

4364

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

HOUSE BILL No. 4364

(By Mr. Delegate Kelly)

— ● —

Passed March 11, 1988

In Effect July 1, 1988 ~~Passage~~

ENROLLED
H. B. 4364
(By DELEGATE KELLY)

[Passed March 11, 1988; in effect July 1, 1988.]

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.

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

§6C-1-2. Definitions.

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

4 (a) "Appropriate authority" means a federal, state,
5 county or municipal government body, agency or
6 organization having jurisdiction over criminal law
7 enforcement, regulatory violations, professional conduct
8 or ethics, or waste; or a member, officer, agent,
9 representative or supervisory employee of the body,
10 agency or organization. The term includes, but is not
11 limited to, the office of the attorney general, the office
12 of the state auditor, the commission on special investi-
13 gations, the Legislature and committees of the Legisla-
14 ture having the power and duty to investigate criminal
15 law enforcement, regulatory violations, professional
16 conduct or ethics, or waste.

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

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

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

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

30 (1) A department, division, officer, agency, bureau,
31 board, commission, court in its nonjudicial functions

32 only, council, institution, spending unit, authority or
33 other instrumentality of the state of West Virginia;

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

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

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

49 (g) "Whistle-blower" means a person who witnesses or
50 has evidence of wrongdoing or waste while employed
51 with a public body and who makes a good faith report
52 of, or testifies to, the wrongdoing or waste, verbally or
53 in writing, to one of the employee's superiors, to an
54 agent of the employer or to an appropriate authority.

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

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

1 (a) No employer may discharge, threaten or otherwise
2 discriminate or retaliate against an employee by
3 changing the employee's compensation, terms, condi-
4 tions, location or privileges of employment because the
5 employee, acting on his own volition, or a person acting
6 on behalf of or under the direction of the employee,
7 makes a good faith report or is about to report, verbally
8 or in writing, to the employer or appropriate authority
9 an instance of wrongdoing or waste.

10 (b) No employer may discharge, threaten or otherwise
11 discriminate or retaliate against an employee by
12 changing the employee's compensation, terms, condi-
13 tions, location or privileges of employment because the
14 employee is requested or subpoenaed by an appropriate
15 authority to participate in an investigation, hearing or
16 inquiry held by an appropriate authority or in a court
17 action.

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

1 (a) A person who alleges that he is a victim of a
2 violation of this article may bring a civil action in a
3 court of competent jurisdiction for appropriate injunc-
4 tive relief or damages, or both, within one hundred
5 eighty days after the occurrence of the alleged violation.

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

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

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

§6C-1-5. Redress for whistle-blower.

1 A court, in rendering a judgment for the complainant
2 in an action brought under this article, shall order, as
3 the court considers appropriate, reinstatement of the

4 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.

1 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.

1 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.

1 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.

Bruce G. Williams
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1988.

John C. Stalls
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Don Tonduril
President of the Senate

[Signature]
Speaker of the House of Delegates

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

Arthur A. Phares Jr.
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 11:19 a.m.

RECEIVED

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OFFICE OF VERT VACCA
SECRETARY OF STATE