

HOUSE BILL NO. 322

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE MCCABE

Introduced: 2/23/26

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the office of the public whistleblower advocate; relating to
2 whistleblower protections; establishing the public whistleblower award fund; and
3 relating to the jurisdiction of the superior court over whistleblower actions."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 09.58.070(a) is amended to read:

6 (a) An employee of a medical assistance provider who is discharged, demoted,
7 suspended, threatened, harassed, or discriminated against in the terms and conditions
8 of employment by the employee's employer because of lawful acts done by the
9 employee on behalf of the employee or others in furtherance of an action under this
10 chapter, including investigation for, initiation of, testimony for or assistance in an
11 action filed or to be filed under this chapter, is entitled to the same relief authorized
12 under AS 39.90.100 - 39.90.199 (Alaska Public Employee Whistleblower
13 Protection and Enforcement Act) [AS 39.90.120].

14 * **Sec. 2.** AS 09.58.070(b) is amended to read:

1 (b) Notwithstanding (a) of this section, a state employee who is discharged,
 2 demoted, suspended, threatened, harassed, or discriminated against in the terms and
 3 conditions of employment because of lawful acts done by the employee on behalf of
 4 the employee or in furtherance of an action under this chapter, including investigation,
 5 initiation of, testimony for, or assistance in an action filed or to be filed under this
 6 chapter, is entitled to relief under AS 39.90.100 - 39.90.199 [AS 39.90.100 -
 7 39.90.150] (Alaska Public Employee Whistleblower Protection and Enforcement
 8 Act).

9 * **Sec. 3.** AS 09.58.070 is amended by adding a new subsection to read:

10 (d) The filing of a complaint with the public whistleblower advocate under (a)
 11 of this section or alleging a violation of AS 39.90.100 suspends the running of the
 12 three-year period specified in (c) of this section. The three-year period specified in (c)
 13 of this section continues to run again from the date the public whistleblower advocate
 14 notifies the complainant that the public whistleblower advocate will not investigate the
 15 complaint as provided under AS 39.90.180(b) or that the complainant has exhausted
 16 all applicable administrative remedies under AS 39.90.185.

17 * **Sec. 4.** AS 22.10.020 is amended by adding a new subsection to read:

18 (j) The superior court is the court of original jurisdiction over all causes of
 19 action arising under the provisions of AS 39.90.100. A person who is injured or
 20 aggrieved by an act, practice, or policy that is prohibited under AS 39.90.100 may
 21 apply to the superior court for relief. In an action brought under this subsection, the
 22 court may grant relief as to any act, practice, or policy of the defendant that is
 23 prohibited by AS 39.90.100. The court may enjoin any act, practice, or policy that is
 24 illegal under AS 39.90.100 and may order any other relief, including the payment of
 25 money, that is appropriate.

26 * **Sec. 5.** AS 39.25.110 is amended by adding a new paragraph to read:

27 (46) the public whistleblower advocate appointed under AS 39.90.160.

28 * **Sec. 6.** AS 39.25.120(c) is amended by adding a new paragraph to read:

29 (22) staff to the public whistleblower advocate under AS 39.90.170.

30 * **Sec. 7.** AS 39.50.200(a)(9) is amended to read:

31 (9) "public official" means

- 1 (A) a judicial officer;
- 2 (B) the governor or the lieutenant governor;
- 3 (C) a person hired or appointed in a department in the
4 executive branch as
- 5 (i) the head or deputy head of the department;
- 6 (ii) the director or deputy director of a division;
- 7 (iii) a special assistant to the head of the department;
- 8 (iv) a person serving as the legislative liaison for the
9 department;
- 10 (D) an assistant to the governor or the lieutenant governor;
- 11 (E) the chair or a member of a state commission or board;
- 12 (F) state investment officers and the state comptroller in the
13 Department of Revenue;
- 14 (G) the chief procurement officer appointed under
15 AS 36.30.010;
- 16 (H) the executive director of the Alaska Workforce Investment
17 Board;
- 18 (I) each appointed or elected municipal officer; [AND]
- 19 (J) the members of the board of trustees, the executive director,
20 and the investment officers of the Alaska Permanent Fund Corporation; **and**
- 21 **(K) the public whistleblower advocate appointed under**
22 **AS 39.90.160;**

