

LEGISLATIVE REFERENCE BUREAU

L.R.B. Form No. 4 (Rev. 1/11/17)

2022D10303SFR:EJH

No. \_\_\_\_\_

Legislative Reference Bureau

AN ACT

Amending Title 43 (Labor) of the Pennsylvania Consolidated Statutes, providing for preliminary provisions and for labor protections.

INTRODUCED \_\_\_\_\_ 20 \_\_\_\_\_

By \_\_\_\_\_ District NO. \_\_\_\_\_

By \_\_\_\_\_ District NO. \_\_\_\_\_

By \_\_\_\_\_ District NO. \_\_\_\_\_

By \_\_\_\_\_ District NO. \_\_\_\_\_

See next page for additional co-sponsors.

Prior Session \_\_\_\_\_

<b>Referred to Committee on</b>	
<b>Date</b> _____	20 _____
<b>Reported</b> _____	20 _____
<b>As Committed-Amended</b>	
<b>Recommendation</b>	
_____	
<b>By Hon.</b> _____	



## AN ACT

1 Amending Title 43 (Labor) of the Pennsylvania Consolidated  
2 Statutes, providing for preliminary provisions and for labor  
3 protections.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 43 of the Pennsylvania Consolidated  
7 Statutes is amended by adding parts to read:

8 PART I

9 PRELIMINARY PROVISIONS

10 Chapter

11 1. General Provisions

12 CHAPTER 1

13 GENERAL PROVISIONS

14 Sec.

15 101. Scope of title.

16 102. Definitions.

17 § 101. Scope of title.

18 This title relates to labor.

1 § 102. Definitions.

2 Subject to additional definitions contained in subsequent  
3 provisions of this title which are applicable to specific  
4 provisions under this title, the following words and phrases  
5 when used in this title shall have the meanings given to them in  
6 this section unless the context clearly indicates otherwise:

7 "Department." The Department of Labor and Industry of the  
8 Commonwealth.

9 PART II

10 LABOR PROTECTIONS

11 Chapter

12 11. Preliminary Provisions

13 13. Whistleblower Protections

14 CHAPTER 11

15 PRELIMINARY PROVISIONS

16 Sec.

17 1101. Scope of part.

18 § 1101. Scope of part.

19 This part relates to labor protections.

20 CHAPTER 13

21 WHISTLEBLOWER PROTECTIONS

22 Sec.

23 1301. Scope of chapter.

24 1302. Purpose.

25 1303. Definitions.

26 1304. Employee protections.

27 1305. Civil action and enforcement.

28 1306. Relief.

29 1307. Notice.

30 1308. Construction.

1 § 1301. Scope of chapter.

2 This chapter relates to whistleblower protections.

3 § 1302. Purpose.

4 The purpose of this chapter is to ensure that each employee  
5 is able to raise concerns about workplace conditions that  
6 violate the law or present an immediate and substantial risk to  
7 health and safety without fear of retaliation or dismissal.

8 § 1303. Definitions.

9 The following words and phrases when used in this chapter  
10 shall have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Appropriate authority." As follows:

13 (1) Any of the following:

14 (i) A Federal, State or local government body,  
15 agency or organization having jurisdiction over criminal  
16 law enforcement, regulatory violations, waste or  
17 professional conduct or ethics.

18 (ii) A member, officer, agent, representative or  
19 supervisory employee of the body, agency or organization  
20 under subparagraph (i).

21 (2) The term includes:

22 (i) The Office of Inspector General.

23 (ii) The Office of Attorney General.

24 (iii) The Department of the Auditor General.

25 (iv) The Treasury Department.

26 (v) The General Assembly and committees of the  
27 General Assembly having the power and duty to investigate  
28 criminal law enforcement, regulatory violations, waste or  
29 professional conduct or ethics.

30 "Commonwealth agency." A department, agency, division,

1 bureau, board, commission, council, authority, office or other  
2 body or officer of the executive branch under the policy  
3 supervision and control of the Governor.

4 "Employee." As follows:

5 (1) A person who performs a service for wages or other  
6 remuneration under a contract of hire, written or oral,  
7 express or implied, for an employer.

8 (2) The term includes:

9 (i) A former employee.

10 (ii) A prospective employee.

11 "Employer." Any of the following:

12 (1) A public body.

13 (2) Any of the following that receives money from a  
14 public body to perform work or provide services relative to  
15 the performance of work for or the provision of services to a  
16 public body:

17 (i) An individual.

