

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1540 Session of
2005

INTRODUCED BY STEIL, ARGALL, BARRAR, BOYD, CALTAGIRONE, CLYMER,
CRAHALLA, FABRIZIO, FREEMAN, GINGRICH, HENNESSEY, HERMAN,
HERSHEY, LEACH, LEH, MANDERINO, S. MILLER, O'NEILL, PRESTON,
PYLE, ROHRER, RUBLEY, SAINATO, SAYLOR, B. SMITH, SOLOBAY,
STERN, E. Z. TAYLOR, TIGUE AND YOUNGBLOOD, MAY 9, 2005

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MAY 9, 2005

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 definitions, remedies and
8 enforcement.

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

11 Section 1. The definitions of "good faith report," "public
12 body" and "wrongdoing" in section 2 of the act of December 12,
13 1986 (P.L.1559, No.169), known as the Whistleblower Law, are
14 amended to 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 "Good faith report." A report of conduct defined in this act
2 as wrongdoing or waste which is made without malice or
3 consideration of personal benefit, other than self-protection,
4 and which the person making the report has reasonable cause to
5 believe is true. This includes reports made by the employee of
6 one public body concerning wrongdoings or waste by another
7 public body. A good faith report need not require conviction of
8 the offending party if the employee had a reasonable belief that
9 there existed a wrongdoing or if a reasonable person in the same
10 position could have reached the same conclusion.

11 "Public body." All of the following:

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

15 (2) A county, city, township, regional governing body,
16 council, school district, special district or municipal
17 corporation, or a board, department, commission, council or
18 agency.

19 (3) Any other body which is created by Commonwealth or
20 political subdivision authority or which is funded in any
21 amount by or through Commonwealth or political subdivision
22 authority or a member or employee of that body. This includes
23 any employer who receives funds in any amount, directly or
24 indirectly, from a public body or uses funds administered by
25 a public body or is paid directly or indirectly by a public
26 body or has a contract or agency relationship with a public
27 body.

28 * * *

29 "Wrongdoing." A violation which is not of a merely technical
30 or minimal nature of a Federal or State statute or regulation,

1 of a political subdivision ordinance or regulation or of a code
2 of conduct or ethics designed to protect the interest of the
3 public or the employer. This includes actions by employers that
4 have or could result in criminal charges, civil litigation, or
5 administrative action against the employer or would violate the
6 code of conduct for a governing professional organization.

7 Section 2. Sections 4(c) and 5 of the act are amended to
8 read:

9 Section 4. Remedies.

10 * * *

11 (c) Defense.--

12 (1) It shall be a defense to an action under this
13 section if the defendant proves by a preponderance of the
14 evidence that the action by the employer occurred for
15 separate and legitimate reasons, which are not merely
16 pretextual.

17 (2) "Separate" shall refer to an action by the employee,
18 independent of the reporting or wrongdoing or waste and not
19 discriminatory in nature, and would be the basis for the
20 adverse action for all other similarly situated employees.

21 (3) If the separate and legitimate reasons are not
22 discovered until after the adverse employment action, the
23 employee shall be entitled to attorney fees and back pay to
24 the point of discovery.

25 (4) If the reporting of the wrongdoing or waste by the
26 employee is shown to be a motivating factor in the adverse
27 action, the employer must prove using a preponderance of the
28 evidence, that it would have made the decision absent the
29 whistleblowing action. Evidence presented by either the
30 employee or employer may be either direct or circumstantial.

1 * * *

2 Section 5. Enforcement.

3 A court, in rendering a judgment in an action brought under
4 this act, shall order, as the court considers appropriate,
5 reinstatement of the employee, the payment of back wages, full
6 reinstatement of fringe benefits and seniority rights, actual
7 damages or any combination of these remedies. A court may also
8 award the complainant all or a portion of the costs of
9 litigation, including reasonable attorney fees and witness fees,
10 if the court determines that the award is appropriate. Punitive
11 damages when deemed appropriate by the court, may be awarded up
12 to a maximum of \$300,000. Employees are eligible for a jury
13 trial under this act.

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