23 * **Sec. 8.** AS 39.90.100(a) is amended to read:

24 (a) A public employer may not **take or threaten retaliatory action**
25 [DISCHARGE, THREATEN, OR OTHERWISE DISCRIMINATE] against an
26 employee [REGARDING THE EMPLOYEE'S COMPENSATION, TERMS,
27 CONDITIONS, LOCATION, OR PRIVILEGES OF EMPLOYMENT] because

- 28 (1) the employee, or a person acting on behalf of the employee, reports
29 to a public body or is about to report to a public body a matter of public concern; or
- 30 (2) the employee participates in a court action, an investigation, a
31 hearing, or an inquiry held by a public body on a matter of public concern.

1 * **Sec. 9.** AS 39.90.100(c) is amended to read:

2 (c) The provisions of AS 39.90.100 - 39.90.199 [AS 39.90.100 - 39.90.150]
3 do not

4 (1) require an employer to compensate an employee for participation in
5 a court action or in an investigation, hearing, or inquiry by a public body;

6 (2) prohibit an employer from compensating an employee for
7 participation in a court action or in an investigation, hearing, or inquiry by a public
8 body;

9 (3) authorize the disclosure of information that is legally required to be
10 kept confidential; or

11 (4) diminish or impair the rights of an employee under a collective
12 bargaining agreement.

13 * **Sec. 10.** AS 39.90.100(d) is amended to read:

14 (d) An employer shall post notices and use other appropriate means to inform
15 an employee [EMPLOYEES] of the employee's [THEIR] protections and obligations
16 under AS 39.90.100 - 39.90.199, including the employee's right to file a complaint
17 with the public whistleblower advocate for a violation of this section
18 [AS 39.90.100 - 39.90.150].

19 * **Sec. 11.** AS 39.90.100 is amended by adding a new subsection to read:

20 (e) In this section, "retaliatory action" means the discharge, demotion,
21 disciplining, denial of promotion, or reassignment of an employee; a discriminatory
22 action taken against an employee regarding compensation, location, or other terms and
23 conditions of employment; or action or inaction by an employer that creates or permits
24 a hostile or intolerable work environment.

25 * **Sec. 12.** AS 39.90.110(a) is amended to read:

26 (a) A person is not entitled to the protections under AS 39.90.100 - 39.90.199
27 [AS 39.90.100 - 39.90.150] unless the person

28 (1) reasonably believes that the information reported is or is about to
29 become a matter of public concern; and

30 (2) reports the information in good faith.

31 * **Sec. 13.** AS 39.90.110(b) is amended to read:

1 (b) A person is entitled to the protections under **AS 39.90.100 - 39.90.199**
 2 [AS 39.90.100 - 39.90.150] only if the matter of public concern

3 (1) is not the result of conduct by the person seeking protection; or

4 (2) is the result of conduct by the person that was required by the
 5 person's employer.

6 * **Sec. 14.** AS 39.90.120(a) is amended to read:

7 (a) A person who alleges a violation of AS 39.90.100 may bring a civil action
 8 **under AS 22.10.020(j)** and the court may grant appropriate relief, including punitive
 9 damages. **A person who brings a civil action under this subsection is not**
 10 **precluded from filing a complaint with the public whistleblower advocate in**
 11 **accordance with AS 39.90.160. A person may file a complaint with the public**
 12 **whistleblower advocate before, concurrent with, or after bringing a civil action**
 13 **under AS 22.10.020(j).**

14 * **Sec. 15.** AS 39.90.120(b) is amended to read:

15 (b) A person who violates or attempts to violate AS 39.90.100 is also liable
 16 for a civil fine of not more than \$10,000. The **public whistleblower advocate or the**
 17 attorney general may enforce this subsection.

