

HOUSE BILL NO. 570
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 3/30/92

Referred: Labor & Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act extending whistleblower protections to persons employed by private employers and
2 certain other persons; and providing for an effective date."

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

4 * **Section 1. FINDINGS.** The legislature finds that information provided by citizens and employees
5 concerning potential wrongdoing is vital to effective law enforcement, public health and safety, and an
6 economically productive society. The legislature also recognizes that the government and the public are
7 increasingly reliant on private companies to conduct their business in voluntary compliance with
8 regulations designed to protect health and safety, and that voluntary compliance is difficult to monitor
9 in large corporations and geographically diverse locations. The threat of a civil action for damages or
10 the threat of retaliation against employees can deter individuals who wish to report information to
11 federal, state, or local agencies. The cost of defending against those suits and the suffering engendered
12 by the retaliation can be severely burdensome.

13 * **Sec. 2. PURPOSE AND INTENT.** The purpose of this Act is to strengthen and improve protection
14 for private sector employees and other persons who report a matter of public concern, to prevent

1 retaliatory action against those persons, to provide remedies for employees and other persons through
2 state tort claims, and to improve the health and safety of workers and the general public.

3 * Sec. 3. AS 23 is amended by adding a new chapter to read:

4 **CHAPTER 50. PROTECTION FOR WHISTLEBLOWERS.**

5 **Sec. 23.50.010. PERSONS PROTECTED.** (a) An employer may not discharge, threaten,
6 or otherwise discriminate against an employee regarding the employee's compensation, terms,
7 conditions, location, or privileges of employment because

8 (1) the employee, or a person acting on behalf of the employee, reports to a
9 public body or other person or is about to report to a public body or other person a matter of
10 public concern; or

11 (2) the employee participates in a court action, an investigation, a hearing, or an
12 inquiry held by a public body or other person on a matter of public concern.

13 (b) An employee or other person who reports a matter of public concern or participates
14 in a proceeding connected with a matter of public concern before a public body, court, or other
15 person is a protected person under this chapter. An employer may not, because of the report or
16 participation, disqualify the protected person from eligibility to bid on contracts with the
17 employer or to receive a right, privilege, or benefit.

18 (c) The provisions of this chapter do not

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

21 (2) prohibit an employer from compensating an employee for participation in a
22 court action or in an investigation, hearing, or inquiry by a public body or other person;

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

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

27 (d) An employer shall prominently display notices and use other appropriate means to
28 inform employees of their protection and obligations under this chapter.

29 **Sec. 23.50.020. EMPLOYEES OF SUBCONTRACTORS.** The provisions of this chapter
30 apply to the employees of a subcontractor of an employer as though they were employees of the
31 employer.

1 Sec. 23.50.030. LIMITATION TO PROTECTION. (a) A person is not entitled to the
2 protection under this chapter unless the person reasonably believes that the information reported
3 is true and is or will be a matter of public concern.

4 (b) As part of its written personnel policy, an employer may require that, before an
5 employee initiates a report on a matter of public concern under AS 23.50.010, the employee shall
6 submit a written report concerning the matter to the employer. However, the employee is not
7 required to submit a report if the employee reasonably fears reprisal or discrimination as a result
8 of disclosure or reasonably believes that an emergency is involved.

9 (c) Agreements by employees, express or implied, written or oral, purporting to waive
10 or modify the rights granted employees under this chapter are void as contrary to public policy.

11 Sec. 23.50.040. RELIEF AND PENALTIES. (a) A person who alleges a violation of
12 AS 23.50.010 may bring a civil action and the court may grant appropriate relief, including
13 punitive damages. The person bringing the civil action is not required, before bringing the civil
14 action, to exhaust administrative remedies available under AS 23.50.050 or other law, or under
15 a collective bargaining agreement unless exhaustion is required under federal law.

16 (b) A person is immune from civil liability for actions protected under this chapter.

17 (c) A person who violates or attempts to violate AS 23.50.010 is also liable for a civil
18 fine of not more than \$10,000. The attorney general may enforce this subsection.

19 (d) A person who attempts to prevent another person from making a report or
20 participating in a matter under AS 23.50.010 with intent to impede or prevent a public inquiry
21 on the matter is liable for a civil fine of not more than \$10,000.

