

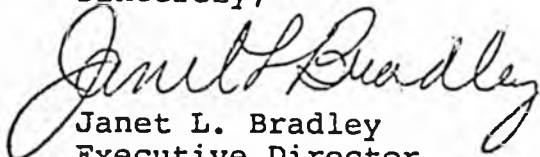
ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3103 SSA HB 556 - HB 578 8672

8/24/83

I hope that this reply is responsive to your inquiry. I would be pleased to schedule a time to discuss your concerns in person at your convenience.

Sincerely,



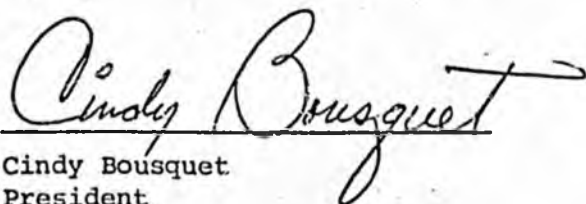
Janet L. Bradley  
Executive Director

JLB:lv  
Enclosure

WHEREAS, the National Organization for Women is dedicated to supporting laws mandating equality in the workplace; and

WHEREAS, a bill is to introduced into the THIRTEENTH LEGISLATURE of the State of Alaska to amend Section of Alaska Statute 18.80 by adding a new paragraph to prohibit retribution by an employer against an employee who files a complaint or testifies in behalf of a complainant who has filed a complaint with the Human Rights Commission;

NOW THEREFORE, be it resolved that Alaska NOW, acting at its annual statewide convention, endorse and support the above bill's intent to assist in its passage by the Legislature



Cindy Bousquet  
President  
National Organization for Women  
State of Alaska

*Resolution / National Organization for Women*



Elizabeth I. Johnson  
Counsellor and Attorney at Law

540 "L" Street Suite 304  
Anchorage, Alaska 99501  
(907) 277-3025

February 29, 1984

Representative Abood  
Capital Room 102  
Pouch V  
Juneau, Alaska 99811

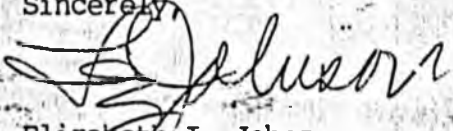
Re: House Bill 555

Dear Rep. Abood:

Enclosed please find a resolution from the Employment Law Section of the Alaska Bar Association concerning the substance and proposed amendments to HB 556. We would ask that these comments be inserted in the public record as written testimony on this bill.

Please contact me if you have further questions.

Sincerely,

  
Elizabeth I. Johnson  
Member  
Employment Law Section  
Alaska Bar Association

2/29/84 Ltr. from AK Bar Assoc. Resolution and Comments

ALASKA BAR ASSOCIATION

EMPLOYMENT LAW SECTION

RESOLUTION & COMMENTS ON H.B. 556

Resolved: That the Employment Law Section of the Alaska Bar Association supports the intention of HB 556 but recommends that the first sentence of the bill be amended in the following manner:

1. That the word "cases" in line 12 be changed to "complaints".
2. That the word "prior" be inserted before the word "complaint" in line 13.
3. That the word "retaliation" be inserted before both words "complaint" in line 15.

Some members of the employment law section had a serious concern that the second sentence of the proposed amendment -- stating that the commission shall file a petition for appropriate temporary relief -- is inconsistent with the powers of the commission as presently granted by statute. Some members also felt that the phrase "in cases where it is necessary" might pose a problem for the Commission by implying that there be some sort of preliminary finding of "necessity" prior to taking court action.

Therefore, the employment law section recommends that if the second sentence is left in the bill it be amended to read as follows:

4. That the word "shall" in line 16 be changed to "may".
5. That the word "retaliation" be inserted before the word "complaint" in line 19.

MAKING IT / KEEPING IT

LEGAL BRIEF



Retaliation Complaints to Human Rights Commission

It's against Alaska state law to fire an employee for making a complaint of discrimination to the State Human Rights Commission. But, according to Rep. Jerry Ward of Mountain View, it might take a year or more before that Commission could do anything about such a firing. HB558, introduced by Ward, would require that the Commission give priority to retaliation complaints (investigation of such cases to be completed within 90 days) and would also require that the Commission petition the court for a temporary restraining order where necessary to protect the employment rights of the complainant.

"The problem is that retaliation complaints are treated the same as any other complaint to the Commission and have to take their turn," Ward explained. "Attorneys representing employers use delaying tactics to freeze out a complaining employee who can't afford to be very long without a job. I just don't think that it's fair that an employee could be intimidated into dropping a complaint because an employer knows they can get away with firing them if they complain of discrimination. I know of one retaliation complaint that has been dragging along for almost two years now. By the time the Commission has made a determination, the employee could be forced to move away to find employment, or drop the complaint because of the stress and financial burden."

With the Human Rights Commission handling retaliation complaints in 90 days it is most unlikely that employers will fire employees who file complaints. But even more importantly, if they do, the employee will know within a reasonable period of time if he/she will indeed return to work and maintain benefits such as medical insurance and vacation seniority or if he/she must start a career in new directions.

This bill is now in the House Rules Committee for consideration. Your support with a Public Opinion Message is greatly needed. Please call the Legislative Information Office at 278-3668 and have them send a telegram of support to all representatives and senators in the Alaska State Legislature.

HOUSE BILL NO. 558  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 THIRTEENTH LEGISLATURE, SECOND SESSION  
 A BILL  
 For an Act entitled "An Act relating to complaints alleging retaliation before the State Commission for Human Rights; and providing for an effective date."  
**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**  
 \*Section 1. AS 18.80.110 is amended by adding a new subsection to read:  
 (b) The commission shall grant priority status to cases that allege that retaliation has occurred for having filed a complaint alleging a violation of AS 18.80.220 and shall complete its investigation of that complaint within 90 days from the date that the complaint was filed with the commission. The commission shall file a petition for appropriate temporary relief against a respondent in cases where it is necessary to protect the employment rights of the complainant.  
 \*Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

- Aboud, Mitchell E.
- Adams, Albert F.
- Bamas, Ramona L.
- Battisworth, Robert H.
- Bussell, Charlie
- Cato, Betty M.
- Clockain, Donald E.
- Cowdery, John
- Davis, Mike
- Duncan, Jim
- Flood, Joe
- Fritz, Mike H.
- Fulmer, John G. "Jack"
- Furuse, Walt
- Go, Peter
- Grossenfort, Ben F.
- Hayes, Joe L. SPEAKER
- Herrmann, Adolph
- Hurlbert, Vernon L.
- Koponen, Niilo
- Lacher, Barbara
- Larson, Ronald L.
- Lindewer, John
- Liska, John J.
- Malone, Hugh
- Martin, Terry
- McBride, Jack

- Miller, Mike M.
- Miller, Mike W.
- Peelinger, Sam
- Phillips, Randy E.
- Ringsaker, John
- Shurtz, Richard
- Szymanski, Mike
- Tischer, Mia
- U-hling, Rick
- Vaska, Anthony N.
- Walt, Jerry
- Wentz, Ron
- Zharoff, Fred F.

- Bennett, Don
- Elrason, Richard L.
- Fahrenkamp, Bettya
- Falks, Jan
- Ferguson, Frank R.
- Fischer, Paul
- Fischer, Vic
- Gilmer, Donald E.
- Hallford, Rick
- Josephson, Joe
- Kelly, Tim
- Kortula, Jalmar
- Moss, Pappy
- Mulcahy, Bob
- Pettyjohn, Fritz
- Ray, Bill
- Rodey, Patrick
- Seckell, John C.
- Sturglewski, Arliss
- Ziegler, Robert H., Sr.