18 * **Sec. 16.** AS 39.90.120 is amended by adding new subsections to read:

19 (d) Upon a finding that an employer has violated or attempted to violate
 20 AS 39.90.100, the public whistleblower advocate may award relief or impose a civil
 21 fine as provided in (b) and (c) of this section and may order, as appropriate,

22 (1) reinstatement of a discharged employee to the employee's former
 23 position or a position that is comparable;

24 (2) back pay, including benefit payments and interest;

25 (3) compensatory damages;

26 (4) attorney fees and costs; and

27 (5) the employer to engage in training and other corrective actions
 28 intended to prevent future violations.

29 (e) When an action is brought under AS 22.10.020(j), the plaintiff shall serve a
 30 copy of the complaint on the public whistleblower advocate. Upon timely application,
 31 the public whistleblower advocate may intervene as a party to the action as a matter of

1 right. If the public whistleblower advocate certifies in writing to the court that the
 2 public whistleblower advocate is presently investigating or actively dealing with the
 3 act, practice, or policy of the defendant giving rise to the cause of action, the court
 4 shall, at the request of the public whistleblower advocate, defer proceedings for a
 5 period of not more than 45 days or another extended period as the court may allow,
 6 except that the court may enter an order or injunction if necessary to prevent
 7 irreparable injury to the plaintiff.

8 (f) If, within the period allowed, a hearing is conducted and a decision is
 9 reached under this section and AS 39.90.185, the decision of the public whistleblower
 10 advocate is binding on the parties to the court action as to all issues resolved in the
 11 hearing but not as to any issues not resolved in the hearing.

12 (g) When proceedings in the superior court are deferred for a hearing and
 13 decision under this section, the plaintiff may proceed, after the decision of the public
 14 whistleblower advocate, as an aggrieved party for the purpose of an appeal to the
 15 superior court under AS 39.90.185, whether or not the person was a party to, or
 16 complainant in, the administrative proceedings.

17 (h) If the public whistleblower advocate does not intervene or file a certificate
 18 and conduct a hearing as provided in this section, the court has complete jurisdiction
 19 of the case.

20 * **Sec. 17.** AS 39.90.130 is amended to read:

21 **Sec. 39.90.130. Exemption for municipalities.** A municipality is not required
 22 to comply with the provisions of AS 39.90.100 - 39.90.199 [AS 39.90.100 -
 23 39.90.150] if the municipality has adopted an ordinance that provides protections for
 24 its employees and other persons that are substantially similar to the protections under
 25 AS 39.90.100 - 39.90.150. Notwithstanding AS 29.25.070, the ordinance may provide
 26 for a civil penalty for violation of the ordinance not to exceed \$10,000.

27 * **Sec. 18.** AS 39.90.150 is amended to read:

28 **Sec. 39.90.150. Short title.** AS 39.90.100 - 39.90.199 [AS 39.90.100 -
 29 39.90.150] may be cited as the Alaska **Public Employee Whistleblower Protection**
 30 **and Enforcement** Act.

31 * **Sec. 19.** AS 39.90 is amended by adding new sections to read:

1 **Article 2A. Office of the Public Whistleblower Advocate.**

2 **Sec. 39.90.160. Office of the public whistleblower advocate; appointment;**
 3 **compensation.** (a) An independent office of the public whistleblower advocate is
 4 created in the Department of Law.

5 (b) The public whistleblower advocate shall be appointed by the governor and
 6 confirmed by the legislature in joint session.

7 (c) The term of office of the public whistleblower advocate is five years. A
 8 public whistleblower advocate may be reappointed but may not serve for more than
 9 three terms.

10 (d) If the term of the public whistleblower advocate expires without the
 11 appointment of a successor under AS 39.90.160 - 39.90.199, the incumbent public
 12 whistleblower advocate may continue in office until a successor is appointed. If the
 13 public whistleblower advocate dies, resigns, becomes ineligible to serve, or is
 14 removed or suspended from office, the person appointed as acting public
 15 whistleblower advocate under AS 39.90.170 serves until a new public whistleblower
 16 advocate is appointed for a full term.

