

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/18/99 H3/30/99

A Bill

Act 1523 of 1999
SENATE BILL 294

5 By: Senators J. Brown, Harriman
6 By: Representatives Faris, T. Thomas
7
8

For An Act To Be Entitled

9
10 "AN ACT TO ESTABLISH THE 'ARKANSAS WHISTLE-BLOWER
11 ACT' TO PROTECT PUBLIC EMPLOYEES FROM DISCHARGE OR
12 RETALIATION BECAUSE THE EMPLOYEE REPORTS IN GOOD
13 FAITH THE EXISTENCE OF ANY WASTE OF PUBLIC FUNDS OR A
14 VIOLATION OF STATE LAW, RULE, OR REGULATION; AND FOR
15 OTHER PURPOSES."
16

Subtitle

17
18 "TO CREATE THE 'ARKANSAS WHISTLE-BLOWER
19 ACT' TO PROTECT PUBLIC EMPLOYEES FROM
20 DISCHARGE OR RETALIATION FOR REPORTING
21 GOVERNMENT WASTE OR VIOLATIONS OF LAW."
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. This act shall be known and may be cited as the "Arkansas
27 Whistle-blower Act."
28

29 SECTION 2. As used in this act, unless the context otherwise requires:

30 (1) "Adverse action" means to discharge, threaten, or otherwise
31 discriminate or retaliate against a public employee in any manner that
32 affects the employee's employment, including compensation, job location,
33 rights, immunities, promotions, or privileges.

34 (2) "Appropriate authority" means a state, county or municipal
35 government department, agency or organization having jurisdiction over
36 criminal law enforcement, regulatory violations, professional conduct or



1 ethics, or waste; or a member, officer, agent, investigator, auditor,
2 representative or supervisory employee of the body, agency or organization.
3 The term includes, but is not limited to, the office of the Attorney General,
4 the office of the Auditor of State, the Arkansas Ethics Commission, the
5 Legislative Joint Audit Committee and the Division of Legislative Audit, and
6 the offices of the various prosecuting attorneys having the power and duty to
7 investigate criminal law enforcement, regulatory violations, professional
8 conduct or ethics, or waste.

9 (3) "Communicate" means a verbal or written report to an
10 appropriate authority.

11 (4) "Public employee" means a person who performs a full or
12 part-time service for wages, salary, or other remuneration for a public
13 employer.

14 (5) "Public employer" means any of the following:

15 (A) An agency, department, board, commission, division,
16 office, bureau, council, authority or other instrumentality of the State of
17 Arkansas, including the offices of the various Arkansas elected
18 constitutional officers and the Arkansas General Assembly and its agencies,
19 bureaus, and divisions;

20 (B) A state-supported college, university, technical
21 college, community college or other institution of higher education, or
22 department, division, or agency of a state institution of higher education;

23 (C) The Arkansas Supreme Court, Court of Appeals, The
24 Administrative Office of the Courts, the circuit and chancery courts, and
25 prosecuting attorneys' offices;

26 (D) An office, department, commission, council, agency,
27 board, bureau, committee, corporation, or other instrumentality of a county
28 government or a municipality, or a municipal court, a county subordinate
29 service district, a municipally-owned utility or a regional or joint
30 governing body of one (1) or more counties or municipalities; or

31 (E) A county board of education or a public school
32 district, school, or an office or department of a public school district in
33 Arkansas.

34 (6) "Violation" means an infraction or a breach, which is not of
35 a merely technical or minimal nature, of a state statute or regulation, of a
36 political subdivision ordinance or regulation or of a code of conduct or code

1 of ethics designed to protect the interest of the public or a public
2 employer.

3 (7) "Waste" means a public employer's conduct or omissions which
4 result in substantial abuse, misuse, destruction or loss of public funds,
5 property, or manpower belonging to or derived from state or local political
6 subdivision's resources.

7 (8) "Whistle-blower" means a person who witnesses or has
8 evidence of a waste or violation while employed with a public employer and
9 who communicates, in good faith, or testifies to, the waste or violation,
10 verbally or in writing, to one of the employee's superiors, to an agent of
11 the public employer or to an appropriate authority, provided that the
12 communication is made prior to any adverse action by the employer.

13
14 SECTION 3. (a) A public employer shall not take adverse action
15 against a public employee because the public employee, or a person authorized
16 to act on behalf of the employee, communicates in good faith the existence of
17 waste of public funds, property, or manpower, excluding federal funds,
18 property, or manpower, or a violation or suspected violation of a law, rule,
19 or regulation adopted under the law of this State or a political subdivision
20 of the state to an appropriate authority. The communication shall be made at
21 a time and in a manner which gives the public employer reasonable notice of
22 need to correct the waste or violation.

