

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

A Bill

HOUSE BILL 1259

4
5 By: Representative Lendall
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For An Act To Be Entitled

8
9 "AN ACT TO BE KNOWN AS THE 'WHISTLEBLOWER PROTECTION
10 ACT'; AND FOR OTHER PURPOSES."

Subtitle

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12
13 "AN ACT TO BE KNOWN AS THE 'WHISTLEBLOWER
14 PROTECTION ACT'."

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 SECTION 1. Short title.

20 This act may be cited as the "Whistleblower Protection Act."

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22 SECTION 2. Definitions.

23 (1) "Employee" means any individual who performs services for and
24 under the control and direction of an employer for wages or other
25 remuneration, including but not limited to at-will employees, contract
26 employees, and independent contractors;

27 (2) "Employer" means any state or local governmental body or
28 individual, partnership, association, corporation or any person or group of
29 persons acting directly or indirectly on behalf of a state or local
30 governmental body;

31 (3) "Improper quality of patient care" means, with respect to
32 patient care by an employer that is a health care provider, any practice,
33 procedure, action or failure to act which violates any law or any rule,
34 regulation or declaratory ruling adopted pursuant to law, or any professional
35 code of ethics;

36 (4) "Protected disclosure" means any good faith communication

1 that discloses or demonstrates an intention to disclose information that may
 2 evidence:

3 (A) Workplace conditions which may significantly threaten
 4 the safety and health of employees or the public;

5 (B) Violation of any broadly recognized professional code
 6 of ethics;

7 (C) Violation of any federal, state, or local law, rule, or
 8 regulation, including this act;

9 (D) Mismanagement, the gross waste of funds, or the abuse
 10 of authority in connection with federal, state, or local government or
 11 programs, their exercise of authority, or their execution of funds or
 12 contracts; or

13 (E) Any other action to assist in carrying out the purposes
 14 of federal, state, or local law, rule, or regulations, including this act;

15 (5) "Retaliatory action" means:

16 (A) The discharge, suspension or demotion of an employee;

17 (B) Threats;

18 (C) Referral to psychiatric or psychological counseling or
 19 examination and the maintenance of records or reports referring to such
 20 counseling or examination;

21 (D) Blacklisting, withholding or threatening to withhold a
 22 favorable personnel action, discriminating against an employee; or other
 23 adverse employment action taken against an employee in the terms and
 24 conditions of employment; or

25 (E) Interfering with or attempting to interfere with the
 26 release of a protected disclosure or exercise of a right under federal, state,
 27 or local law, rule, or regulation;

28 (6) "State or local governmental body" means any office,
 29 department, commission, council, board, committee, legislative body, agency,
 30 or other establishment of the executive, judicial, or legislative branch of
 31 the State of Arkansas, or a municipality, county, school district, improvement
 32 district, or any political district or subdivision thereof;

33 (7) "Supervisor" means any individual within an employer's
 34 organization who has the authority to direct and control the work performance
 35 of the affected employee or who has authority to take corrective action
 36 regarding the violation of the law, rule or regulation of which the employee

1 complains.

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3 SECTION 3. Protected activity.

4 An employer shall not take any retaliatory action against an employee
5 because the employee does any of the following protected activities:

6 (1) Discloses, or demonstrates an intention to disclose to a
7 supervisor or to a federal agency or state or local governmental body an
8 activity, policy or practice of the employer or another employer, with whom
9 there is a business relationship, that the employee reasonably believes is in
10 violation of a law, or a rule or regulation promulgated pursuant to law, or,
11 in the case of an employee who is a licensed or certified health care
12 professional, reasonably believes constitutes improper quality of patient
13 care;

14 (2) Provides information to, or testifies before, any federal
15 agency or state or local governmental body conducting an investigation,
16 hearing or inquiry into any violation of law, or a rule or regulation
17 promulgated pursuant to law by the employer or another employer, with whom
18 there is a business relationship or, in the case of an employee who is a
19 licensed or certified health care professional, provides information to, or
20 testifies before, any federal agency or state or local governmental body
21 conducting an investigation, hearing or inquiry into the quality of patient
22 care;