ALASKA STATE LEGISLATURE  
 THIRTEENTH LEGISLATURE - FIRST SESSION  
 1983  
 HOUSE OF REPRESENTATIVES

- (R) 4504 Spensard Rd, Anchorage AK 99503 465-4947
- (R) P.O. Box 333, Kotzebue 99713 465-3708
- (R) P.O. Box 3382, Dowdville 99574 Anchorage 99510 465-3711
- (R) 121 Kallum, Fairbanks 99701 465-4857
- (R) P.O. Box 4-1325, Anchorage 99506 465-4399
- (R) P.O. Box 773, Valdez 99686 465-4889
- (R) 1537 "H" Street, Anchorage 99501 465-3776
- (R) P.O. Box 10-1823, Anchorage 99511 465-4838
- (R) P.O. Box 81426, College 99708 465-4838
- (R) P.O. Box 690, Juneau 99802 465-4798
- (R) 3423 W. 79th, Anchorage 99502 465-4857
- (R) P.O. Box 158, Anchor Point 99684 465-3788
- (R) P.O. Box 888, Nome 99762 465-3825
- (R) P.O. Box 1442, Anchorage 99511 465-3825
- (R) P.O. Box 981, Halasa 99527, 465-4828
- (R) P.O. Box 228, Siltka 99639 465-3424
- (R) P.O. Box 191827, Anchorage 99510 465-3771
- (R) P.O. Box 83, Naknek 99633 465-4857
- (R) General Delivery, Sleetmute 99866 465-3798
- (R) P.O. Box 252, Fairbanks 99707 465-4992
- (R) P.O. Box 478, Palmer 99645 465-4884
- (R) Box 83, Palmer 99645 465-3727
- (R) 2833 Generals Place, Anchorage 99508 465-3709
- (R) S.R. Box 421, Eagle River 99577 465-3732
- (R) P.O. Box 6, Kenai 99611 465-4843
- (R) 2980 Reka Dr., B-6, Anchorage 99504 465-3783
- (R) P.O. Box 7543, Ketchikan 99901 465-4819
- (R) P.O. Box 1494, Juneau 99802 465-4841
- (R) P.O. Box 55094, North Pole 99708 465-4878
- (R) 630 "I" Street, Anchorage 99501 465-3715
- (R) P.O. Box 142, Eagle River 99577 465-4849
- (R) P.O. Box 1846, Fairbanks 99707 465-3742
- (R) RR 790, Mile 81, Tok 99700 465-4840
- (R) P.O. Box 130418, Anchorage 99502 465-4840
- (R) 2305 Oregon Drive, Anchorage 99503 465-3758
- (R) 1834 Juneau Drive, Anchorage 99501 465-4821
- (R) P.O. Box 1485, Bethel 99559 465-4814
- (R) Box 2718, Anchorage 99518 465-4828
- (R) 2855 Evergreen Ave., Ketchikan 99901 465-4844
- (R) P.O. Box 405, Kodiak 99618 465-4868

- SENATE
- (R) P.O. Box 2801, Fairbanks 99707 465-3714
  - (R) P.O. Box 143, Siltka 99635 465-4818
  - (R) 4018 Evergreen, Fairbanks 99701 465-3762
  - (R) SRA Box 637, Anchorage 99507 465-3770
  - (R) Box 131, Kotzebue 99713 465-4868
  - (R) Box 784, Soldotna 99689 465-3791
  - (R) 1024 W. 8th, Anchorage 99501 465-4954
  - (R) P.O. Box 830, Kenai 99611 465-4826
  - (R) Box 190, Chugiak 99587 465-4858
  - (R) 1526 "F" Street, Anchorage 99501 465-3787
  - (R) 283 Muldoon Rd., Station Box 78, Anchorage 99504 465-3822
  - (R) Box 2, Palmer 99645 465-3771
  - (R) P.O. Box 182, Delta Junction 99727 465-4821
  - (R) P.O. Box 246, Kodiak 99618 465-3718
  - (R) SRA 2345-M Anchorage 99507 465-3473
  - (R) Pouch V, Juneau 99811 465-4822
  - (R) 2325 Lord Baranof, Anchorage 99603 465-3793
  - (R) Box 11, Ruby 99784 465-3763
  - (R) 2257 Sheldon Jackson Street, Anchorage 99504 465-3818
  - (R) 307 Camden Street, Ketchikan 99901 465-3743



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 When not in session, mail may be sent to their home addresses.

Article - 3/84 New Horizons

MAKING IT / KEEPING IT  
**LEGAL BRIEF**



● Retaliation Complaints to  
 Human Rights Commission

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HOUSE BILL NO. 556  
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 THIRTEENTH LEGISLATURE - SECOND SESSION  
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ALASKA STATE LEGISLATURE  
 THIRTEENTH LEGISLATURE - FIRST SESSION  
 1983  
 HOUSE OF REPRESENTATIVES

Abood, Mitchell E., Jr.	(R)	4504 Spenard Rd, Anchorage AK 99503	465-4947
Adams, Albert P.	(D)	P.O. Box 333, Kotzebue 99752	465-3708
Barnes, Ramona L.	(R)	P.O. Box 3302, Downtown Sta., Anchorage 99510	461-3718
Bettsworth, Robert H.	(R)	924 Kellum, Fairbanks 99701	467-4967
Bussell, Charlie	(R)	P.O. Box 4-1325, Anchorage 99509	465-4990
Cato, Belle M.	(D)	P.O. Box 775, Valdez 99688	465-4858
Clocksln, Donald E.	(D)	1527 'H' Street, Anchorage 99501	465-3704
Cowdery, John	(R)	P.O. Box 10-1823, Anchorage 99511	465-4905
Davis, Mike	(D)	P.O. Box 81435, College 99708	465-4930
Duncan, Jim	(D)	P.O. Box 890, Juneau 99802	465-4766
Flood, Joe	(R)	3423 W. 79th, Anchorage 99502	467-4937
Fritz, Milo H.	(R)	P.O. Box 158, Anchor Point 99558	415-4833
Fuller, John G. "Jack"	(D)	P.O. Box 489, Nome 99762	465-3789
Furnace, Walt	(R)	P.O. Box 1542, Anchorage 99510	465-3692
Goll, Peter	(D)	P.O. Box 681, Haines 99827	465-4925
Grusendorf, Ben F.	(D)	P.O. Box 928, Sitka 99835	465-3824
Hayes, Joe L. SPEAKER	(R)	P.O. Box 101821, Anchorage 99510	465-3721
Herrmann, Adelheid	(D)	P.O. Box 63, Naknek 99633	465-4942
Hurlbert, Vernon L.	(D)	General Delivery, Sleetmute 99668	465-3709
Koponen, Nillo	(D)	P.O. Box 252, Fairbanks 99707	465-4992
Lacher, Barbara	(R)	P.O. Box 478, Palmer 99645	465-4894
Laraon, Ronald L.	(D)	Box 53, Palmer 99645	465-3727
Lindauer, John	(R)	3933 Geneva Place, Anchorage 99508	465-3709
Liska, John J.	(R)	S.R. Box 421, Eagle River 99577	465-3732
Malone, Hugh	(D)	P.O. Box 9, Kenai 99611	465-4843
Martin, Terry	(R)	3980 Reka Dr., B-8, Anchorage 99504	465-3783
McBride, Jack	(D)	P.O. Box 7583, Ketchikan 99901	465-4919

# Human Rights Commission

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This bill is now in the House Rules Committee for consideration. Your support with a Public Opinion Message is greatly needed. Please call the Legislative Information Office at 276-3668 and have them send a telegram of support to all representatives and senators in the Alaska State Legislature.



Barnes, Ramona L. (R)  
 Bettisworth, Robert H. (R)  
 Bussell, Charlie (R)  
 Cato, Bettie M. (D)  
 Clocksin, Donald E. (D)  
 Cowdery, John (R)  
 Davis, Mike (D)  
 Duncan, Jim (D)  
 Flood, Joe (R)  
 Fritz, Milo H. (R)  
 Fuller, John G. "Jack" (D)  
 Furnace, Walt (R)  
 Goll, Peter (D)  
 Grussendorf, Ben F. (D)  
 Hayes, Joe L. SPEAKER (R)  
 Hennmann, Adelheid (D)  
 Hurlbert, Vernon L. (D)  
 Koponen, Niilo (D)  
 Lacher, Barbara (R)  
 Larson, Ronald L. (D)  
 Lindauer, John (R)  
 Liska, John J. (R)  
 Malone, Hugh (D)  
 Martin, Terry (R)  
 McBride, Jack (D)

Miller, Mike M. (D)  
 Miller, Mike W. (R)  
 Pestinger, Sam (R)  
 Phillips, Randy E. (R)  
 Ringstar, John (R)  
 Shultz, Richard (R)  
 Szymanski, Mike (D)  
 Tischer, Mae (R)  
 Uehling, Rick (R)  
 Vasya, Anthony N. (D)  
 Weis, Jerry (R)  
 Wendig, Ron (D)  
 Zaroff, Fred F. (D)

Bennett, Don (R)  
 Ellason, Richard I. (R)  
 Fahrenkamp, Bettye (D)  
 Falke, Jan (R)  
 Ferguson, Frank R. (D)  
 Fischer, Paul (R)  
 Fischer, Vic (D)  
 Gilman, Donald E. (R)  
 Halford, Rick (R)  
 Josephson, Joe (D)  
 Kelly, Tim (R)  
 Kerttula, Jalmar (D)  
 Moss, Pappy (D)  
 Mulcahy, Bob (R)  
 Pettyjohn, Fritz (R)  
 Ray, Bill (D)  
 Roddy, Patrick (D)  
 Sackell, John C. (R)  
 Sturgulewski, Arles (R)  
 Ziegler, Robert H., Sr. (D)

