOD, GRUITZA, GANNON, HUTCHINSON, HASAY, HARPER, HERMAN, HOWLETT, HONAMAN, JAROLIN, HERSHEY, JOSEPHS, HAGARTY, KASUNIC, JACKSON, KOSINSKI, JOHNSON, KUKOVICH, KENNEY, LLOYD, LASHINGER, LEVDANSKY, MANMILLER, LIVENGOOD, MILLER, LEVIN, MACKOWSKI, LAUGHLIN, MICOZZIE, LETTERMAN, MERRY, LESCOVITZ, McVERRY, LINTON, MOEHLMANN, LUCYK, NAHILL, McCALL, PERZEL, MURPHY, PUNT, MARKOSEK, MICHLOVIC, PHILLIPS, McHALE, PICCOLA, MRKONIC, RAYMOND, MORRIS, ROBBINS, OLIVER, REINARD, REBER, PRESTON, SCHULER, PETRARCA, SCHEETZ, PETRONE, SWIFT, PISTELLA, SEMMEL, PRATT, SAURMAN, PRESSMANN, B. SMITH, RYBAK, SIRIANNI, RICHARDSON, STAIRS, RUDY, D. W. SNYDER, SALOOM, G. M. SNYDER, STABACK, E. Z. TAYLOR, SHOWERS, TELEK, STUBAN, VROON, STEIGHNER, WASS, SWEET, WESTON, STEWART, WILSON, TRELLO, J. L. WRIGHT, TRUMAN, R. C. WRIGHT, TIGUE, WOGAN, F. E. TAYLOR, VEON, VAN HORNE, WOZNIAK, WIGGINS, WILLIAMS, YANDRISEVITS, GRUPPO, HALUSKA, MAYERNIK, KENNEDY, RIEGER, ARGALL, BALDWIN, BROUJOS, POTT, STEVENS AND OLASZ,  
FEBRUARY 5, 1985

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AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 29, 1985

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## AN ACT

- 1 Providing protection for employees who report a violation or
- 2 suspected violation of State, local or Federal law; providing
- 3 protection for employees who participate in hearings,
- 4 investigations, legislative inquiries or court actions; and
- 5 prescribing remedies and penalties.

1 The General Assembly of the Commonwealth of Pennsylvania  
2 hereby enacts as follows:

3 Section 1. Short title.

4 This act shall be known and may be cited as the Whistleblower  
5 Law.

6 Section 2. Definitions.

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

10 ~~"Employee." Any person employed by the Commonwealth or a~~ <—  
11 ~~political subdivision of the Commonwealth.~~

12 ~~"Employer." Any person in State government supervising one~~  
13 ~~or more employees, including the employee in question, any of~~  
14 ~~the superiors of that supervisor and any agent of the employer,~~  
15 ~~the Commonwealth or a political subdivision of the Commonwealth.~~

16 ~~"Public body." All of the following:~~

17 ~~(1) A State officer, employee, agency, department,~~  
18 ~~division, bureau, board, commission, council, authority or~~  
19 ~~other body in the Executive Branch of State government.~~

20 ~~(2) A county, city, township, regional governing body,~~  
21 ~~council, school district, special district or municipal~~  
22 ~~corporation, or a board, department, commission, council,~~  
23 ~~agency or any member or employee thereof.~~

24 ~~(3) Any other body which is created by State or local~~  
25 ~~authority or which is primarily funded by or through State or~~  
26 ~~local authority or any member or employee of that body.~~

27 ~~(4) A law enforcement agency or any member or employee~~  
28 ~~of a law enforcement agency.~~

29 ~~(5) The judiciary and any member or employee of the~~  
30 ~~judiciary.~~

1       ~~"Whistleblower." A person who witnesses or has evidence of a~~  
2 ~~violation of a law, rule or regulation or of fraud or other~~  
3 ~~wrongdoing while employed and who reports the violation,~~  
4 ~~verbally or in writing, to any of his superiors or any agent of~~  
5 ~~his employer. The term includes any person who reports a~~  
6 ~~violation, verbally or in writing, to the Office of Attorney~~  
7 ~~General, the Department of the Auditor General, the Treasury~~  
8 ~~Department or any other agency which has jurisdiction over~~  
9 ~~fraud, crime, corruption, violations of law or law enforcement~~  
10 ~~powers.~~

11       "APPROPRIATE AUTHORITY." A FEDERAL, STATE OR LOCAL       ←  
12 GOVERNMENT BODY, AGENCY OR ORGANIZATION HAVING JURISDICTION OVER  
13 CRIMINAL LAW ENFORCEMENT, REGULATORY VIOLATIONS, PROFESSIONAL  
14 CONDUCT OR ETHICS, OR WASTE; OR A MEMBER, OFFICER, AGENT,  
15 REPRESENTATIVE OR SUPERVISORY EMPLOYEE OF THE BODY, AGENCY OR  
16 ORGANIZATION. THE TERM INCLUDES, BUT IS NOT LIMITED TO, THE  
17 OFFICE OF ATTORNEY GENERAL, THE DEPARTMENT OF THE AUDITOR  
18 GENERAL, THE TREASURY DEPARTMENT, THE GENERAL ASSEMBLY AND  
19 COMMITTEES OF THE GENERAL ASSEMBLY HAVING THE POWER AND DUTY TO  
20 INVESTIGATE CRIMINAL LAW ENFORCEMENT, REGULATORY VIOLATIONS,  
21 PROFESSIONAL CONDUCT OR ETHICS, OR WASTE.