17 (e) The public whistleblower advocate is entitled to receive an annual salary
 18 equal to a step in Range 26 on the salary schedule set out in AS 39.27.011(a).

19 **Sec. 39.90.165. Qualifications.** To serve as the public whistleblower advocate,
 20 a person must be at least 21 years of age and a qualified voter who has been a resident
 21 of the state for at least three years. A person may not serve as the public whistleblower
 22 advocate

23 (1) within one year after the last day on which the person served as a
 24 member of the legislature;

25 (2) while the person is a candidate for or holds any other national,
 26 state, or municipal office; nor may the public whistleblower advocate become a
 27 candidate for national, state, or municipal office until one year has elapsed from the
 28 date the public whistleblower advocate vacates the office of the public whistleblower
 29 advocate;

30 (3) while the person is engaged in any other occupation for which the
 31 person receives compensation.

1 **Sec. 39.90.170. Staff and delegation.** The public whistleblower advocate shall
2 appoint a person to serve as acting public whistleblower advocate in the absence of the
3 public whistleblower advocate. The public whistleblower advocate shall also appoint
4 assistants and clerical personnel necessary to carry out the provisions of AS 39.90.160
5 - 39.90.199.

6 **Sec. 39.90.175. Legal counsel.** The attorney general is legal counsel for the
7 public whistleblower advocate. The attorney general shall advise the public
8 whistleblower advocate in legal matters arising in the discharge of the duties of the
9 public whistleblower advocate and represent the public whistleblower advocate in
10 actions to which the public whistleblower advocate is a party.

11 **Sec. 39.90.180. Procedures; notice.** (a) The public whistleblower advocate
12 shall, by regulations adopted under AS 44.62 (Administrative Procedure Act),
13 establish procedures for receiving and processing complaints, conducting
14 investigations, reporting findings, preserving records, ensuring that confidential
15 information obtained by the public whistleblower advocate in the course of an
16 investigation will not be improperly disclosed, and awarding payments from recovered
17 funds under AS 39.90.190.

18 (b) If the public whistleblower advocate decides not to investigate a
19 complaint, the public whistleblower advocate shall inform the complainant of that
20 decision and shall state the reasons.

21 (c) If the public whistleblower advocate decides to investigate a complaint, the
22 public whistleblower advocate shall provide notification of the decision to

23 (1) the complainant; and

24 (2) the public employer, unless the public whistleblower advocate
25 believes that advance notice will unduly hinder the investigation or make the
26 investigation ineffectual.

27 (d) The public whistleblower advocate may not charge fees for the submission
28 or investigation of complaints.

29 **Sec. 39.90.185. Powers and duties; appeals.** (a) The public whistleblower
30 advocate may

31 (1) receive and investigate complaints from a person alleging a

1 violation of AS 39.90.100;

2 (2) seek interim relief from the court in accordance with (c) of this
3 section for conduct alleged to be in violation of AS 39.90.100, including

4 (A) reinstatement of a discharged employee; and

5 (B) an order to cease and desist unlawful conduct;

6 (3) subject to the privileges that witnesses have in the courts of this
7 state, administer oaths or affirmations and compel by subpoena, at a specified time and
8 place, the

9 (A) appearance and sworn testimony of a person who the
10 public whistleblower advocate reasonably believes may be able to give
11 information relating to a matter under investigation; and

12 (B) production by a person of a record or object that the public
13 whistleblower advocate reasonably believes may relate to the matter under
14 investigation;

15 (4) issue findings of fact and conclusions of law at the conclusion of an
16 investigation;

17 (5) order relief as provided under AS 39.90.120;

18 (6) obtain a court order for the enforcement of any orders issued by the
19 public whistleblower advocate by filing a complaint with the superior court in the
20 judicial district in which the violation is alleged to have occurred.