22 Sec. 23.50.050. ADMINISTRATIVE COMPLAINT. A protected person who suffers
23 retaliation from an employer for making a communication protected under this chapter may report
24 the conduct of the employer to the department. The department shall review the report and, if
25 it finds that there is probable cause to believe that the employer violated this chapter, the
26 department shall issue an order requiring the employer to stop the conduct and to compensate the
27 complainant for any damages suffered. The department may order the employer to pay punitive
28 damages if appropriate. Either party may request a hearing to contest the department's findings
29 and order. The hearing is subject to the Administrative Procedure Act (AS 44.62). A party to
30 a hearing under this section is entitled to a trial de novo in superior court on appeal.

31 Sec. 23.50.060. POWERS AND DUTIES OF THE DEPARTMENT. (a) The department

1 shall

2 (1) investigate a complaint of retaliation under this chapter;

3 (2) enter the place of business or employment of an employer at reasonable times
4 for the purpose of investigating a complaint filed under this chapter;

5 (3) require and subpoena from an employer a statement in writing, when the
6 department considers it necessary, of facts concerning a complaint filed under this chapter; the
7 commissioner may require the employer to make the statement under oath;

8 (4) question an employee in a place of employment during work hours with
9 respect to a complaint filed under this chapter;

10 (5) compel the attendance of witnesses and the production of books, papers, and
11 documents by subpoena when necessary for the purpose of a hearing or investigation provided
12 for in this chapter.

13 (b) The department may adopt regulations under the Administrative Procedure Act
14 (AS 44.62) to implement this chapter.

15 Sec. 23.50.070. ENFORCEMENT BY INJUNCTION. If it appears to the commissioner
16 that an employer is engaged in an act or practice that violates or will violate a provision of this
17 chapter or of a regulation adopted under this chapter, the commissioner may bring an action in
18 a competent court to enjoin the act or practice, and to enforce compliance with this chapter or
19 with the regulation. Upon a proper showing, a permanent or temporary injunction or restraining
20 order shall be granted.

21 Sec. 23.50.080. ENFORCEMENT OF SUBPOENAS. If a person fails to comply with
22 a subpoena issued under AS 23.50.060, or if a witness refuses to produce evidence or to testify
23 to a matter regarding which the witness may be lawfully interrogated, a competent court shall,
24 upon application of the commissioner or an authorized representative, compel obedience by
25 proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued
26 by the court or a refusal to testify before it.

27 Sec. 23.50.190. DEFINITIONS. In this chapter,

28 (1) "discriminate" or "discrimination" means an action taken against a protected
29 person that adversely affects that protected person and includes

30 (A) demotion, denial of promotion, reduction in pay, suspension, dismissal,
31 denial of employment, and, at the time the employee terminates employment, denial of

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earned benefits;

(B) blacklisting and other actions that interfere with continued employment including failure to rehire or recall from layoff and refusal to hire through a union hiring hall;

(C) selective imposition of unsatisfactory or undesirable working conditions or locations;

(D) unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;

(E) encouragement by a supervisor or other superior of hostile behavior toward the employee or other person protected by this chapter;

(F) requiring a psychiatric or psychological examination or treatment as a condition of continued employment;

(G) instigation or maintenance of surveillance;

(H) written or oral conduct that a reasonable person would find harassing, intimidating, or that would discourage other employees or persons from engaging in actions protected by this chapter;

(2) "employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for an employer;

(3) "employer" means a person who employs one or more employees other than a public employer as defined in AS 39.90.150;

(4) "matter of public concern" means

(A) a violation of a state, federal, or municipal law, regulation, or ordinance;

(B) a danger to public health or safety;

(C) gross mismanagement of public assets, a substantial waste of public funds, or a clear abuse of public authority; or

(D) a matter accepted for investigation by the office of the ombudsman under AS 24.55.100 or 24.55.320;

(5) "protected person" means a person protected under AS 23.50.010;

(6) "public body" includes an officer or agency of

(A) the federal government;

- 1 (B) the state;
2 (C) a political subdivision of the state including
3 (i) a municipality;
4 (ii) a municipal school district; and
5 (iii) a rural educational attendance area;
6 (D) a public or quasi-public corporation or authority established by state
7 law including the Alaska Railroad Corporation; and
8 (E) the University of Alaska.
9 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).