22       "EMPLOYEE." A PERSON WHO PERFORMS A SERVICE FOR WAGES OR  
23 OTHER REMUNERATION UNDER A CONTRACT OF HIRE, WRITTEN OR ORAL,  
24 EXPRESS OR IMPLIED, FOR A PUBLIC BODY.

25       "EMPLOYER." A PERSON SUPERVISING ONE OR MORE EMPLOYEES,  
26 INCLUDING THE EMPLOYEE IN QUESTION; A SUPERIOR OF THAT  
27 SUPERVISOR; OR AN AGENT OF A PUBLIC BODY.

28       "GOOD FAITH REPORT." A REPORT OF CONDUCT DEFINED IN THIS ACT  
29 AS WRONGDOING OR WASTE WHICH IS MADE WITHOUT MALICE OR  
30 CONSIDERATION OF PERSONAL BENEFIT AND WHICH THE PERSON MAKING

1 THE REPORT HAS REASONABLE CAUSE TO BELIEVE IS TRUE.

2 "PUBLIC BODY." ALL OF THE FOLLOWING:

3 (1) A STATE OFFICER, AGENCY, DEPARTMENT, DIVISION,  
4 BUREAU, BOARD, COMMISSION, COUNCIL, AUTHORITY OR OTHER BODY  
5 IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

6 (2) A COUNTY, CITY, TOWNSHIP, REGIONAL GOVERNING BODY,  
7 COUNCIL, SCHOOL DISTRICT, SPECIAL DISTRICT OR MUNICIPAL  
8 CORPORATION, OR A BOARD, DEPARTMENT, COMMISSION, COUNCIL OR  
9 AGENCY.

10 (3) ANY OTHER BODY WHICH IS CREATED BY COMMONWEALTH OR  
11 POLITICAL SUBDIVISION AUTHORITY OR WHICH IS SUBSTANTIALLY  
12 FUNDED BY OR THROUGH COMMONWEALTH OR POLITICAL SUBDIVISION  
13 AUTHORITY OR A MEMBER OR EMPLOYEE OF THAT BODY.

14 "WASTE." AN EMPLOYER'S CONDUCT OR OMISSIONS WHICH RESULT IN  
15 SUBSTANTIAL ABUSE, MISUSE, DESTRUCTION OR LOSS OF FUNDS OR  
16 RESOURCES BELONGING TO OR DERIVED FROM COMMONWEALTH OR POLITICAL  
17 SUBDIVISION SOURCES.

18 "WHISTLEBLOWER." A PERSON WHO WITNESSES OR HAS EVIDENCE OF  
19 WRONGDOING OR WASTE WHILE EMPLOYED AND WHO MAKES A GOOD FAITH  
20 REPORT OF THE WRONGDOING OR WASTE, VERBALLY OR IN WRITING, TO  
21 ONE OF THE PERSON'S SUPERIORS, TO AN AGENT OF THE EMPLOYER OR TO  
22 AN APPROPRIATE AUTHORITY.

23 "WRONGDOING." A VIOLATION WHICH IS NOT OF A MERELY TECHNICAL  
24 OR MINIMAL NATURE OF A FEDERAL OR STATE STATUTE OR REGULATION,  
25 OF A POLITICAL SUBDIVISION ORDINANCE OR REGULATION OR OF A CODE  
26 OF CONDUCT OR ETHICS DESIGNED TO PROTECT THE INTEREST OF THE  
27 PUBLIC OR THE EMPLOYER.

28 Section 3. Protection of employees.

29 (a) Persons not to be discharged.--No ~~public body~~ EMPLOYER <—  
30 may discharge, threaten or otherwise discriminate OR RETALIATE <—

1 against an employee regarding the employee's compensation,  
2 terms, conditions, location or privileges of employment because  
3 the employee or a person acting on behalf of the employee  
4 ~~reports~~ MAKES A GOOD FAITH REPORT or is about to report, <—  
5 verbally or in writing, ~~a violation or a suspected violation of~~ <—  
6 ~~a law or a rule or regulation promulgated by the Commonwealth, a~~  
7 ~~political subdivision of the Commonwealth or the United States~~  
8 ~~unless the employee knows that the report is false~~ TO THE <—  
9 EMPLOYER OR APPROPRIATE AUTHORITY AN INSTANCE OF WRONGDOING OR  
10 WASTE.

