

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

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

Subtitle

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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."
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. This act shall be known and may be cited as the "Arkansas
27 Whistle-blower Act."
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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 affects
32 the employee's employment, including compensation, job location, rights,
33 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

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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 part-
12 time service for wages, salary, or other remuneration for a public employer.

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

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

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

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

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

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

33 (6) "Violation" means an infraction or a breach, which is not of
34 a merely technical or minimal nature, of a state statute or regulation, of a
35 political subdivision ordinance or regulation or of a code of conduct or code
36 of ethics designed to protect the interest of the public or a public employer.

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

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

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

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

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

32 (d) A public employer shall not take an adverse action against a public
33 employee because an employee has objected to or refused to carry out a
34 directive that the employee reasonably believes violates a law or a rule or
35 regulation adopted under the authority of laws of the state, a political
36 subdivision of the state.

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

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

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

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

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

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

1 adopt voluntary mediation application and request forms.

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

5 (1) An injunction to restrain continued violation of the
6 provisions of this act;

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

9 (3) The reinstatement of full fringe benefits and retirement
10 service credit;

11 (4) The compensation for lost wages, benefits, and any other
12 remuneration;

13 (5) The payment by the public employer of reasonable court costs
14 and attorney's fees.

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

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

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

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33 SECTION 9. In the event any provision of this act regarding the
34 remedies or damages for public employees in Sections 4, 5, or 6 are held to be
35 invalid, the invalidity shall not affect the other provisions of this act
36 which offer protection to public employees from adverse actions by public

1 employers, and to this end the provisions of this act are declared to be
2 severable.

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

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

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

16 /s/ J. Brown, et al
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