P.O. Box 3382, Downtown Sta., Anchorage 99510 (R)  
 924 Kellum, Fairbanks 99701 (R)  
 P.O. Box 4-1325, Anchorage 99509 (R)  
 P.O. Box 775, Valdez 99686 (D)  
 1527 'H' Street, Anchorage 99501 (D)  
 P.O. Box 10-1623, Anchorage 99511 (R)  
 P.O. Box 81435, College 99708 (D)  
 P.O. Box 690, Juneau 99802 (D)  
 3423 W. 79th, Anchorage 99502 (R)  
 P.O. Box 758, Anchor Point 99556 (R)  
 P.O. Box 689, Nome 99762 (D)  
 P.O. Box 1542, Anchorage 99510 (R)  
 P.O. Box 581, Haines 99827 (D)  
 P.O. Box 928, Sitka 99835 (D)  
 P.O. Box 101821, Anchorage 99510 (R)  
 P.O. Box 63, Haines 99833 (D)  
 General Delivery, Sleetmute 99368 (D)  
 P.O. Box 252, Fairbanks 99707 (D)  
 P.O. Box 478, Palmer 99645 (R)  
 Box 53, Palmer 99645 (D)  
 3933 Geneva Place, Anchorage 99508 (R)  
 S.R. Box 421, Eagle River 99577 (R)  
 P.O. Box 9, Kenai 99611 (D)  
 3960 Reka Dr., B-6, Anchorage 99504 (R)  
 P.O. Box 7563, Ketchikan 99901 (D)

P.O. Box 1494, Juneau 99802 (D)  
 P.O. Box 55094, North Pole 99705 (R)  
 630 "I" Street, Anchorage 99501 (R)  
 P.O. Box 142, Eagle River 99577 (R)  
 P.O. Box 1848, Fairbanks 99707 (R)  
 SR 790, Mile 91, Tok 9978 (R)  
 SRA Box 13048, Anchorage 99502 (D)  
 3305 Oregon Drive, Anchorage 99503 (R)  
 1634 Juneau Drive, Anchorage 99501 (R)  
 P.O. Box 1495, Bethel 99559 (D)  
 Box 2716, Anchorage 99510 (R)  
 3855 Evergreen Ave., Ketchikan 99901 (D)  
 P.O. Box 405, Kodiak 99815 (D)

## SENATE

P.O. Box 2801, Fairbanks 99707 (R)  
 P.O. Box 143, Sitka 99835 (R)  
 4016 Evergreen, Fairbanks 99701 (D)  
 SRA Box 62F, Anchorage 99507 (R)  
 Box 131, Kotzebue 99752 (D)  
 Box 784, Soldotna 99669 (R)  
 1024 W. 6th, Anchorage 99501 (D)  
 P.O. Box 630, Kenai 99611 (R)  
 Box 190, Chugiak 99567 (R)  
 1526 "F" Street, Anchorage 99501 (D)  
 283 Muldoon Rd., Station Box 76, Anchorage 99504 (R)  
 Box 2, Palmer 99645 (D)  
 P.O. Box 182, Delta Junction 99737 (D)  
 P.O. Box 249, Kodiak 99615 (R)  
 SRA 2385-A, Anchorage 99507 (R)  
 Pouch V, Juneau 99811 (D)  
 2335 Lord Baranof, Anchorage 99503 (R)  
 Box 11, Ruby 99768 (D)  
 2057 Sheldon Jackson Street, Anchorage 99504 (R)  
 307 Baydon Street, Ketchikan 99901 (D)

465-3718  
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 465-3743

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## Worker's right to non-retaliation

By Julia Pieper

**H**B 558 recently passed the Alaska State House of Representatives. Introduced by Jerry Ward, Representative from Mt. View, the bill requires that priority status be granted to Human Rights cases that allege retaliation has occurred as a result of an employee filing a discrimination/harassment complaint with the State Human Rights Commission. HB 558 requires the Commission to complete its investigation of such cases within 90 days.

Alaska law currently prohibits the firing of an employee who has filed a complaint. Once a person is fired, though, under the existing procedures the Human Rights Commission may take as long as two years before acting. This delaying tactic can cause considerable financial difficulty to the complainant, as well as emotional and physical stress.

A frequent result is a decision to drop the complaint.

With the Human Rights Commission handling retaliation complaints within 90 days, it is less likely that an employer will fire an employee who files a complaint. But more importantly, if she is fired, the employee will know within a reasonable period of time if she will indeed return to work or if she must start her career in a new direction.

This bill is now in the Senate for its consideration. Your support with a Public Opinion Message is greatly needed. Please call the Legislative Information Office at 278-3888 and have them send a telegram of support to all Senators in the Alaska State Senate.

*Julia Pieper previously worked for an oil company on the North Slope. Currently she is employed at Great Earth Vitamins in the Diamond Mall.*

Shirley's in my  
"in" basket

HB 556

- 1983-9 complaints

- Do it intermally rather than  
direct laws.

- write it in regulations  
- purpose

→ note see minutes are  
very complete,

- Janet,  
the filing of bill

- Get letter from Janet  
Bradley, taking care of problem  
in court,

Elizabeth Johnson

Employment Law Section of Mc Kar  
Assoc.

540 E. Suite 804 99501

①

②

Issue of last sentence:

\*What kind of impact "shall"

Does human rights commission have  
right to issue restraining order.

Bill passed out of house before then

VF,

please call Joyce Rivers.  
(Hughes,

274-7522

ELIZABETH JOHNSON / RESOLUTION.

To: Suzanne, Vic  
From: Steve  
Re: HB 556 - Human Rights Commission  
Date: 2/24/84

This bill would give priority status to those cases before the Human Rights Commission that deal with employment retaliation. Apparently, a more and more commonly used tactic by employers to get rid of unwanted employees is to fire them knowing that the current backlog at the Human Rights Commission is over two years long. The companies figure correctly that over the course of two years, either the person has left the state or has found other work and does not want to continue the case. The companies are doing this knowing that their action is probably illegal.

The measure is sponsored by Rep. Ward and cosponsored by Lindauer, Malone.  
It is now before HOuse Rules, and will likely pass and be referred to Senate State Affairs.

The Human Rights Commission supports this measure. It is likely to act as a preventive measure reducing or eliminating this current corporate practice.

If you have any questions, please let me know. This matter was brought to my attention by Julia Pieper, PO Box 3415, Anch 99501, 349-7410 (h) or 344-6531 (message)

ALASKA BAR ASSOCIATION

EMPLOYMENT LAW SECTION

RESOLUTION & COMMENTS ON H.B. 556

Resolved: That the Employment Law Section of the Alaska Bar Association supports the intention of HB 556 but recommends that the first sentence of the bill be amended in the following manner:

1. That the word "cases" in line 12 be changed to "complaints".
2. That the word "prior" be inserted before the word "complaint" in line 13.
3. That the word "retaliation" be inserted before both words "complaint" in line 15.

Some members of the employment law section had a serious concern that the second sentence of the proposed amendment -- stating that the commission shall file a petition for appropriate temporary relief -- is inconsistent with the powers of the commission as presently granted by statute. Some members also felt that the phrase "in cases where it is necessary" might pose a problem for the Commission by implying that there be some sort of preliminary finding of "necessity" prior to taking court action.

Therefore, the employment law section recommends that if the second sentence is left in the bill it be amended to read as follows:

4. That the word "shall" in line 16 be changed to "may".
5. That the word "retaliation" be inserted before the word "complaint" in line 19.



# Alaska State Legislature House of Representatives

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WHILE IN JUNEAU  
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JUNEAU, ALASKA 99801  
(907) 465-4939

REPRESENTATIVE JERRY WARD  
DISTRICT 13

MEMBER FINANCE COMMITTEE  
CHAIRMAN OF SUBCOMMITTEE ON  
COMMERCE & ECONOMIC DEVELOPMENT  
CHAIRMAN OF SUBCOMMITTEE ON LABOR  
MEMBER OF SUBCOMMITTEE ON STATE LOANS

FOR IMMEDIATE RELEASE  
January 31, 1984

Contact: Rep. Jerry Ward  
465-4939

A handwritten signature in dark ink, appearing to read "JW", is written over the contact information.

## WARD INTRODUCES BILL TO SPEED UP HANDLING OF RETALIATION COMPLAINTS TO HUMAN RIGHTS COMMISSION

It's against Alaska state law to fire an employee for making a complaint of discrimination to the State Human Rights Commission. But, according to Rep. Jerry Ward, it might take a year or more before that Commission could do anything about such a firing. HB 556, introduced today by Ward, would require that the Commission give priority to retaliation complaints and would also require that the Commission petition the court for a temporary restraining order where necessary to protect the employment rights of the complainant.

"The problem is that retaliation complaints are treated the same as any other complaint to the Commission and have to take their turn," Ward explained. "Attorneys representing employers use delaying tactics to freeze out a complaining employee who can't afford to be very long without a job. I just don't think that it's fair that an employee could be intimidated into dropping a complaint because an employer knows they can get away with firing them if they complain of discrimination. I know of one retaliation complaint that has been dragging along for almost two years now. By the time the Commission has made a determination, the employee could be forced to move away to find employment, or drop the complaint because of the stress and financial burden."

Quoted in *Hotel & Restaurant Union Local 878 v. Alaska State Comm'n for Human Rights*, Sup. Ct. Op. No. 1653 (File No. 4248), 595 P.2d 653 (1979).

**Sec. 18.80.210. Civil rights.** The opportunity to obtain employment, credit and financing, public accommodations, housing accommodations and other property without discrimination because of sex, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin is a civil right. (§ 6 ch 117 SLA 1965; am § 4 ch 42 SLA 1972; am § 8 ch 104 SLA 1975)

## NOTES TO DECISIONS

Cited in *Loomis Electronic Protection, Inc. v. Schaefer*, Sup. Ct. Op. No. 1262 (File No. 2684), 549 P.2d 1341 (1976).