23 (3) Objects to, or refuses to participate in any activity, policy
24 or practice which the employee reasonably believes is:

25 (A) In violation of a law, or a rule or regulation
26 promulgated pursuant to law or, if the employee is a licensed or certified
27 health care professional, constitutes improper quality of patient care;

28 (B) Fraudulent or criminal; or

29 (C) Incompatible with a clear mandate of public policy
30 concerning the public health, safety or welfare or protection of the
31 environment;

32 (4) Makes, demonstrates intent to make, or aids others in making
33 a protected disclosure;

34 (5) Refuses, demonstrates intent to refuse, or aids others in
35 refusing:

36 (A) To violate or assist in violating a broadly recognized

1 professional code of ethics for professionals licensed by either the federal,
 2 state, or local government;

3 (B) To violate or assist in violating federal, state, or
 4 local law, rule, or regulation;

5 (C) To work or order others to work in conditions which may
 6 threaten the safety and health of employees or the public;

7 (D) In connection with the federal, state, or local
 8 government, to conduct or order others to conduct acts of waste, fraud,
 9 mismanagement, and abuse of authority; or

10 (E) To conduct or order others to conduct acts which may
 11 pose a significant threat to employee or public health or safety;

12 (6) Exercises, demonstrates intent to exercise, or aids others in
 13 exercising a right under federal, state, or local law, rule, or regulation;

14 (7) Assists, demonstrates intent to assist, or assists others in
 15 achieving compliance, including but not limited to, participation in a
 16 hearing, investigation, inquiry, or court action; with:

17 (A) This act or any other federal, state, or local law,
 18 rule, or regulation;

19 (B) Standards which insure against significant threats to
 20 employees or the public; or

21 (C) Refusing to reveal, refusing to order others to reveal,
 22 or assisting others in refusing to reveal the contents of a protected
 23 disclosure to the employer.

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 25 SECTION 4. Burden of Proof.

26 In a civil action, once it has been demonstrated by a preponderance of
 27 evidence that an activity protected by Section 3 was a contributing factor in
 28 the alleged retaliatory action against a former, current, or prospective
 29 employee, the burden of proof shall be on the employer to prove by clear and
 30 convincing evidence that the alleged action would have occurred for
 31 legitimate, independent reasons even if the employee had not engaged in
 32 activities protected by Section 3.

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 34 SECTION 5. Remedies.

35 All remedies available in common law tort actions shall be available to
 36 prevailing plaintiffs. These remedies are in addition to any legal or

1 equitable relief provided by this act or any other statute. The court may
2 also order one (1) or more of the following:

3 (1) An injunction to restrain continued violation of this act;

4 (2) The reinstatement of the employee to the same position held
5 before the retaliatory action, or to an equivalent position;

6 (3) The reinstatement of full fringe benefits and seniority
7 rights;

8 (4) The compensation for lost wages, benefits and other
9 remuneration;

10 (5) The payment by the employer of reasonable costs, interest on
11 back pay, and attorney's fees;

12 (6) Punitive damages; or

13 (7) An assessment of a civil fine of not more than one thousand
14 dollars (\$1,000) for the first violation of the act and not more than five
15 thousand dollars (\$5,000) for each subsequent violation, which shall be paid
16 to the State Treasurer for deposit as general revenues.

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18 SECTION 6. Posting of Notice.

19 An employer shall conspicuously display notices of its employees'
20 protections and obligations under this act, and use other appropriate means to
21 keep its employees so informed. The content of the notice shall be prescribed
22 by the Director of the Arkansas Department of Labor.

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24 SECTION 7. Preemption.

25 Nothing in this act shall be deemed to diminish the rights, privileges,
26 or remedies of any employee under any other federal or state law or regulation
27 or under any collective bargaining agreement or employment contract.

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29 SECTION 8. Rights not waived.

30 The rights and procedures provided by this act may not be waived by
31 contract or otherwise, unless such waiver is part of a written statement
32 agreed to and signed by the parties to a pending action or complaint under
33 this act.

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35 SECTION 9. All provisions of this act of a general and permanent nature
36 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

1 Revision Commission shall incorporate the same in the Code.

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

SECTION 11. All laws and parts of laws in conflict with this act are hereby repealed.