21 (b) If a person refuses to comply with a subpoena issued under (a) of this
22 section, the superior court may, upon application of the public whistleblower
23 advocate, compel obedience by proceedings for contempt in the same manner as in the
24 case of disobedience to the requirements of a subpoena issued by the court or refusal
25 to testify in the court.

26 (c) At any time after a complaint is filed with the public whistleblower
27 advocate alleging a violation of AS 39.90.100, the public whistleblower advocate may
28 file a petition in the superior court in the judicial district in which the subject of the
29 complaint occurs, or in the judicial district in which a respondent resides or transacts
30 business, seeking appropriate temporary relief against the respondent, pending final
31 determination of proceedings under AS 39.90.160 - 39.90.199. The court has the

1 power to grant the temporary relief or restraining order the court considers just and
2 proper. However, no relief or order extending beyond 10 days may be granted except
3 by consent of the respondent or after hearing upon notice to the respondent and a
4 finding by the court that there is reasonable cause to believe that the respondent has
5 engaged in unlawful practices.

6 (d) The public whistleblower advocate may refer criminal actions to the
7 appropriate authorities.

8 (e) A person is entitled to a hearing conducted by the office of administrative
9 hearings (AS 44.64.010) to appeal an order of the public whistleblower advocate. A
10 person may appeal an adverse decision of the office of administrative hearings to the
11 superior court.

12 **Sec. 39.90.190. Public whistleblower award fund; payment of award from**
13 **recovered funds.** (a) The public whistleblower award fund is established as a separate
14 account in the general fund.

15 (b) The legislature may appropriate money to the public whistleblower award
16 fund to carry out the purposes of this section.

17 (c) The public whistleblower advocate may use money in the public
18 whistleblower award fund to award a person who files a report under AS 39.90.100 -
19 39.90.120 that results in a recovery or savings of public funds an amount that is not
20 less than 10 percent and not more than 30 percent of the amount that was recovered or
21 saved.

22 (d) The public whistleblower advocate shall consider the significance of the
23 disclosure and the value of the cooperation by the person who filed the report when
24 considering whether to issue an award and in what amount.

25 (e) Nothing in this section creates a dedicated fund.

26 **Sec. 39.90.195. Annual report.** The public whistleblower advocate shall
27 submit to the senate secretary and the chief clerk of the house of representatives an
28 annual report of the public whistleblower advocate's activities under AS 39.90.160 -
29 39.90.199 and notify the legislature that the report is available. The report must
30 include the number of complaints received by the public whistleblower advocate, the
31 types of disclosures made to the public whistleblower advocate, the outcomes of

1 investigations and remedies ordered by the public whistleblower advocate, the
 2 amounts of any recovered public funds or savings described under AS 39.90.190, and
 3 any awards granted under AS 39.90.190. The report must also include any systemic
 4 issues that the public whistleblower advocate recommends be addressed through a
 5 change in law or policy.

6 **Sec. 39.90.199. Definitions.** In AS 39.90.160 - 39.90.199,

7 (1) "employee" has the meaning given in AS 39.90.140;

8 (2) "public employer" has the meaning given in AS 39.90.140;

9 (3) "record" means a document, paper, memorandum, book, letter, file,
 10 drawing, map, plat, photo, photographic file, motion picture, film, microfilm,
 11 microphotograph, exhibit, magnetic or paper tape, punched card, or other item
 12 developed or received under law or in connection with the transaction of official
 13 business, but does not include an attorney's work product, material that is confidential
 14 as a privileged communication between an attorney and client under rules adopted by
 15 the supreme court, or confidential oil and gas geological and geophysical data.