18 (ii) A partnership.

19 (iii) An association.

20 (iv) A corporation for profit.

21 (v) A corporation not for profit.

22 (vi) Any other business entity.

23 (3) An individual or a private entity that has any of  
24 the following characteristics:

25 (i) Is located in this Commonwealth and employs an  
26 individual who is a resident of this Commonwealth.

27 (ii) Is located in this Commonwealth and employs an  
28 individual who is not a resident of this Commonwealth.

29 (iii) Is located outside this Commonwealth and  
30 employs an individual who is a resident of this

1 Commonwealth.

2 "Good faith report." As follows:

3 (1) A report of conduct defined in this chapter as  
4 wrongdoing or waste, which is made without malice or  
5 consideration of personal benefit and which the person making  
6 the report has reasonable cause to believe is true.

7 (2) An employer is not barred from taking disciplinary  
8 action against the employee who completed the report if the  
9 employee's report was submitted in bad faith.

10 "Illegal or dangerous business activity." A practice,  
11 procedure, action or failure to act by an employer, or an  
12 employee or agent of the employer, taken in the course of the  
13 employer's business, whether or not within the scope of  
14 employment or agency, that:

15 (1) is in violation of a law, rule or regulation; or

16 (2) creates and presents a substantial and specific  
17 danger to the public health or safety.

18 "Independent agency." As follows:

19 (1) A department, agency, division, bureau, board,  
20 commission, council, authority, office or other body or  
21 officer of the Commonwealth that is not under the policy  
22 supervision or control of the Governor.

23 (2) The term does not include:

24 (i) A court or agency of the unified judicial  
25 system.

26 (ii) The General Assembly or an agency of the  
27 General Assembly.

28 "Independent department." Any of the following:

29 (1) The Department of the Auditor General.

30 (2) The Treasury Department.

1           (3) The Office of Attorney General.

2           (4) The office of Lieutenant Governor.

3           (5) A board, commission or other instrumentality of an  
4 entity under paragraph (1), (2), (3) or (4).

5 "Public body." Any of the following:

6           (1) A Commonwealth agency.

7           (2) An independent department.

8           (3) An independent agency.

9           (4) A court or agency of the unified judicial system.

10          (5) The General Assembly or an agency of the General  
11 Assembly.

12          (6) As follows:

13           (i) A county, city, borough, incorporated town,  
14 township, regional governing body, council, school  
15 district, special district or municipal corporation.

16           (ii) A board, department, commission, council,  
17 agency, division, bureau, office, committee or other  
18 instrumentality of an entity under subparagraph (i).

19          (7) As follows:

20           (i) A State or local regulatory, administrative or  
21 public agency or authority.

22           (ii) An instrumentality of an entity under  
23 subparagraph (i).

24          (8) As follows:

25           (i) A State or local law enforcement agency,  
26 prosecutorial office or police or peace officer.

27           (ii) An instrumentality of an entity under  
28 subparagraph (i).

29          (9) As follows:

30           (i) Any other body that is created by Commonwealth



1 or political subdivision authority or that is funded in  
2 any amount through Commonwealth or political subdivision  
3 authority.

4 (ii) A member or employee of the body under  
5 subparagraph (i).

6 "Waste." An employer's conduct or omission that results in  
7 substantial abuse, misuse, destruction or loss of money or  
8 resources belonging to or derived from Commonwealth or political  
9 subdivision sources.

10 "Whistleblower." Any of the following:

11 (1) A person who witnesses or has evidence of wrongdoing  
12 or waste while employed and who makes a good faith report of  
13 the wrongdoing or waste, verbally or in writing, to one of  
14 the person's superiors, to an agent of the employer or to an  
15 appropriate authority.

16 (2) An employee who is otherwise protected by the  
17 provisions of this chapter.

18 "Wrongdoing." A violation that is not of a merely technical  
19 or minimal nature of a Federal or State statute or regulation,  
20 of a political subdivision ordinance or regulation or of a code  
21 of conduct or ethics designed to protect the interest of the  
22 public or the employer.

23 § 1304. Employee protections.

24 (a) Prohibitions.--An employer may not discharge, demote,  
25 threaten, refuse to hire, discriminate against, retaliate  
26 against or take any other adverse action against an employee  
27 regarding the employee's compensation, terms, conditions,  
28 location or privileges of employment because the employee, or a  
29 person acting on behalf of the employee, has done any of the  
30 following:

1           (1) Makes a good faith report, or is about to report,  
2 verbally or in writing, to the employer or appropriate  
3 authority an instance of:

4           (i) wrongdoing or waste by a public body; or

5           (ii) waste by another employer.