Collateral references. — Actionability under state statutes of discrimination because of complaining party's association with persons of different race, color, or the like. 35 ALR3d 859.

Recovery of damages for emotional distress resulting from racial, ethnic, or religious abuse or discrimination. 40 ALR3d 1290.

Racial or religious discrimination in furnishing of public utilities, services, or facilities. 53 ALR3d 1027.

Recovery of damages for emotional distress resulting from discrimination

because of sex or marital status. 61 ALR3d 944.

Trailer park as place of public accommodation within meaning of state civil rights statutes. 70 ALR3d 1142.

Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions. 85 ALR3d 351.

Identification of job seeker by race, religion, national origin, sex, or age, in "situation wanted" employment advertising as violation of state civil rights laws. 99 ALR3d 154.

**Sec. 18.80.215. Activities in aid of housing for minority groups.** The activities of a nonprofit and noncommercial organization on a nonremunerative basis in aiding minority group members to obtain housing opportunities so as to further the purpose of this chapter are not considered a violation of AS 08.88.161. (§ 3 ch 119 SLA 1969)

**Sec. 18.80.220. Unlawful employment practices.** (a) It is unlawful for

(1) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood;

§ 18.80.220

HEALTH AND SAFETY

§ 18.80.220

(2) a labor organization, because of a person's sex, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, color or national origin, to exclude or to expel him from its membership, or to discriminate in any way against one of its members or an employer or an employee;

(3) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment or to make an inquiry in connection with prospective employment, which expresses, directly or indirectly, a limitation, specification or discrimination as to sex, marital status, changes in marital status, pregnancy, parenthood, age, race, creed, color or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because he has opposed any practices forbidden under AS 18.80.200 — 18.80.280 or because he has filed a complaint, testified or assisted in a proceeding under this chapter;

(5) an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business or type of work in the same locality; or

(6) a person to print, publish, broadcast or otherwise circulate a statement, inquiry or advertisement in connection with prospective employment which expresses directly, a limitation, specification or discrimination as to sex, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, color or national origin, unless based upon a bona fide occupational qualification.

(b) The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public. (§ 6 ch 117 SLA 1965; am § 4 ch 119 SLA 1969; am § 1 ch 237 SLA 1970; am §§ 5, 6 ch 42 SLA 1972; am § 1 ch 119 SLA 1974; am § 9 ch 104 SLA 1975)

**Cross references.** — As to original jurisdiction of the superior court over suits arising under this chapter, see AS 22.10.020.

**Opinions of attorney general.** — Subsection (b) should be interpreted to require the commission to keep confidential infor-

mation from a survey for records maintained to administer civil rights laws and regulations until it is presented at public hearing unless the information is released in a format which does not identify individual responding employers or unions. May 14, 1979, Op. Att'y Gen.

Highways and Ferries  
Title 19

Infants and Incapacitated  
Title 20

granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices. (§ 2 ch 119 SLA 1969)

**Sec. 18.80.110. Investigation and conciliation.** The executive director or a member of the commission's staff designated by the executive director shall informally investigate the matters set out in a filed complaint, promptly and impartially. If the investigator determines that the allegations are supported by substantial evidence, he shall immediately try to eliminate the discrimination complained of, by conference, conciliation, and persuasion. (§ 1 ch 15 SLA 1963)

#### NOTES TO DECISIONS

The legislature intended the commission to be more than a simple complaint-taking bureau; the statutory scheme constitutes a mandate to the agency to seek out and eradicate discrimination in employment, in credit and financing practices, in places of public accommodations and in the sale, lease or rental of real property. *Hotel Employees Local 879 v. Thomas*, Sup. Ct. Op. No. 1280

(File No. 2703), 551 P.2d 942 (1976).

Authority to dismiss complaints insufficient on face. — By implication, this section gives the executive director authority to dismiss complaints which are insufficient on their face. *Hotel & Restaurant Union Local 878 v. Alaska State Comm'n for Human Rights*, Sup. Ct. Op. No. 1853 (File No. 4248), 595 P.2d 653 (1979).

**Sec. 18.80.115. Confidential information.** Except as provided in AS 18.80.105, the commission may not make public the name of a person initiating a complaint or a person alleged to have committed an act or practice declared unlawful in this chapter during an investigation conducted by the commission under AS 18.80.110. The records of investigation and information obtained by the commission during an investigation under AS 18.80.110 are confidential and may not be made available by the commission for inspection by the public. However, the records and information compiled by the commission during an investigation shall be available to the complainant or respondent (1) at least 10 days before a hearing is held under AS 18.80.120 or upon receipt by the complainant or respondent under AS 18.80.120 of a notice of failure of conciliation under AS 18.80.110, whichever occurs earlier; and (2) in accordance with the rules of discovery if an action relating to the charge is commenced in court. In addition, the commission may issue public statements describing or warning of a course of conduct which constitutes or will constitute an unlawful practice under this chapter, and the commission may also make information public if necessary to perform its duties or exercise its powers under AS 18.80.105 and 18.80.120 — 18.80.145. (§ 1 ch 125 SLA 1980)

**Sec. 18.80.120. Hearing.** If the informal efforts to eliminate the alleged discrimination are unsuccessful, the executive director shall



# Alaska State Legislature House of Representatives

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WHILE IN JUNEAU  
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REPRESENTATIVE JERRY WARD  
DISTRICT 13

MEMBER FINANCE COMMITTEE  
CHAIRMAN OF SUBCOMMITTEE ON  
COMMERCE & ECONOMIC DEVELOPMENT  
CHAIRMAN OF SUBCOMMITTEE ON LABOR  
MEMBER OF SUBCOMMITTEE ON STATE LOANS

## MEMORANDUM

DATE: February 29, 1984

TO: Cheryl Roeser  
Senate Advisory Council

FROM: Representative Jerry Ward *JW*

I attach the following materials supporting HB 556:

1. News release explaining effect of bill.
2. Letter dated 8-24-83 from Janet L. Bradley, Executive Director of State Human Rights Commission, stating that retaliation cases are not given any priority.
3. Resolution from National Organization for Women supporting passage of bill.
4. Petitions signed by 120 persons supporting passage of bill.
5. Zero Fiscal Note.

In addition, please review testimony offered at the House State Affairs committee hearings of 2-20 and 2-21.

Thank you.

# STATE OF ALASKA

## HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

431 WEST 7TH AVENUE  
SUITE 105  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-7474

August 24, 1983

Representative Jerry Ward  
P.O. Box 2716  
Anchorage, AK 99510

Dear Representative Ward:

This is in reply to your request for information from our agency on March 10, 1983. Mark Ertischek, the Hearing Advocate and Acting Executive Director at the time of your request, assigned this response to a staff member who left the Commission in April. Quite frankly, Mr. Ward, it appears that your information request was lost in the transition between staff members. Please accept my apology for this oversight. I will attempt to answer your questions at this time as best I can.

1. You asked about the average time delay between the time a complaint is filed and the time an investigator is assigned. In general, at the time a complaint is filed, it is reviewed by the Regional Director of the investigative unit and where appropriate a resolution conference is scheduled and an investigator assigned to the case. Therefore, there should be approximately two weeks between the complaint filing and the scheduling of the conference on most cases. Due to limited staffing, there is however a delay of one to two months between the filing of the complaint and the date of the resolution.
2. You asked about the average length of time before an investigation is completed. I cannot give you an average time on all open cases before the Commission at this time; however, the Equal Employment Opportunity Commission (EEOC) keeps records on the Alaska Commission's average processing time of EEOC case resolutions in federal FY 83. The average processing time recorded by EEOC in June, 1983 was 295 days.
3. In general cases are assigned on a first come, first serve basis. This means that an early resolution of cases is attempted soon after filing (unless the case is inappropriate for a resolution conference). Your question whether priority is given to cases where complainant shows "irreparable harm" as in the instance of a case of firing in retaliation for filing a complaint. In some respects, irreparable harm exists whenever a person is discriminated

against. Under our statutes, the Alaska Commission cannot award compensation for suffering the humiliation of discrimination. However, the Commission is able to award "make whole" relief which in a discharge case would include backpay from the date of discrimination to the time when the agreement is signed or even in some instances frontpay until the complainant is awarded a job of equal value either by the discrimination or other employers. In all cases in which jobs are lost or denied, the complainant has an obligation to mitigate damages by seeking other jobs for which they are qualified.

To respond to your question directly, we do not give priority to cases of irreparable harm such as you have described.