11 (b) Discrimination prohibited.--No ~~public body~~ EMPLOYER may <—  
12 discharge, threaten or otherwise discriminate OR RETALIATE <—  
13 against an employee regarding the employee's compensation,  
14 terms, conditions, location or privileges of employment because  
15 the employee is requested by a ~~public body~~ AN APPROPRIATE <—  
16 AUTHORITY to participate in an investigation, hearing or inquiry  
17 held by a ~~public body~~ AN APPROPRIATE AUTHORITY or in a court <—  
18 action.

19 Section 4. Remedies.

20 (a) Civil action.--A person who alleges a violation of this  
21 act may bring a civil action IN A COURT OF COMPETENT <—  
22 JURISDICTION for appropriate injunctive relief or damages, or  
23 both, within ~~90~~ 180 days after the occurrence of the alleged <—  
24 violation.

25 ~~(b) Jurisdiction. An action begun under this section may be~~ <—  
26 ~~brought in the court of the county where the alleged reprisal~~  
27 ~~occurred, the county where the complainant resides or the county~~  
28 ~~where the person against whom the civil complaint is filed~~  
29 ~~resides or has his principal place of business.~~

30 (c) (B) Necessary showing of evidence.--An employee alleging <—

1 ~~discrimination under~~ A VIOLATION OF this act must show by clear <—  
2 and convincing evidence that, prior to the alleged reprisal, the  
3 employee or a person acting on behalf of the employee had  
4 reported or was about to report IN GOOD FAITH, verbally or in <—  
5 writing, ~~a violation or a suspected violation of a law of the~~ <—  
6 ~~Commonwealth, a political subdivision of the Commonwealth or the~~  
7 ~~United States to a public body~~ AN INSTANCE OF WRONGDOING OR <—  
8 WASTE TO THE EMPLOYER OR AN APPROPRIATE AUTHORITY.

9 (C) DEFENSE.--AN EMPLOYER MAY REBUT THE PRESUMPTION OF  
10 VIOLATION OF THIS ACT RAISED BY AN EMPLOYEE'S PRESENTATION OF A  
11 PRIMA FACIE CASE BY CLEAR AND CONVINCING EVIDENCE OF SUBSTANTIAL  
12 AND COMPELLING GROUNDS OR CIRCUMSTANCES JUSTIFYING THE ACTIONS  
13 ALLEGED TO BE RETALIATORY OR DISCRIMINATORY.

14 (d) Civil service employees.--An employee covered by civil  
15 service who contests a civil service action, believing it to be  
16 motivated by his having ~~reported or been about to report a~~ <—  
17 ~~violation of government law, rule or regulation,~~ MADE A GOOD <—  
18 FAITH REPORT OF AN INSTANCE OF WRONGDOING OR WASTE, may submit  
19 as admissible evidence any or all material relating to the  
20 action as whistleblower and to the resulting alleged reprisal.

21 ~~(e) Definition. As used in this section, the term "damages"~~ <—  
22 ~~means actual damages for loss or injury caused by each violation~~  
23 ~~of this act, as well as punitive damages in cases where the~~  
24 ~~reprisal is determined to have damaged the reputation,~~  
25 ~~diminished the community status or discredited the professional~~  
26 ~~or occupational standing of the complainant, plus reasonable~~  
27 ~~attorney fees.~~

28 Section 5. Enforcement.

29 A court, in rendering a judgment in an action brought under  
30 this act, shall order, as the court considers appropriate,

1 reinstatement of the employee, the payment of back wages, full  
2 reinstatement of fringe benefits and seniority rights, actual  
3 damages, ~~punitive damages~~ or any combination of these remedies. <—  
4 A court may also award the complainant all or a portion of the  
5 costs of litigation, including reasonable attorney fees and  
6 witness fees, if the court determines that the award is  
7 appropriate.

8 Section 6. Penalties.

9 A person who, UNDER COLOR OF AN EMPLOYER'S AUTHORITY, <—  
10 violates this act shall be liable for a civil fine of not more  
11 than \$500. ~~or suspension from public service for not more than~~ <—  
12 ~~six months, or both. A civil fine which is ordered under this~~  
13 ~~act shall be submitted to the State Treasurer for deposit into~~  
14 ~~the General Fund.~~ ADDITIONALLY, EXCEPT WHERE THE PERSON HOLDS AN <—  
15 ELECTED PUBLIC OFFICE, IF THE COURT SPECIFICALLY FINDS THAT THE  
16 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. A CIVIL FINE WHICH IS ORDERED  
21 UNDER THIS SECTION SHALL BE PAID TO THE STATE TREASURER FOR  
22 DEPOSIT INTO THE GENERAL FUND.

23 Section 7. Construction.

24 This act shall not be construed to require an employer to  
25 compensate an employee for participation in an investigation,  
26 hearing or inquiry held by ~~a public body~~ AN APPROPRIATE <—  
27 AUTHORITY, or impair the rights of any person under a collective  
28 bargaining agreement.

29 Section 8. Notice.

30 An employer shall post notices and use other appropriate

1 means to notify employees and keep them informed of protections  
2 and obligations under this act.

3 Section 9. Effective date.

4 This act shall take effect in 60 days.