6           (2) Discloses to a supervisor or a public body or  
7 expresses an intent to make a disclosure to a public body  
8 regarding an illegal or dangerous business activity.

9           (3) Provides information to, or testifies before, a  
10 public body conducting an investigation, hearing or inquiry  
11 into an illegal or dangerous business activity or an activity  
12 that endangers workplace or public safety or health or  
13 otherwise at the request of the public body.

14           (4) Is requested by an appropriate authority to  
15 participate in an investigation, hearing or inquiry held by  
16 the appropriate authority or in a court action.

17           (5) Objects to, or refuses to participate in, an illegal  
18 or dangerous business activity.

19           (b) Application.--The protection against retaliatory action  
20 under subsection (a) regarding an illegal or dangerous business  
21 activity shall apply to an employee who in good faith reasonably  
22 believes that the illegal or dangerous business activity has  
23 occurred or will occur, based on information that the employee  
24 in good faith reasonably believes to be true.

25           (c) Disclosure prohibition.--An appropriate authority to  
26 which a violation of this chapter was reported may not disclose  
27 the identity of the whistleblower without the whistleblower's  
28 consent, unless disclosure is unavoidable in the investigation  
29 of the alleged violation.

30 § 1305. Civil action and enforcement.

1 (a) Civil action by employee.--An employee or other person  
2 who has been the subject of an alleged violation of this chapter  
3 may bring a civil action in a court of competent jurisdiction  
4 for appropriate injunctive relief or damages, or both, within  
5 two years after the alleged violation occurred.

6 (b) Other enforcement action.--The department or the  
7 Attorney General may also bring an enforcement action for an  
8 alleged violation of this chapter. The following apply:

9 (1) The enforcement action must be brought within two  
10 years after the occurrence of the alleged violation of this  
11 chapter.

12 (2) The enforcement action may seek the collection of  
13 relief, including costs, disbursements and attorney fees in  
14 accordance with paragraph (4).

15 (3) The department or the Attorney General shall not be  
16 required to pay the filing fee or other costs in connection  
17 with the enforcement action.

18 (4) If the department or the Attorney General prevails  
19 in the enforcement action, the aggrieved party shall be  
20 awarded damages and the Commonwealth shall be awarded  
21 penalties and costs.

22 (c) Rebuttable presumption.--

23 (1) It shall be considered a rebuttable presumption of  
24 retaliation if an employer takes an adverse action against an  
25 employee within 180 days of the employee's exercise of rights  
26 protected under this chapter.

27 (2) An employer may rebut the presumption under  
28 paragraph (1) with clear and convincing evidence that the  
29 adverse action was taken for a permissible purpose.

30 (d) Evidence.--

1           (1) An employee alleging a violation of this chapter  
2 involving wrongdoing or waste by a public body or waste by  
3 another employer must show by a preponderance of the evidence  
4 that, prior to the alleged reprisal, the employee or person  
5 acting on behalf of the employee had reported or was about to  
6 report in good faith, verbally or in writing, an instance of  
7 wrongdoing or waste to the employer or an appropriate  
8 authority.

9           (2) It shall be a defense to an action under paragraph  
10 (1) if the defendant proves by a preponderance of the  
11 evidence that the action taken by the employer occurred for  
12 separate and legitimate reasons, which are not merely  
13 pretextual.

14       (e) Venue.--An action authorized under this section may be  
15 brought in the county in which:

16           (1) the alleged retaliatory action occurred;

17           (2) the complainant resides; or

18           (3) the employer has its principal place of business.

19       (f) Jury trial.--In the action brought under this section,  
20 the parties shall be entitled to a jury trial.

21       (g) Civil service employees.--An employee covered by civil  
22 service who contests a civil service action, believing it to be  
23 motivated by having made a good faith report, verbally or in  
24 writing, of an instance of wrongdoing or waste, may submit as  
25 admissible evidence any materials relating to the action as  
26 whistleblower and to the resulting alleged reprisal.

27       (h) Motivating factor.--Except as otherwise provided under  
28 this section, a violation of this section is established when  
29 the complainant demonstrates that a motivating factor for the  
30 retaliatory action violates subsection (c).

