WEST VIRGINIA CODE CHAPTER 6C ARTICLE 1

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§6C-1-1. Short title.

This article shall be known, and may be cited, as the "Whistle-blower Law."

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§6C-1-2. Definitions.

The following words and phrases when used in this article have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Appropriate authority" means a federal, state, county or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the office of the Attorney General, the office of the State Auditor, the commission on special investigations, the Legislature and committees of the Legislature having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

(b) "Employee" means a person who performs a full or part-time service for wages, salary, or other remuneration under a contract of hire, written or oral, express or implied, for a public body.

(c) "Employer" means a person supervising one or more employees, including the employee in question, a superior of that supervisor, or an agent of a public body.

(d) "Good faith report" means a report of conduct defined in this article as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

(e) "Public body" means any of the following:

(1) A department, division, officer, agency, bureau, board, commission, court in its nonjudicial functions only, council, institution, spending unit, authority or other instrumentality of the State of West Virginia;

(2) A commission, council, department, agency, board, court, in its nonjudicial functions only, official, special district, corporation or other instrumentality of a county or a municipality or a regional or joint governing body of one or more counties or municipalities; or

(3) Any other body which is created by state or political subdivision authority or which is funded by thirty-five percent or more by or through state or political subdivision authority, or a member or employee of that body.

(f) "Waste" means an employer or employee's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal, state or political subdivision sources.

(g) "Whistle-blower" means a person who witnesses or has evidence of wrongdoing or waste while employed with a public body and who makes a good faith report of, or testifies to, the

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wrongdoing or waste, verbally or in writing, to one of the employee's superiors, to an agent of the employer or to an appropriate authority.

(h) "Wrongdoing" means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

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§6C-1-3. Discriminatory and retaliatory actions against whistle-blowers prohibited; promotion, increased compensation protected.

(a) No employer may discharge, threaten, or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location, or privileges of employment because the employee, acting on his or her own volition, or a person acting on behalf of or under the direction of the employee, makes a good faith report, or is about to report, verbally or in writing, to the employer or appropriate authority, an instance of wrongdoing or waste.

(b) No employer may discharge, threaten, or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location, or privileges of employment because the employee is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry held by an appropriate authority or in a court action.

(c) No employer may deny a whistle-blower covered by the civil service system, because of his or her status or actions as a whistle-blower, a promotion or other increase in compensation that the whistle-blower otherwise would have received.

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§6C-1-4. Civil action by whistle-blower for violation; limitation on actions; burden of proof; defense; use of evidence in civil service proceeding; grievance action available; other rights and actions not limited.

(a) A person who alleges that he or she is a victim of a violation of this article may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within two years after the occurrence of the alleged violation.

(b) An employee alleging a violation of this article must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee, or a person acting on behalf of or under the direction of the employee, had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority.

(c) It shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action complained of occurred for separate and legitimate reasons, which are not merely pretexts.

(d) An employee covered by the civil service system who contests a civil service action, believing it to be motivated by the employee having made a disclosure of information, may submit as admissible evidence any or all material relating to the action as whistle-blower and to the resulting alleged reprisal.

(e) Any employee covered by the civil service system who has suffered a retaliatory action as a result of being a whistle-blower may pursue a grievance under the West Virginia Public Employees Grievance Procedure.

(f) Nothing in this article shall impair or limit any other right or legal action of an employee covered by the civil service system.

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§6C-1-5. Redress for whistle-blower.

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

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§6C-1-6. Civil penalty; termination from public service.

(a) A person who, as an employer or under color of an employer's authority, violates this article is personally liable for a civil fine of not more than $5,000. A civil fine which is collected under this section shall be paid to the State Treasurer for deposit into the General Fund.

(b) In addition to subsection (a) of this section, and notwithstanding any provision in this code to the contrary, if the court specifically finds that the person, while in the employment of a public body, committed a violation of section three of this article with the intent to discourage the disclosure of information, such finding: (1) shall be deemed a finding of official misconduct and malfeasance in office, and may be relied upon as admissible evidence in any subsequent proceeding or petition to remove the person from public office; and (2) may be relied upon by the public body as a basis to discipline the person, including, but not limited to, termination from employment: Provided, That nothing shall be construed as requiring a civil action, civil penalty or a court finding under this section as a condition or prerequisite for a public body to take disciplinary action against the person.

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§6C-1-7. Limitations on scope of construction; protections related to political activity and membership in organization of employee.

(a) The provisions of this article shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by an appropriate authority or impair the rights of any employee covered by the civil service system to be a member of an organization of employees or to refrain from being a member of an organization of employees.

(b) Except when on duty or acting in an official capacity, and except where otherwise prohibited by state or federal law, no employee covered by the civil service system may be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

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§6C-1-8. Notice to employees of protection of whistle-blowers.

An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations set forth in the provisions of this article.

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