16 * **Sec. 20.** AS 44.62.040(c) is amended to read:

17 (c) Before submitting the regulations and orders of repeal to the lieutenant
 18 governor under (a) of this section, every state agency that by statute possesses
 19 regulation making authority, except the Regulatory Commission of Alaska, the Board
 20 of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission,
 21 the office of victims' rights, [AND] the office of the ombudsman, **and the office of**
 22 **the public whistleblower advocate**, shall submit to the governor for review a copy of
 23 every regulation or order of repeal adopted by the agency, except regulations and
 24 orders of repeal identified in (a)(1) and (2) of this section. The governor may review
 25 the regulations and orders of repeal received under this subsection. The governor may
 26 return the regulations and orders of repeal to the adopting agency before they are
 27 submitted to the lieutenant governor for filing under (a) of this section within 30 days
 28 if they are inconsistent with the faithful execution of the laws. The governor may not
 29 delegate the governor's review authority under this subsection to a person other than
 30 the lieutenant governor.

31 * **Sec. 21.** AS 44.62.190(d) is amended to read:

1 (d) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section,
 2 the state agency, except the Regulatory Commission of Alaska, the Board of Fisheries,
 3 the Board of Game, [AND] the Alaska Oil and Gas Conservation Commission, **and**
 4 **the office of the public whistleblower advocate**, shall include

5 (1) the reason for the proposed action, including, if applicable, an
 6 identification of the law, order, decision, or other action of the federal government or a
 7 federal or state court that is the basis for the proposed action; in this paragraph,
 8 "federal government" means a department, agency, corporation, or instrumentality of
 9 the United States government;

10 (2) the initial cost to the state agency of implementation;

11 (3) the estimated annual costs, based on a good faith effort to estimate
 12 the costs in the aggregate for each of the following categories using the information
 13 available to the state agency, to

14 (A) private persons to comply with the proposed action;

15 (B) the state agency for implementation and to other state
 16 agencies to comply with the proposed action; and

17 (C) municipalities to comply with the proposed action;

18 (4) the name of the contact person for the state agency; and

19 (5) the origin of the proposed action.

20 * **Sec. 22.** AS 44.62.190(g) is amended to read:

21 (g) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section,
 22 the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game,
 23 [AND] the Alaska Oil and Gas Conservation Commission, **and the office of the**
 24 **public whistleblower advocate** shall include the reason for the proposed action, the
 25 initial cost of implementation to the state agency, the estimated annual costs of
 26 implementation to the state agency, the name of a contact person, and the origin of the
 27 proposed action.

28 * **Sec. 23.** AS 44.62.200(c) is amended to read:

29 (c) An agency that issues a notice under this section shall ensure that the
 30 notice is prepared in a form adequate for posting on the Alaska Online Public Notice
 31 System. Unless the adoption, amendment, or repeal of a regulation is proposed by the

1 Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, [OR]
2 the Alaska Oil and Gas Conservation Commission, **or the office of the public**
3 **whistleblower advocate**, a complete copy of each proposed adoption, amendment, or
4 repeal of a regulation and, if feasible and not prohibited by copyright, any document
5 or other material incorporated by reference, including any document or other material
6 incorporated by reference under this section, in the proposed adoption or amendment
7 shall be made available on the Alaska Online Public Notice System by providing an
8 electronic attachment or link to the complete text.

9 * **Sec. 24.** AS 44.62.213(c) is amended to read:

10 (c) In this section, "agency" does not include the Regulatory Commission of
11 Alaska, the Board of Fisheries, the Board of Game, [OR] the Alaska Oil and Gas
12 Conservation Commission, **or the office of the public whistleblower advocate**.

13 * **Sec. 25.** AS 44.62.215 is amended to read:

14 **Sec. 44.62.215. Record of public comment.** In the drafting, review, or other
15 preparation of a proposed regulation, amendment, or order of repeal, an agency, other
16 than the Regulatory Commission of Alaska, the Board of Fisheries, the Board of
17 Game, the Alaska Oil and Gas Conservation Commission, the office of victims' rights,
18 [AND] the office of the ombudsman, **and the office of the public whistleblower**
19 **advocate** shall keep a record of its use or rejection of factual or other substantive
20 information that is received in writing or orally as public comment and that is relevant
21 to the accuracy, coverage, or other aspect of the proposed regulatory action.

22 * **Sec. 26.** AS 44.62.330(a) is amended by adding a new paragraph to read:

23 (47) the office of the public whistleblower advocate.