4. These year end statistics are compiled from our annual report for the years 1975-1982 inclusive:

Calendar Year	Complaints Filed	Complaints Closed	Complaints Unassigned for Investigation
1975	646	434	322
1976	777	589	488
1977	603	638	422
1978	406	534	241
1979	305	417	104
1980	278	377	123
1981	233	261	97
1982	292	319	128

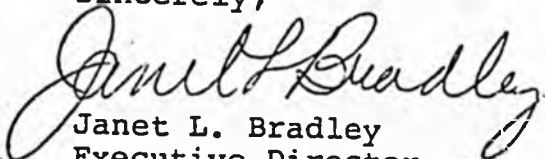
I am also including for your information the latest case processing statistics from our quarterly meeting in Kodiak on July 28 and 29th. I feel certain that if you look carefully at the report you will note the growing number of cases over 180 days in process. I previously communicated to you our concern about the age of our cases and expressed to you in that letter our goal of completing most cases within 180 days. It seems likely that under the present staffing pattern we will be unable to reach that goal.

The Human Rights Commission has experienced underfunding in personal services over the last five years and in fact, in FY 83, was forced to leave one position vacant during the entire fiscal year. In FY 84, our staff has been reduced to 25 employees. The forecast for FY 85 is even more gloomy since our programs is personal services intensive and a decrease in funding is being predicted. Our FY 85 Budget Submission will include proposals to eliminate 1 - 3½ positions at the 95% - 85% service levels. When faced with decreased funding, we have no alternative but to cut positions.

8/24/83

I hope that this reply is responsive to your inquiry. I would be pleased to schedule a time to discuss your concerns in person at your convenience.

Sincerely,



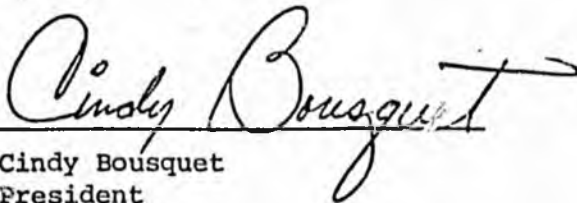
Janet L. Bradley  
Executive Director

JLB:lv  
Enclosure

WHEREAS, the National Organization for Women is dedicated to supporting laws mandating equality in the workplace; and

WHEREAS, a bill is to introduced into the THIRTEENTH LEGISLATURE of the State of Alaska to amend Section 1 of Alaska Statute 18.80 by adding a new paragraph to prohibit retribution by an employer against an employee who files a complaint or testifies in behalf of a complainant who has filed a complaint with the Human Rights Commission;

NOW THEREFORE, be it resolved that Alaska NOW, acting at its annual statewide convention, endorse and support the above bill's intent to assist in its passage by the Legislature

A handwritten signature in cursive script that reads "Cindy Bousquet". The signature is written in dark ink and is positioned above a horizontal line.

Cindy Bousquet  
President  
National Organization for Women  
State of Alaska

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST  
Bill/Resolution No.: HB 556  
Title: Relating to complaints  
alleging retaliation before HRC  
Sponsor: Ward, Lindauer, Malone  
Requestor: \_\_\_\_\_  
Date of Request: 2/21/84

FISCAL DETAIL  
Agency Affected: Office of the Governor  
Program Category Affected: \_\_\_\_\_  
Due Process  
BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-		
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-		
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

None - no fiscal impact.

ANALYSIS: Attach a separate page for analysis

Prepared By: Janet Bradley, Exec. Dir. Phone: 276-7474  
Division: Human Rights Commission Date: 2/21/84  
Approved by Commissioner: Laura J. Herman Date: 2/21/84  
Agency: Office of the Governor

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

Narrative:

In 1983, the Human Rights Commission accepted nine (9) complaints of discrimination on the basis of retaliation. This small number of complaints can be given legal review and priority processing by excepting them from the regular complaint processing system.

No fiscal impact is anticipated.



P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

<u>NAME</u>	<u>ADDRESS</u>
Sharon Y. Hillman	1941 Rebel Ridge Anch., Ak
Robert O. Jankin	7550 S. Fortitude Way Anch. Ak
Yara Victor	3714 Siskiyew St Anch
Anna B. Baldwin	3127 Cottonwood
Anna Diet. Whit	6736 Lures Dr. Anch AK 99509
Kilwood H. Hittler	104 Firewood Drive #3 Anch AK 99502
Don Brimmer	4131 Laurel Anch AK 99505
Eileen B. Brown	52A1302-F Anch. 99505
Marge Campbell	2519 Cottonwood Anch 99508
Donna Shouse	9599 Blayton Dr. 99507
Anna Egg-Everson	8000 Rovinka Anch AK 99502
Corine Caplan	Box 102856 Anch. AK 99510-2856
Christina	7302 Huntmen Ct - A Anch AK 99502
Elleanor Seeger	1627 W 32 #56 Anch AK 99503

P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

NAME

ADDRESS

William A. Buckley

1710 Rosemary St - Anchorage AK 99504

Laura S. Lurie

7132 Peck Ave. - Anchorage AK 99504

BARBARA EDWARDS

6920 E. 17th Ave Anch. AK 99504

Jamie Bowen

19610 Lynette Dr. Anch AK 99504

CLARA MURPHY

3510 Olympic Circle Anchorage AK 99504

Christina M. Muffy

5015 Fredrick Anchorage AK 99504

Deirdre Deacon

1919 Oliver Place Anch. AK 99504

Nichole Ann Cox

705 Muldron Rd #25 Anchorage AK 99508

Nelore A. Tambant

413 W. 13th St Anchorage AK 99508

Becky Rioschi

P.O. Box 111951, Anchorage, AK 99511

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WEIMEN 112 MIGHT - ACC

P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

NAME

ADDRESS

<u>Shirley Nelson</u>	<u>505 E. 12th Anchorage 99501</u>
<u>Pamela Shiel</u>	<u>8516 Hartwell Rd Anchorage 99507</u>
<u>Pamela Sawitzky</u>	<u>200 E. DIMOND #164 Anchorage AK 99502</u>
<u>Cynthia Spensky</u>	<u>214 PENNAC ST Anchorage Ak 99503</u>
<u>Elizabeth Warren</u>	<u>3601 C ST. SUITE 434 ANCH</u>
<u>Trini E. Fenn</u>	<u>#752 200 W. 34th Avenue</u>
<u>Yvonne Thorsrud</u>	<u>2205 Driskill #13 Anchorage 99504</u>
<u>Vickie Koster</u>	<u>3732 Peterkin St, Anch, AK 99508</u>
<u>Margaret Anderson</u>	<u>1620 George Bell Circle, Anch 99515</u>
<u>Stephanie Harker</u>	<u>5820 Yukon, Anchorage 99510</u>
<u>Debra Harrison</u>	<u>734 E. 78 ANCHORAGE 99507</u>
<u>Yvonne Dietz</u>	<u>6736 Lenox Dr. Anchorage</u>
<u>Kathryn Koehl-Simms</u>	<u>3809 W 76 #6 Anchorage 99502</u>
<u>Barbara Fisher</u>	<u>3101 Delta Dr., Anch 99502</u>
<u>Margie Emie</u>	<u>2221 Muldoon Rd, SP585 Anch.</u>
<u>Laura Doughty-Olson</u>	<u>714 Strawberry Rd Anch AK 99502</u>
<u>Ann van Dusen</u>	<u>1415 W. 16 Anch AK 99501</u>
<u>Vivette D. Jider</u>	<u>911 E. 20th Apt B 99501</u>
<u>Kenna McWhorter</u>	<u>3530 W. 84th #3 Anch. 99502</u>
<u>D. M. Stewart</u>	<u>8345 JEWEL LAKE #1 Anch 99502</u>
<u>Billie Elmore</u>	<u>Box 3-422 Anchorage 99501</u>
<u>Mary L. Turner</u>	<u>8200 Pioneer 99504</u>
<u>Janet A. Russell</u>	<u>4233 Claring Cross Cir 99504</u>
<u>Joni Nelson</u>	<u>8300 Henry Circle Anch AK 99504</u>

P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

NAME

ADDRESS

Maria Usciflis	3214 Usciflis Place Anchorage, AK
Edith Tuler	SPR 131 2-F (Anchorage) 99515
John M. C. C.	PO Box 112647 Anch. 99511
Sicki Sprick	57 Co. 103395 Anch. 99570
Dr. H. M. D. D.	SPR 2-372C Anch. 99507
Marilyn Moreno	3954 Apollo Dr. Anch. 99504
CHRISTINA MAI OLSEN	705 Mildoon Anch. AK. 99508
Edith Tuler	941 E. 20th Apt. B 99501
Edith Tuler	1011 Friendly Ln. Apt. A Anch.
Margaret J. Lorenson	SPR 2 Box 1503A 12910 Jack's Circle Anchorage 99507
Margaret J. Lorenson	8671 Kankakee Cir. Anchorage 99504
Dr. Rickson	200 W 34th Box 168 Anchorage AK 9950
Marion Ballou	2805 Wisconsin St Anch. AK
Charles E. H. H.	SPR 2V B-7E ANCH 99516
Colleen J. J.	24301 NAK Cir ANCH 99508

