

HOUSE BILL NO. 4396

April 12, 2023, Introduced by Reps. Edwards, Breen, Hood, Farhat, Brabec, Morse, Price, Weiss, Snyder, Brenda Carter, Tsernoglou, Hope, Andrews, Haadsma and Scott and referred to the Committee on Labor.

A bill to amend 1980 PA 469, entitled "The whistleblowers' protection act," by amending the title and sections 1, 2, 3, and 5 (MCL 15.361, 15.362, 15.363, and 15.365), section 3 as amended by 1982 PA 146, and by adding section 4a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to provide protection to employees who report a
3 violation, **planned violation**, or suspected violation of state,
4 local, or federal law; to provide protection to employees who

1 participate in hearings, investigations, legislative inquiries, or
 2 court actions; and to prescribe remedies and penalties.

3 Sec. 1. As used in this act:

4 (a) "Employee" means a person who performs a service for wages
 5 or other remuneration under a contract of hire, written or oral,
 6 express or implied. Employee includes ~~a~~**all of the following:**

7 (i) **A** person employed by ~~the~~**this** state or a political
 8 subdivision of ~~the~~**this** state, ~~except~~**not including the** state
 9 classified civil service.

10 (ii) **An independent contractor.**

11 (iii) **A prospective employee who previously engaged in a**
 12 **protected activity described in section 2.**

13 (b) "Employer" means a person who has 1 or more employees.
 14 Employer includes an agent of an employer and ~~the~~**this** state or a
 15 political subdivision of ~~the~~**this** state.

16 (c) "Person" means an individual, sole proprietorship,
 17 partnership, corporation, association, or any other legal entity.

18 (d) "Public body" means all of the following:

19 (i) A state officer, employee, agency, department, division,
 20 bureau, board, commission, council, authority, or other body in the
 21 executive branch of state government.

22 (ii) An agency, board, commission, council, member, or employee
 23 of the legislative branch of state government.

24 (iii) A county, city, township, village, intercounty, intercity,
 25 or regional governing body, a council, school district, special
 26 district, or municipal corporation, or a board, department,
 27 commission, council, agency, or any member or employee thereof.

28 (iv) Any other body ~~which~~**that** is created by state or local
 29 authority or ~~which~~ is primarily funded by or through state or local

1 authority, or any member or employee of that body.

2 (v) A law enforcement agency or any member or employee of a
3 law enforcement agency.

4 (vi) The judiciary and any member or employee of the judiciary.

5 Sec. 2. An employer shall not discharge, **demote, suspend,**
6 threaten, or otherwise discriminate against an employee regarding
7 the employee's **promotion,** compensation, terms, conditions,
8 location, or privileges of employment **or fail or refuse to hire an**
9 **employee** because the employee, or a person acting on behalf of the
10 employee, ~~reports~~ **does any of the following:**

11 (a) **Reports** or is about to report, verbally or in writing, a
12 violation, **planned violation,** or a ~~suspected~~ suspected violation of a law or
13 regulation or rule promulgated pursuant to **a** law of this state, a
14 political subdivision of this state, or the United States to a
15 **supervisor or** public body, unless the employee knows that the
16 report is false. 7

17 (b) **Provides information to, testifies before, or otherwise**
18 **participates in an investigation, hearing, or inquiry held by a**
19 **public body regarding a violation, planned violation, or suspected**
20 **violation described in subdivision (a), or a court action,** or
21 because an employee is requested by a public body to **provide**
22 **information to, testify before, or otherwise** participate in an
23 investigation, hearing, or inquiry held by that public body, or a
24 court action.

25 (c) **Protests participating, or refuses to participate, in a**
26 **violation, planned violation, or suspected violation described in**
27 **subdivision (a).**

28 Sec. 3. (1) A person who alleges a violation of this act may
29 bring a civil action for appropriate injunctive relief ~~7~~ or actual

1 damages, or both, within ~~90 days~~ **2 years** after the occurrence of
 2 the alleged violation of this act. **A person who brings an action**
 3 **under this subsection may demand a jury trial.**

4 (2) An action ~~commenced pursuant to~~ **brought under** subsection
 5 (1) may be brought in the circuit court for the county where the
 6 alleged violation occurred, the county where the complainant
 7 resides, or the county where the person against whom the civil
 8 complaint is filed resides or ~~has his or her~~ **where the person's**
 9 principal place of business **is located.**

10 (3) As used in subsection (1), "damages" means damages for
 11 injury or loss caused by each violation of this act, including
 12 reasonable attorney fees.

13 (4) An employee shall show by clear and convincing evidence
 14 that ~~he or she~~ **the employee, another employee,** or a person acting
 15 on ~~his or her~~ **the employee's** behalf **reported or** was about to
 16 report, verbally or in writing, a violation, **planned violation,** or
 17 a suspected violation of a law of this state, a political
 18 subdivision of this state, or the United States to a **supervisor or**
 19 a public body.

20 **Sec. 4a. If this state recovers money as the result of an**
 21 **employee reporting a violation, planned violation, or suspected**
 22 **violation under section 2, this state shall pay 30% of the money**
 23 **recovered to the employee who first reported the violation, planned**
 24 **violation, or suspected violation under section 2(a).**

25 **Sec. 5. (1) A person who violates this act ~~shall be liable for~~**
 26 **is subject to** a civil fine of not more than ~~\$500.00~~ **\$10,000.00 for**
 27 **each separate violation.**

28 (2) A civil fine ~~which is~~ ordered pursuant to this act ~~shall~~
 29 **must** be submitted to the state treasurer for deposit in the general

1 fund.