
SUBSTITUTE SENATE BILL 5788

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on State & Local Government (originally sponsored by Senators Kline, Swecker, Patterson, Oke, Shin, Rasmussen, Costa, Prentice, Sheahan, McAuliffe, McCaslin, Benton, Fraser, Deccio, Finkbeiner, Johnson and Winsley)

READ FIRST TIME 03/05/01.

1 AN ACT Relating to the definition of "whistleblower"; and amending
2 RCW 42.40.020 and 42.40.050.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 42.40.020 and 1999 c 361 s 1 are each amended to read
5 as follows:

6 As used in this chapter, the terms defined in this section shall
7 have the meanings indicated unless the context clearly requires
8 otherwise.

9 (1) "Auditor" means the office of the state auditor.

10 (2) "Employee" means any individual employed or holding office in
11 any department or agency of state government.

12 (3) "Good faith" means a reasonable basis in fact for the
13 communication. "Good faith" is lacking when the employee knows or
14 reasonably ought to know that the report is malicious, false, or
15 frivolous.

16 (4) "Gross waste of funds" means to spend or use funds or to allow
17 funds to be used without valuable result in a manner grossly deviating
18 from the standard of care or competence that a reasonable person would
19 observe in the same situation.

1 (5)(a) "Improper governmental action" means any action by an
2 employee undertaken in the performance of the employee's official
3 duties:

4 (i) Which is ~~((a))~~ a gross waste of public funds or resources as
5 defined in this section;

6 (ii) Which is in violation of federal or state law or rule, if the
7 violation is not merely technical or of a minimum nature; or

8 (iii) Which is of substantial and specific danger to the public
9 health or safety.

10 (b) "Improper governmental action" does not include personnel
11 actions, for which other remedies exist, including but not limited to
12 employee grievances, complaints, appointments, promotions, transfers,
13 assignments, reassignments, reinstatements, restorations,
14 reemployments, performance evaluations, reductions in pay, dismissals,
15 suspensions, demotions, violations of the state civil service law,
16 alleged labor agreement violations, reprimands, claims of
17 discriminatory treatment, or any action which may be taken under
18 chapter 41.06 RCW, or other disciplinary action except as provided in
19 RCW 42.40.030.

20 (6) "Substantial and specific danger" means a risk of serious
21 injury, illness, peril, or loss, to which the exposure of the public is
22 a gross deviation from the standard of care or competence which a
23 reasonable person would observe in the same situation.

24 (7) "Use of official authority or influence" includes taking,
25 directing others to take, recommending, processing, or approving any
26 personnel action such as an appointment, promotion, transfer,
27 assignment, reassignment, reinstatement, restoration, reemployment,
28 performance evaluation, or any adverse action under chapter 41.06 RCW,
29 or other disciplinary action.

30 (8) "Whistleblower" means an employee who in good faith reports
31 alleged improper governmental action to the auditor, initiating an
32 investigation under RCW 42.40.040. For purposes of the provisions of
33 this chapter and chapter 49.60 RCW relating to reprisals and
34 retaliatory action, the term "whistleblower" also means: (a) An
35 employee who in good faith provides information to the auditor in
36 connection with an investigation under RCW 42.40.040 and an employee
37 who is believed to have reported asserted improper governmental action
38 to the auditor or to have provided information to the auditor in
39 connection with an investigation under RCW 42.40.040 but who, in fact,

1 has not reported such action or provided such information; (~~(e)~~) (b)
2 an employee who in good faith identifies rules warranting review or
3 provides information to the rules review committee, and an employee who
4 is believed to have identified rules warranting review or provided
5 information to the rules review committee but who, in fact, has not
6 done so; or (c) an employee who refuses to obey an order that he or she
7 believes in good faith would require him or her to violate a law.

8 **Sec. 2.** RCW 42.40.050 and 1999 c 283 s 1 are each amended to read
9 as follows:

10 (1) Any person who is a whistleblower, as defined in RCW 42.40.020,
11 or any person who has reported the alleged occurrence of improper
12 governmental action to a public body, and who has been subjected to
13 workplace reprisal or retaliatory action is presumed to have
14 established a cause of action for the remedies provided under chapter
15 49.60 RCW. For the purpose of this section, "public body" means the
16 employee's supervisor, law enforcement, attorney general, legislative
17 and executive branches of government, and other governmental
18 authorities. For the purpose of this section, "reprisal or retaliatory
19 action" means but is not limited to any of the following:

- 20 (a) Denial of adequate staff to perform duties;
- 21 (b) Frequent staff changes;
- 22 (c) Frequent and undesirable office changes;
- 23 (d) Refusal to assign meaningful work;
- 24 (e) Unwarranted and unsubstantiated letters of reprimand or
25 unsatisfactory performance evaluations;
- 26 (f) Demotion;
- 27 (g) Reduction in pay;
- 28 (h) Denial of promotion;
- 29 (i) Suspension;
- 30 (j) Dismissal;
- 31 (k) Denial of employment;
- 32 (l) A supervisor or superior encouraging coworkers to behave in a
33 hostile manner toward the whistleblower; and
- 34 (m) A change in the physical location of the employee's workplace
35 or a change in the basic nature of the employee's job, if either are in
36 opposition to the employee's expressed wish.

37 (2) The agency presumed to have taken retaliatory action under
38 subsection (1) of this section may rebut that presumption by proving by

1 a preponderance of the evidence that the agency action or actions were
2 justified by reasons unrelated to the employee's status as a
3 whistleblower.

4 (3) Nothing in this section prohibits an agency from making any
5 decision exercising its authority to terminate, suspend, or discipline
6 an employee who engages in workplace reprisal or retaliatory action
7 against a whistleblower. However, the agency also shall implement any
8 order under chapter 49.60 RCW (other than an order of suspension if the
9 agency has terminated the retaliator).

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