WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

HOUSE BILL No. H.364

(By Mr. Delegate Kelly)

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Passed March 11, 1988

In Effect July 1, 1988

Passage
AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter six-c, relating to public employees; defining terms applicable to article; prohibiting discrimination or retaliation against a public employee, or “whistle-blower,” who reports an actual or suspected violation of state, local or federal law or who participates in any hearing, investigation, legislative inquiry or court action; allowing the whistle-blower to seek redress in a civil action charging discrimination or retaliation; providing a time limitation on civil action; placing on the whistle-blower the burden of proof in a civil action; providing that justification of the acts complained of is a defense; allowing evidence of retaliation or discrimination to be presented in civil service proceedings; providing alternative remedies for whistle-blower prevailing in civil action; providing for a civil fine and allowing suspension from public service for violations; placing limitations on the scope of construction of this article; and requiring notice by employer to employee of the protections afforded whistle-blowers.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter six-c, to read as follows:
CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 1. WHISTLE-BLOWER LAW.

§6C-1-1. Short title.

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

§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 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.

§6C-1-3. Discriminatory and retaliatory actions against whistle-blowers prohibited.

(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 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.

§6C-1-4. Civil action by whistle-blower for violation; limitation on actions; burden of proof; defense; use of evidence in civil service proceeding.

(a) A person who alleges that he 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 one hundred eighty days 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 his 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.

§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.

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

A person who, as an employer or under color of an employer's authority, violates this article is liable for a civil fine of not more than five hundred dollars. Additionally, except where the person holds a public office by election or appointment, if the court specifically finds that the person, while in the employment of the state or a political subdivision, committed a violation of section three of this article with the intent to discourage the disclosure of information, the court may order the person's suspension from public service for not more than six months. A civil fine which is collected under this section shall be paid to the state treasurer for deposit into the general fund.

§6C-1-7. Limitations on scope of construction.

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 person under a collective bargaining or other labor management.

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

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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.


Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 31st day of March, 1988.

Governor
PRESENTED TO THE GOVERNOR

Date 3/22/88

Time 11:19 a.m.