P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

<u>NAME</u>	<u>ADDRESS</u>
Ruth Sheridan	4704 Hawaii Anchorage 99504
J H Burns Ka Pt. Barrow	6520 East 1st Dr Anchorage 99512 743-0309
"Emma" E. W. ...	2034 S 2nd Ave Anchorage 99509 772-1159
Lucille E. Mearns	411-E 10th 99501 277-1369
Elena Lange	3533 Richmond #16 Anch. 99504
Susan Schomburg	4430 Thompson #3 Anch A 99508
Marilyn P. ...	2737 Westminster Anch 99508
Janice ...	P.O. Box 48 Anchorage 99509
Eda M. ...	7512 E. 4th Anch. AK 99504
Lynda M. ...	716 1/2 N Pine Anch AK 99508
St. ...	3923 Deberch In Anch AK 99504
JISA ...	3923 Schorah Ctn Anch AK 99504
Donna M. ...	2304 Tunagwa Phn Anchorage AK 99503
Kelly Mann Frank	3006 EUREKA ANCHORAGE AK 99503
Brenda ...	SEA 877 Anch AK 99502
Chal ...	SEA 1050 13741 Iron Dr. Anch. AK 99507
Jan ...	K... AK 99611
...	1508 E 27th Ave - Anchorage AK 99508
...	SEA BOKSONG (W) Anch AK 99685
...	P.O. Box 160302 Anchorage 99510
...	1040 E 6th Ave. #4 City
...	4426 E 5th ANCHORAGE
...	3605 Arctic Blvd #1727 Anch AK 503
...	310 8TH AVENUE / ANCH / AK
...	2501 W. 5th St Anch AK 99503
...	272-7163 P.O. Box 102112 Anch. 99501
...	8500 PAGAN ST. Anch. AK. 99502
...	P.O. Box 3136 Anchorage AK 99510
...	Box 102178 ANCHORAGE AK 99510
...	2301-E-52nd Ave #22 Anch 99501
...	Box 1834-15 Anch ADT - 994051
...	P.O. Box 101978 - Anchorage AK 99510
...	Box 100447 Anchorage AK 99510
...	6520 East 9th Ave Anch 99504
...	P.O. Box 10421 Anchorage AK 99510
...	1344 Alameda St. Anch AK 99508
...	3741 - Anchorage #3 - Anchorage 99508

RETURN TO:

300-7th Ave  
 Anchorage, AK 99501

Ms. Julia Pieper  
 P. O. Box 3415  
 Anchorage, AK 99501

GB

To: Suzanne, Vic  
From: Steve  
Re: HR 556 - Human Rights Commission  
Date: 2/24/84

This bill would give priority status to those cases before the Human Rights Commission that deal with employment retaliation. Apparently, a more and more commonly used tactic by employers to get rid of unwanted employees is to fire them knowing that the current backlog at the Human Rights Commission is over two years long. The companies figure correctly that over the course of two years, either the person has left the state or has found other work and does not want to continue the case. The companies are doing this knowing that their action is probably illegal.

The measure is sponsored by Rep. Ward and cosponsored by Lindauer, Malone. It is now before House Rules, and will likely pass and be referred to Senate State Affairs.

The Human Rights Commission supports this measure. It is likely to act as a preventive measure reducing or eliminating this current corporate practice.

If you have any questions, please let me know. This matter was brought to my attention by Julia Pieper, PO Box 3415, Anch 99501, 349-7410 (h) or 344-6531 (message)

# Alaska State Legislature

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## House of Representatives

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PO BOX 2716  
ANCHORAGE, ALASKA 99510  
(907) 276-4506

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4939

REPRESENTATIVE JERRY WARD  
DISTRICT 13

MEMBER FINANCE COMMITTEE  
CHAIRMAN OF SUBCOMMITTEE ON  
COMMERCE & ECONOMIC DEVELOPMENT  
CHAIRMAN OF SUBCOMMITTEE ON LABOR  
MEMBER OF SUBCOMMITTEE ON STATE LOANS

### MEMORANDUM

DATE: May 1, 1984

TO: Senator Vic Fischer, Chairman  
Senate State Affairs Committee

FROM: Representative Jerry Ward *JW*

RE: HB 536 - "Relating to complaints alleging retaliation before the  
State Commission for Human Rights": effective date.

HB 578 - "An Act relating to whistleblowing".

---

Thank you for scheduling the above referenced bills for hearing. I  
attach background information on each of these bills for distribution to  
the committee members.

Thank you.

Attachments



P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

NAME

ADDRESS

<u>Sharon L. Pillsbury</u>	<u>1941 Rebel Ridge Anch, Ak</u>
<u>Helen D. Jamlin</u>	<u>7550B Fortitude Way Anch, Ak</u>
<u>Barbara Victoria</u>	<u>7714 Blackberry St Anch</u>
<u>Alma B. Baldwin</u>	<u>3127 Cottonwood</u>
<u>Ann Dietrich</u>	<u>6736 Luman Dr. Anch Ak 99507</u>
<u>Kilwood A. Hittich</u>	<u>104 Fireweed Drive #5 Anch AK 99508</u>
<u>Donna Brimmer</u>	<u>4151 Laurel Anch AK 99525</u>
<u>Eileen Brimmer</u>	<u>5RA1302-F Anch. 99525</u>
<u>Marge Campbell</u>	<u>2518 Cottonwood Anch. 99508</u>
<u>Donna Shouse</u>	<u>9599 Brighton Dr. 99507</u>
<u>Anna Fagg-Ericson</u>	<u>8000 Rowena Anch AK 99502</u>
<u>Corina Caplano</u>	<u>Box 102856 Anch. AK 99510-2856</u>
<u>Carol Lewis</u>	<u>7302 Huntersmen - A Anch AK 99502</u>
<u>Delores Seelye</u>	<u>1627 W 32 #56 Anch, 99503</u>



P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

NAME

ADDRESS

<u>Whitley Nelson</u>	<u>505 E. 12th Anchorage 99501</u>
<u>Janet Shiel</u>	<u>8516 Hartwell Rd Cnty 99507</u>
<u>RAMONA SAUVAGE</u>	<u>700 E. DIMOND #164 Anchorage AK 99502</u>
<u>Carole Sprinkel</u>	<u>214 Newton St Anchorage Ak 99503</u>
<u>Elizabeth Warner</u>	<u>3601 C. ST. SUITE 434 ANCH.</u>
<u>Kejira E. Fenn</u>	<u>#752 200 W. 34th Avenue</u>
<u>Yvonne Yarnold</u>	<u>2205 Brinkley #13 Anchorage 99504</u>
<u>Vickie Kopper</u>	<u>373 1/2 Peterkin St, Anch, AK 99508</u>
<u>Margaret Anderson</u>	<u>1620 George Ball Circle Anch 99515</u>
<u>Shirley Cooper</u>	<u>5820 Yukon, Anchorage 99510</u>
<u>Norm Parsons</u>	<u>734 E. 78 ANCHORAGE 99507</u>
<u>Marie Dietz</u>	<u>6736 Leonard Dr. Anchorage</u>
<u>Kathryn Keith Barnes</u>	<u>3809 W 76 #6 Anchorage 99502</u>
<u>Barbara Sisker</u>	<u>3101 Delta Dr., Anch, 99502</u>
<u>Margie E. Smith</u>	<u>2221 Muldoon F2A, SPS&amp;S' Anch</u>
<u>Laura Doughty-Olson</u>	<u>714 Strawberry Rd, Anch AK 99502</u>
<u>Ann von Bohmann</u>	<u>1425 W. 16 Anch AK 99501</u>
<u>Edith D. Jule</u>	<u>941 E. 20th Apt. B 99501</u>
<u>Menna M. Williams</u>	<u>3530 W. 84th #2 Anch. 99502</u>
<u>Dr. M. Stewart</u>	<u>8345 JEWEL LAKE #1 Anch 99502</u>
<u>Billie Elvire</u>	<u>Box 3-422 Anchorage 99501</u>
<u>Mona L. Turner</u>	<u>8200 Pioneer 99504</u>
<u>Barbara Cassell</u>	<u>4238 Claring Cross Cir 99504</u>
<u>Jeri Palmer</u>	<u>8300 Henry Circle Anch AK 99504</u>

NEWARK ALASKA

P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

NAME

ADDRESS

Mary McNeilis	3214 Municipal Plaza Anchorage, AK
Edith Tucker	SRA 1312-F Anchorage, AK 99515
Gene M. Axel	PO Box 11247 Anch. 99511
Jacki Swank	PO Box 103393 Anch. 99510
Christine Dahl	SRA Box 372C Anch 99507
Marilyn Moreno	3954 Apollo Dr Anch 99504
CHRISTINA MAE OLSEN	705 Mildoon Anch AK. 99508
Edith Tucker	941 E. 20th Apt. B 99501
Gith Eicher	1011 Friendly Ln. Apt. A Anch
Muriel J. Lorenson	SRA Box 1503A 12910 Jack's Circle Anchorage 99507
Marilyn Moulton	8671 Keweenaw Cir Anchorage 99504
Lois Rieken	200 W 34th Box 168 Anchorage AK 99503
Shirley Ballou	2805 Wisconsin St Anch. AK
Marilyn E. Swank	SRA BV 87E ANC 99516
Clarence J. Lopez	2934 NAK DR ANC 99508

P E T I T I O N

The undersigned petitioners support passage of an act to prohibit retribution for complaints to the State of Alaska Human Rights Commission.

