

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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

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

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 18, 1985

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

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

24 "Employer." A person supervising one or more employees,
25 including the employee in question; a superior of that
26 supervisor; or an agent of a public body.

27 "Good faith report." A report of conduct defined in this act
28 as wrongdoing or waste which is made without malice or
29 consideration of personal benefit and which the person making
30 the report has reasonable cause to believe is true.

1 "Public body." All of the following:

2 (1) A State officer, agency, department, division,
3 bureau, board, commission, council, authority or other body
4 in the executive branch of State government.

5 (2) A county, city, township, regional governing body,
6 council, school district, special district or municipal
7 corporation, or a board, department, commission, council or
8 agency.

9 (3) Any other body which is created by Commonwealth or
10 political subdivision authority or which is ~~substantially~~ ←
11 funded IN ANY AMOUNT by or through Commonwealth or political ←
12 subdivision authority or a member or employee of that body.

13 "Waste." An employer's conduct or omissions which result in
14 substantial abuse, misuse, destruction or loss of funds or
15 resources belonging to or derived from Commonwealth or political
16 subdivision sources.

17 "Whistleblower." A person who witnesses or has evidence of
18 wrongdoing or waste while employed and who makes a good faith
19 report of the wrongdoing or waste, verbally or in writing, to
20 one of the person's superiors, to an agent of the employer or to
21 an appropriate authority.

22 "Wrongdoing." A violation which is not of a merely technical
23 or minimal nature of a Federal or State statute or regulation,
24 of a political subdivision ordinance or regulation or of a code
25 of conduct or ethics designed to protect the interest of the
26 public or the employer.

27 Section 3. Protection of employees.

28 (a) Persons not to be discharged.--No employer may
29 discharge, threaten or otherwise discriminate or retaliate
30 against an employee regarding the employee's compensation,

1 terms, conditions, location or privileges of employment because
2 the employee or a person acting on behalf of the employee makes
3 a good faith report or is about to report, verbally or in
4 writing, to the employer or appropriate authority an instance of
5 wrongdoing or waste.

6 (b) Discrimination prohibited.--No employer may discharge,
7 threaten or otherwise discriminate or retaliate against an
8 employee regarding the employee's compensation, terms,
9 conditions, location or privileges of employment because the
10 employee is requested by an appropriate authority to participate
11 in an investigation, hearing or inquiry held by an appropriate
12 authority or in a court action.

13 Section 4. Remedies.

14 (a) Civil action.--A person who alleges a violation of this
15 act may bring a civil action in a court of competent
16 jurisdiction for appropriate injunctive relief or damages, or
17 both, within 180 days after the occurrence of the alleged
18 violation.

19 (b) Necessary showing of evidence.--An employee alleging a
20 violation of this act must show by ~~clear and convincing~~ A <—
21 PREPONDERANCE OF THE evidence that, prior to the alleged
22 reprisal, the employee or a person acting on behalf of the
23 employee had reported or was about to report in good faith,
24 verbally or in writing, an instance of wrongdoing or waste to
25 the employer or an appropriate authority.

26 ~~(c) Defense. An employer may rebut the presumption of~~ <—
27 ~~violation of this act raised by an employee's presentation of a~~
28 ~~prima facie case by clear and convincing evidence of substantial~~
29 ~~and compelling grounds or circumstances justifying the actions~~
30 ~~alleged to be retaliatory or discriminatory.~~

1 (C) DEFENSE.--IT SHALL BE A DEFENSE TO AN ACTION UNDER THIS <—
2 SECTION IF THE DEFENDANT PROVES BY A PREPONDERANCE OF THE
3 EVIDENCE THAT THE ACTION BY THE EMPLOYER OCCURRED FOR SEPARATE
4 AND LEGITIMATE REASONS, WHICH ARE NOT MERELY PRETEXTUAL.

5 (d) Civil service employees.--An employee covered by civil
6 service who contests a civil service action, believing it to be
7 motivated by his having made a good faith report, VERBALLY OR IN <—
8 WRITING, of an instance of wrongdoing or waste, may submit as
9 admissible evidence any or all material relating to the action
10 as whistleblower and to the resulting alleged reprisal.

11 Section 5. Enforcement.

12 A court, in rendering a judgment in an action brought under
13 this act, shall order, as the court considers appropriate,
14 reinstatement of the employee, the payment of back wages, full
15 reinstatement of fringe benefits and seniority rights, actual
16 damages or any combination of these remedies. A court may also
17 award the complainant all or a portion of the costs of
18 litigation, including reasonable attorney fees and witness fees,
19 if the court determines that the award is appropriate.

20 Section 6. Penalties.

21 A person who, under color of an employer's authority,
22 violates this act shall be liable for a civil fine of not more
23 than \$500. Additionally, except where the person holds an
24 elected public office, if the court specifically finds that the
25 person, while in the employment of the Commonwealth or a
26 political subdivision, committed a violation of this act with
27 the intent to discourage the disclosure of criminal activity,
28 the court may order the person's suspension from public service
29 for not more than six months. A civil fine which is ordered
30 under this section shall be paid to the State Treasurer for

1 deposit into the General Fund.

2 Section 7. Construction.

3 This act shall not be construed to require an employer to
4 compensate an employee for participation in an investigation,
5 hearing or inquiry held by an appropriate authority, or impair
6 the rights of any person under a collective bargaining
7 agreement.

8 Section 8. Notice.

9 An employer shall post notices and use other appropriate
10 means to notify employees and keep them informed of protections
11 and obligations under this act.

12 Section 9. Effective date.

13 This act shall take effect in 60 days.