

SENATE BILL REPORT

SB 6072

As of January 11, 2012

Title: An act relating to the protection of public policy.

Brief Description: Protecting employees from retaliation for conduct that promotes public policy.

Sponsors: Senators Kline, Kohl-Welles, Conway, Harper and Hobbs.

Brief History:

Committee Activity: Judiciary:

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: Wrongful discharge may occur when an employee's contract of employment has been terminated by the employer in circumstances where the termination breaches one or more terms of the contract of employment or provision in employment law. The scope for wrongful dismissal varies according to the terms of the employment contract. The absence of a formal contract of employment does not preclude wrongful dismissal if a *de facto* contract is taken to exist by virtue of the employment relationship. Terms of such a contract may also include obligations and rights outlined in an employee handbook.

Being terminated for any of the items listed below may constitute wrongful termination:

- **Discrimination:** The employer cannot terminate employment because the employee is of a certain race, nationality, religion, sex, age, or in some jurisdictions, sexual orientation.
- **Retaliation:** An employer cannot fire an employee because the employee filed a claim of discrimination or is participating in an investigation for discrimination. In the United States, this retaliation is forbidden under civil rights law.
- **Employee's Refusal to Commit an Illegal Act:** An employer is not permitted to fire an employee because the employee refuses to commit an illegal act.
- **Employer Not Following Own Termination Procedures:** Often, the employee handbook or company policy outlines a procedure that must be followed before an employee is terminated. If the employer fires an employee without following this procedure, the employee may have a claim for wrongful termination.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

When proven, wrongful dismissal tends to lead to two main remedies: reinstatement of the dismissed employee; and/or monetary compensation.

Summary of Bill: A cause of action, separate from the common law tort of wrongful discharge, is created to protect employees or independent contractors from materially adverse actions in retaliation for conduct that promotes local, state, or federal public policy. An action is not material if it has only a trivial effect. Protected conduct includes refusing to commit an illegal act, performing a legal duty or obligation, exercising a legal right or privilege, and reporting employer misconduct or whistleblowing. The policy is intended to encourage employees to act to protect public policy by deterring employer retaliation.

An employee or independent contractor who is retaliated against may recover actual damages along with the cost of the suit, including attorney's fees and other remedies available under the U.S. Civil Rights Act of 1964 or Washington's law against discrimination. A three-year statute of limitations applies to violations.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:
Testimony From 2011 Second Special Session.

PRO: Public employees have whistleblower protection. This bill provides similar protections for private employees. Effective public policy will be promoted by protecting employees from retaliation. The intent is to enhance Washington public policy enforcement in cases where public policy is clearly established. The bill does not give employees substantive rights, just a cause of action. This will help clarify state law in light of confusing court decisions. This would bring Washington in line with 44 states that provide this protection. Hanford has retaliated against many whistleblowers with no consequence under Washington law. This will protect employees who report violations at an early stage. Washington should not be the state that protects employers who retaliate. Many whistleblowers refuse to report because of uncertain career consequences.

CON: This bill encompasses every enactment by the Legislature as a statement of public policy. A broad array of actions less than discharge would be subject to a claim of retaliation. It would turn the court into a super personnel committee. It would create a broad exception to the at-will employment rule. It could undermine the ability of public employers to implement their policy priorities and directives. Many disagreements could give rise to frivolous lawsuits. The Washington Supreme Court has identified the elements of these court actions, but these are not included in the bill. Independent contractors are not employees receiving employment protection now. This would create costs and uncertainty for employers. Ambiguities in the bill could potentially be subject to broad court interpretation. Small employers could be particularly vulnerable to litigation.

Persons Testifying:

Persons Testifying From 2011 Second Special Session.

PRO: Jesse Wing, Washington Employment Lawyers Association; Janet Chung, Legal Voice; Tom Carpenter, Hanford Challenge; Walter Tamosaitis.

CON: Michael Lynch, Washington State Attorney General's Office; Candice Bock, Association of Washington Cities; Kris Tefft, Association of Washington Businesses; Patrick Connor, National Federation of Independent Businesses.