NAME	ADDRESS
Ruth Sheridan	4704 Kenai, Anchorage 99504
J. H. Smith, Sr.	6520 East D. Anchorage 99512 343-2209
"Eanna" Ellis	2030 S 3 <sup>rd</sup> Ave Anchorage 99509
Russell M. Morsan	411-E 10 <sup>th</sup> 99501 277-1369
Elena Lange	3533 Richmond #16 Anch. 99504
Susan Schromberg	4430 Thompson #3 Anch A 99508
Marilyn Carpenter	3937 Westminster, Anch 99507
Janice Collins	P.O. 14-48 Anchorage 99509
John W. Paul	7512 E. 4 <sup>th</sup> Circle, Anch. 99504
Lincoln M. Moeck	716 1/2 N Pine Ranch #16 99504
John J. Terenty	3923 Debarch Ln. Anch. Ak 99504
MISA Presented by	3923 Debarch Ln Anch. AK 99504
Donna M. Korman	2304 Tanageria Phoen Anchorage, Ak 99503
Kelly Mann Frank	3006 EUREKA ANCHORAGE AK 99503
Brenda Bulley	SEA 877, Anch, AK 99502
Carol Erick	SEA 1050 13741 Kenai Ave. Anch. 99507
Joe Huff	Kenai AK 99611
John J. Hester	1508 E 27 <sup>th</sup> Ave - Anchorage AK 99508
William P. Lohle	SEA Box 5205 Willow AK 99688
Therese Kauranen	P.O. Box 160302 Anchorage 99510
Mita Sirchise	1040 E 6 <sup>th</sup> Ave. #14 City
John Dams	4426 E 5 <sup>th</sup> ANCHORAGE
John J. Hester	3605 Arctic Blvd #1727 Anch AK 503
John J. Hester	310 8TH AVENUE / ANCH / AK
Anthony J. Morlica	2001 W. EST 34 <sup>th</sup> Ave Anch. 99503
Maureen Domina	272-7163 P.O. Box 102112 Anch. 99510
James P. Krause	8500 DAGAN ST. ANCH. AK. 99502
Robert Torgerson	P.O. Box 3130 Anchorage Ak. 99510
William Schmuck	Box 102178 ANCHORAGE AK 99510
Mark J. Warner	2301-E-52nd Ave #22 Anch 9950
GLADYS BLAKE	Box 1034-15 Anch ADT - 9940510
Lois Klemes	P.O. Box 101978 - Anchorage AK 99510
Elle Davis	Box 100447 Anchorage Ak 99510
Harriet Torgerson	6520 East 9th Ave Anch 99504
Auston Devillier	P.O. Box 104621 Anchorage AK 99510
Wathley Dell	1344 Airport Dr. Anchorage 99508
Marie Schloesser	3741 - Richmond Ave #3 - Anchorage 99508

RETURN TO:

309-7410 home  
311 6531 work

Ms. Julia Pieper  
P. O. Box 3415  
Anchorage, AK 99501

# STATE OF ALASKA

## HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

AGENCY HEADQUARTERS  
431 W. 7th AVENUE, SUITE 105  
ANCHORAGE, ALASKA 99501  
(907) 276-7474

NORTHERN REGION  
675 SEVENTH AVENUE, STA H  
FAIRBANKS, ALASKA 99701  
(907) 452-1561

SOUTHCENTRAL REGION  
431 W. 7th AVENUE, SUITE 101  
ANCHORAGE, ALASKA 99501  
(907) 274-4692

SOUTHEASTERN REGION  
POUCH AH  
314 GOLDSTEIN BUILDING  
JUNEAU, ALASKA 99811  
(907) 465-3560

May 14, 1984

The Honorable Vic Fischer, Chair  
Senate Committee on State Affairs  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

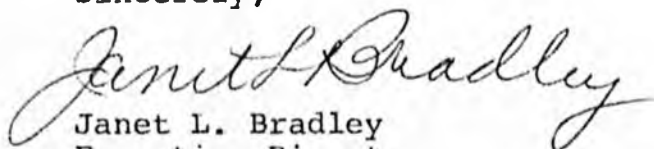
Dear Senator Fischer:

The Human Rights Commission has taken notice of the Legislature's interest in the establishment of specific time frames for investigation of retaliation complaints as proposed in HB 556 sponsored by Representatives Ward, Lindauer, and Malone.

We intend to incorporate these time frames into our case processing standards which provide for specific actions on each case in process in our regional investigative units. The significant dates of these actions, which include date of assignment, date of completed analysis and closure date, are being captured on our new internal docket system permitting easy management review of case activities. Completed investigations of retaliation cases as defined in HF 556 will be set as an additional case processing standard. A copy of our revised case processing standards will be forwarded to you for your committee files.

We appreciate your committee's interest in the work of our agency and in our efforts to improve our service to the people of Alaska.

Sincerely,



Janet L. Bradley  
Executive Director

JLB/jab

CC: James H. Chase, Chairperson  
Arlene G. Dilts-Standiford, Commissioner  
John C. Gonzales, Commissioner  
Bienvenido E. Holganza, Personnel Commissioner  
Virgie King, Vice-Chairperson  
Jacqueline Lindauer, Fiscal Commissioner  
Morgan P. Solomon, Commissioner

*Let from Janet Bradley, Exec. Director / 5/14/84*

May 15, 1984

Senator Vic Fischer  
Pouch V  
Juneau, Ak. 99811

Dear Mr. Fischer:

I am again disappointed that HB556 relating to the Human Rights Commission has not been passed out of the Senate State Affairs.

I understand the Ms. Janet Bradley, Executive Director of the Human Rights Commission has agreed to put the substance of HB<sup>5</sup>56 into the regulations of the Commission.

But I refer you to the attached letters that I have from Janet Bradley which may relay to you why I feel so strongly that some things should not be left to the interpretation or implementation of "personalities" I refer specifically to the sentence of March 9th: "For the record, retaliation complaints have always been viewed as priority cases; this does not necessarily mean, however, we can guarantee a resolution of the case" The letter of July 5th states that she cannot support the adoption of such a policy.

I realize that the letters were written under varying circumstances and that is the whole point, there should be no varying circumstances to delay processing of a retaliation complaint when a complaintant has been fired!

I ask you to again consider FB556!

Sincerely,

  
(Ms.) Julia Pieper

P.O. Box 3415  
Anchorage, Ak. 99501

P.S. The management audit report of the Alaska State Commission for Human Rights also supports this view!

xc: Jerry Ward, Alaska State House of Representatives

*Let Ann Julia Pieper 15-15-84*

# STATE OF ALASKA

## HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

431 WEST 7TH AVENUE  
SUITE 105  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-7474

July 5, 1983

Ms. Julia Pieper  
P.O. Box 3415  
Anchorage, AK 99501

Dear Ms. Pieper:

At the request of Commissioner James Chase, Acting Chairperson, I have reviewed and considered your letter of June 13, 1983 calling attention to AS 18.60.089, the Department of Labor statute providing for a mandatory 90 day determination of complaints of retaliation.

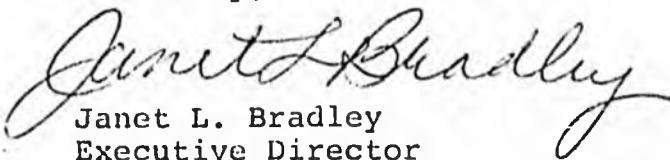
Given the Commission's present level of funding and the growing number of new complaints being filed in our offices, I cannot support the adoption of such a policy. Our present practice of attempting early resolution of cases on all newly filed charges and completing extended investigations on a first come, first serve basis spreads our limited resources to benefit the greatest number of persons.

I do share, however, your concern for the prompt resolution of discrimination complaints and want to assure you that staff and Commissioners are continuing efforts toward that goal. Unfortunately, like other state government services, our agency faces a decrease in funding in FY 84 which may result in a greater delay in case processing.

I would like to point out that once having filed a complaint with the Commission, you have protected your rights to the administrative processing of your case. Under Alaska statute, you may also file directly in court within two years of the date of the alleged discrimination.

Thank you for taking time to explore alternatives to our present system of case processing.

Sincerely,



Janet L. Bradley  
Executive Director

JLB:rs  
cc: Commissioners

*Copy to Julia Pieper from Janet Bradley 7/5/83*

# STATE OF ALASKA

## HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

431 WEST 7TH AVENUE  
SUITE 105  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-7474

March 9, 1983

Julia Pieper  
P.O. Box 3415  
Anchorage, AK 99501

Dear Ms. Pieper:

Governor Sheffield has referred your letter of February 15 to him for my reply.

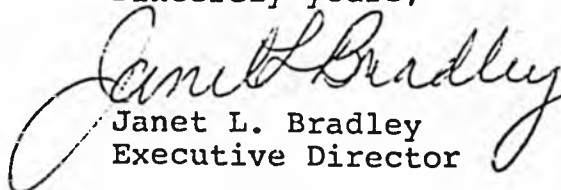
I have reviewed the processing of your cases and find that you originally filed a complaint with our agency in April of 1982 and filed a second charge of retaliation against the same respondent in August 1982. I also found that an attempted resolution of both complaints took place at a conference scheduled in September of 1982. Recent vacancies on the Southcentral Region staff have called my attention to the growing number of cases which, like yours, will be unassigned until new persons can be hired. It is unclear at this time if funding will permit us to fill the existing investigator position.