1 § 1306. Relief.

2 (a) Authorization.--A court, in rendering a judgment in an  
3 action brought under this chapter, shall order, as the court  
4 considers appropriate, any of the following remedies:

5 (1) Either of the following:

6 (i) The reinstatement of the employee to the same  
7 position held before the retaliatory action or to an  
8 equivalent position.

9 (ii) Front pay in lieu of reinstatement.

10 (2) The payment of back wages, compensation or other  
11 remuneration.

12 (3) The reinstatement of full fringe benefits, seniority  
13 rights and any other previously existing rights.

14 (4) Actual damages.

15 (5) Compensatory damages relating to lost wages,  
16 benefits and other economic loss and relating to emotional  
17 distress.

18 (6) The payment of reasonable costs, disbursements and  
19 attorney fees.

20 (7) An injunction to restrain the employer's continued  
21 violation of this chapter.

22 (8) Liquidated damages up to \$20,000.

23 (9) In an action brought by the department or the  
24 Attorney General, a civil penalty of not less than \$1,000 nor  
25 more than \$10,000, except that if the department or the  
26 Attorney General finds that the employer has violated the  
27 provisions of this chapter in the preceding six years, the  
28 department or the Attorney General may assess a civil penalty  
29 of not less than \$1,000 nor more than \$20,000.

30 (10) Any combination of the remedies specified in this

1 subsection.

2 (b) Other damages.--In addition to the remedies under  
3 subsection (a), a court shall also award the complainant all or  
4 a portion of the costs of litigation, including reasonable  
5 attorney fees and witness fees, if the complainant prevails in  
6 the civil action.

7 (c) Agent of employer.--A person who, under color of an  
8 employer's authority, violates this chapter shall be liable for  
9 a civil fine of not more than \$10,000. The following apply:

10 (1) Except where the person holds an elected public  
11 office, if the court specifically finds that the person,  
12 while in the employment of the Commonwealth or a political  
13 subdivision, committed a violation of this chapter with the  
14 intent to discourage the disclosure of criminal activity, the  
15 court may order the person's suspension from public service  
16 for not more than seven years.

17 (2) A civil fine that is ordered under this section  
18 shall be paid to the State Treasurer for deposit into the  
19 General Fund.

20 (d) Existing rights.--Nothing under this section shall be  
21 deemed to diminish the rights, privileges or remedies of an  
22 employee under any other law or regulation or under any  
23 collective bargaining agreement or employment contract.

24 § 1307. Notice.

25 (a) Requirements.--Each employer shall post a notice of  
26 employees' protections, rights and obligations under this  
27 chapter. The notice shall be:

28 (1) posted conspicuously in easily accessible and well-  
29 lighted places customarily frequented by employees and  
30 prospective employees; and

1           (2) written in legible form in English and in each  
2           language commonly spoken among employees on the job site.

3           (b) Template.--The department shall provide template notices  
4           on its publicly accessible Internet website for use by employers  
5           in each language commonly spoken among employees in this  
6           Commonwealth.

7           § 1308. Construction.

8           This chapter shall not be construed to:

9           (1) require an employer to compensate an employee for  
10           participation in an investigation, hearing or inquiry held by  
11           an appropriate authority; or

12           (2) impair the rights of any person under a collective  
13           bargaining agreement.

14           Section 2. Repeals are as follows:

15           (1) The General Assembly declares that the repeal under  
16           paragraph (2) is necessary to effectuate the addition of 43  
17           Pa.C.S. Pt. II.

18           (2) The act of December 12, 1986 (P.L.1559, No.169),  
19           known as the Whistleblower Law, is repealed.

20           Section 3. Except as otherwise provided in 43 Pa.C.S. Pt.  
21           II, all activities initiated under the act of December 12, 1986  
22           (P.L.1559, No.169), known as the Whistleblower Law, shall  
23           continue and remain in full force and effect and may be  
24           completed under 43 Pa.C.S. Pt. II. Orders, regulations, rules  
25           and decisions which were made under the Whistleblower Law and  
26           which are in effect on the effective date of section 2 of this  
27           act shall remain in full force and effect until revoked, vacated  
28           or modified under 43 Pa.C.S. Pt. II. Contracts, obligations and  
29           collective bargaining agreements entered into under the  
30           Whistleblower Law are not affected nor impaired by the repeal of

1 the Whistleblower Law.

2 Section 4. This act shall take effect in 60 days.