23 (b) For purposes of subsection (a) of this section, a public employee
24 communicates in good faith if there is a reasonable basis in fact for the
25 communication of the existence of waste or of a violation. Good faith is
26 lacking when the public employee does not have personal knowledge of a
27 factual basis for the communication or where the public employee knew or
28 reasonably should have known that the communication of the waste or of the
29 violation is malicious, false or frivolous.

30 (c) A public employer shall not take an adverse action against a
31 public employee because the employee participates or gives information in an
32 investigation, hearing, court proceeding, legislative or other inquiry, or in
33 any form of administrative review.

34 (d) A public employer shall not take an adverse action against a
35 public employee because an employee has objected to or refused to carry out a
36 directive that the employee reasonably believes violates a law or a rule or

1 regulation adopted under the authority of laws of the state, a political
2 subdivision of the state.

3
4 SECTION 4. (a) A public employee who alleges a violation of this act
5 may bring a civil action for appropriate injunctive relief or actual damages,
6 or both, within one hundred eighty (180) calendar days after the occurrence
7 of the alleged violation of this act.

8 (b) An action commenced under this section may be brought in the
9 chancery court for the county where the alleged violation occurred or for the
10 county where the complainant resides, or in the chancery court of Pulaski
11 County, if the complaint is filed against an agency, department, or
12 institution of Arkansas state government.

13 (c) To prevail in an action brought under the authority of this
14 section, the public employee shall establish, by a preponderance of the
15 evidence, that the employee has suffered an adverse action because the
16 employee, or a person acting on his behalf, engaged or intended to engage in
17 an activity protected under this act.

18 (d) As used in this section, "damages" means damages for a job-related
19 injury or loss caused by each violation of this act, including, but not
20 limited to, fringe benefits, retirement service credit, compensation for lost
21 wages, benefits, and any other remuneration, and reasonable court costs and
22 attorneys' fees.

23 (e) A public employer shall have an affirmative defense to a civil
24 action brought by a public employee under this act, if the adverse action
25 taken against a public employee was due to employee misconduct, poor job
26 performance or a reduction in workforce unrelated to a communication made
27 pursuant to Section 3 of this act. The public employer must prove the
28 existence of the public employee's misconduct, poor job performance or a
29 reduction in workforce unrelated to the communication by a preponderance of
30 the evidence.

31 (f) In the event the Office of Personnel Management of the Department
32 of Finance and Administration implements an employee grievance mediation
33 program, a public employee or public employer may voluntarily participate in
34 mediation under the Department's mediation program if they wish to resolve a
35 dispute between them that involves an adverse action taken against the public
36 employee. Voluntary mediation shall occur before a civil action has been

1 initiated in court in which the public employee and public employer are
2 parties. The Director of the Department of Finance and Administration shall
3 adopt voluntary mediation application and request forms.
4

5 SECTION 5. A court in rendering judgement under this act may order any
6 or all of the following remedies:

7 (1) An injunction to restrain continued violation of the
8 provisions of this act;

9 (2) The reinstatement of the public employee to the same
10 position held before the adverse action, or to an equivalent position;

11 (3) The reinstatement of full fringe benefits and retirement
12 service credit;

13 (4) The compensation for lost wages, benefits, and any other
14 remuneration;

15 (5) The payment by the public employer of reasonable court costs
16 and attorney's fees.
17

18 SECTION 6. A court may also order that reasonable attorney's fees and
19 court costs be awarded to an employer if the court determines that an action
20 brought by a public employee under this act is without basis in law or fact.
21 Provided, a public employee shall not be assessed attorney's fees under this
22 section if, after exercising reasonable and diligent efforts after filing the
23 suit, the public employee files a voluntary nonsuit concerning the employer
24 within sixty (60) calendar days after determining the employer would not be
25 liable for damages.
26

27 SECTION 7. This act shall not be construed to permit a disclosure
28 which would diminish or impair the rights of any person or any public
29 official to the continued protection of confidentiality of records or working
30 papers where a statute or the common law provides for protection.
31

32 SECTION 8. A public employer shall use appropriate means to notify its
33 public employees of their protection and obligations under this act.
34

35 SECTION 9. In the event any provision of this act regarding the
36 remedies or damages for public employees in Sections 4, 5, or 6 are held to

1 be invalid, the invalidity shall not affect the other provisions of this act
2 which offer protection to public employees from adverse actions by public
3 employers, and to this end the provisions of this act are declared to be
4 severable.

5
6 SECTION 10. All provisions of this act of general and permanent nature
7 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
8 Revision Commission shall incorporate the same in the Code.

9
10 SECTION 11. If any provisions of this act or the application thereof
11 to any person or circumstance is held invalid, the invalidity shall not
12 affect other provisions or applications of the act which can be given effect
13 without the invalid provisions or application, and to this end the provisions
14 of this act are declared to be severable.

15
16 SECTION 12. All laws and parts of laws in conflict with this act are
17 hereby repealed.

18 /s/ J. Brown, et al

19
20
21 APPROVED: 4/15/1999
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

1

2