I do regret the problems experienced by both complainants and respondents when the Human Rights Commission staff is delayed in processing complaints. As Executive Director I have undertaken a review with my headquarters staff of all cases which are over 180 days in process and will be formulating a plan of action to deal with these cases including prioritizing retaliation complaints. For the record, retaliation complaints have always been viewed as priority cases; this does not necessarily mean, however, that we can guarantee a resolution of the case, only immediate attention within limitations imposed by staffing.

*Ltr to Julia Pieper from Janet Bradley 3/9/84*

Should you wish to discuss the specifics of your case, the Southcentral Director can assist you. Please be assured that we are committed to improving our service to persons like you who turn to the Commission in times of crisis.

Sincerely yours,

  
Janet L. Bradley  
Executive Director

JLB:lv

cc: The Honorable Bill Sheffield,  
Governor of Alaska

Allen Blume, Special Assistant to  
the Governor

House and Senate bills currently in the Senate

BILL #	TITLE	STATUS	SPONSOR	NOTES
SB77	Older Alaska employment	Fin	VF	assigned to V.Fischer
SB110	Retirement	Fin	VF	unassigned as of 5/15
SJR38	Nuclear free arctic	Rules	VF	passed rules 5/16/84
SB395	Division/EE0	Fin	St.Aff.	assigned to Faiks*
SCR44	Sand/Gravel inventory	Fin	Res.	assigned to Ferguson
SJR46	Public Corp/ARR	Jud.	St.Aff.	
HB663 664 665	AHFC	Fin	H.Rules	unassigned as of 5/15
HB668	Child support enforce	Rules	H.Rules	passed rules 5/16/84
HB503	Pioneer home allowance	St.Aff.	Uehling	
SB531	Futures Commission	Rules	Gov.	
SB528	Marital rape	Jud	HESS	

H B

5 6 4

SENATE STATE AFFAIRS COMMITTEE

Bill Number CSHB 567 (S) Title Use of perm fund available to satisfy  
debts owed to the state Date received 5/4/84

Fiscal Position Date requested From Amount Date Rec'd  
Note Paper Note Paper

Fiscal Position		Date requested	From	Amount	Date Rec'd
Note	Paper				Note Paper
			Revenue		FN w/ bill
			State of Interest - House Finance		

CONTACTS

Backup list

→ Tom Williams Revenue / Dan Robinson  
→ Bathsworth's office for back-up

HEARING INFORMATION

State can attach up to 50% if have outstanding  
debt, change to 100% for debts owed to the  
state

NOTES

FINAL ACTION \_\_\_\_\_

DATE \_\_\_\_\_



Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: HB 564 Use of permanent fund dividends to satisfy debts owed to the state.

DATE: May 10, 1984

HB 564 would allow the state to collect outstanding debts owed to a state agency from permanent fund dividends.

Under current law, 50% of the annual permanent fund dividend is exempt from any remedy for collection of debt. This bill would restrict the exemption by allowing the state to collect debt from the dividend.

The House State Affairs version of the bill added to the original bill all new language after the comma on line 20. The House State Affairs language would restrict the State's ability to collect debt if 1) the debt is contested and appeal is pending, or 2) the debt is within the time limit for filing an appeal. State agencies would not be able to collect any debt from the dividend unless all child support obligations were already subtracted from the dividend.

The House Finance Committee added a letter of intent which is attached to the back of the fiscal note. The letter of intent states that in certain cases it is the intent of the legislature that the Department of Revenue assign a hearing officer to consider the impact the collection of debt on a persons' health and safety.

The House adopted the letter of intent.

### Fiscal information

There is a \$45,000 fiscal note for FY '85.

the slot

- support leg.

Revenue -

Get fiscal note for the letter of intent.

Language

~~HEART~~  
Marcy - called  
MOM



# Alaska State Legislature

*Sen Pat Roddy*

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

Official Business

### MEMORANDUM

TO: Senate State Affairs Committee  
FROM: Senate State Affairs Committee Staff  
RE: Fiscal note for HB 564  
DATE: May 22, 1984

During the last committee meeting, the committee requested a fiscal note reflecting the cost of the letter of intent that was adopted by the House. (The letter of intent is attached to the March 1, 1984 fiscal note.)

The fiscal note dated May 16, 1984 reflects the cost of the letter of intent.

The total operating cost for the letter of intent is 56.7 thousand for FY '85. The total amount received from collecting debts in accordance with HB 564 is 45.0 thousand for FY '85.

Based on the two fiscal notes received from the Department of Revenue, the cost of HB 564 with the letter of intent is 11.7 thousand dollars for FY '85.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date May 16, 1984

I. REQUEST

Bill/Resolution No: CSHB 564 (SA)  
Title: An Act relating to use of permanent fund dividends to satisfy debts owed to the state  
Sponsor: House State Affairs Committee  
Requestor: Senate State Affairs Comm.  
Date of Request: May 14, 1984

FISCAL DETAIL

Agency Affected: Revenue  
Program Category Affected: General Government  
BRU, Program of Subprogram(s) Affected: Revenue Management and Collections

II. EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	49.2	-	-	-	-
200 TRAVEL	-	5.0	-	-	-	-
300 CONTRACTUAL	-	2.0	-	-	-	-
400 SUPPLIES	-	.5	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	56.7	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	45.0	49.1	28.8	15.8	8.9

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	56.7	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	56.7	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	2	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: General Funds. See attached analysis.

IV. ANALYSIS: See attached narrative.

Prepared By: Thomas C. Williams, Director  
Division: Enforcement

Phone: 465-2366  
Date: May 16, 1984

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 5/16/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget

FISCAL NOTE PERTAINING COSTS OF LETTER OF INTENT

Department of Revenue  
Analysis of CSRB 554 (State Affairs)  
May 16, 1984

A. Assumptions

1. The PFD program is retained and there are no substantive changes to the current program.
2. Individual dividend payments over the next five years are as follows:

Dividend Year	84	85	86	87	88
Paid in FY	85	86	87	88	89
Dividend Amount	\$357	\$431	\$514	\$564	\$606

3. The average accounts receivable (a/r) attachment is estimated to amount to 84-88% of the value of an attached dividend. Currently 1982 PFD a/r attachments average approximately 44% of the value of dividends attached while 1983 PFD a/r attachments average approximately 48%. Accordingly, we could expect an increase of approximately 40% of each dividend attached.
4. The number of a/r attachments on PFD applications is likely to decrease 10% per year until FY '86 and then by 50% per year. This change will result largely from the lapsing of the 6 year statute of limitations on the repeal of income taxes in 1978. Under this scenario the number of attachments would likely be as follows:

Fiscal Year	84	85	86	87	88	89
Est. Attachments	350	315	285	140	70	35

B. Program Summary

The legislative intent added by the House Finance Committee will in certain cases, require a hearing officer to evaluate the effect of allowing the state to attach 100% of an eligible applicant's Permanent Fund Dividend to satisfy debts owed to the State. In addition this function would require clerical support.

Personal Services (100)

Hearing Officer (R25)	6 months @ \$6,070	\$36,420
Clerk Typist III (R8)	6 months @ \$2,130	<u>12,780</u>

Total Personal Services (100) \$49,200

Travel (200)

To applicant's geographic area	<u>5,000</u>
--------------------------------	--------------

Contractual Services (300)

Word Processing, printing, postage, etc.	<u>2,000</u>
--	--------------

Department of Revenue  
Analysis of CSHB 564 (State Affairs)  
 May 16, 1984

B. Program Summary (continued)

Supplies (400)

General Office Supplies 500

Total \$56,700

C. Revenue Computations

Increased Revenue:

<u>Dividend</u> <u>Year</u>	<u>Fiscal</u> <u>Year</u>	<u>A (2)</u> <u>Dividend</u> <u>Amount</u>	x	<u>A (3)</u> <u>Average</u> <u>Increase</u>	x	<u>A (4)</u> <u>Est a/r</u> <u>Attachment</u>	=	<u>Income</u> <u>in Revenue</u> <u>(x 1000)</u>
84	85	\$357	x	.40	x	315	=	\$ 45.0
85	86	431	x	.40	x	285	=	49.1
86	87	514	x	.40	x	140	=	28.8
87	88	564	x	.40	x	70	=	15.8
88	89	606	x	.40	x	35	=	<u>8.9</u>

Total Amount of Increase Over 5 Years \$147.6

D. Impact of 100% Accounts Receivable Offset on Enforcement Division  
Collection Activities:

Although the additional revenue collected by Enforcement is relatively small, the impact on our collection efforts may be more significant. The additional offset provision will likely allow us to close more cases with a minimal amount of collection effort when the tax liability is small. This would allow more of our current resources to be devoted to more difficult cases where the tax liability is larger.



Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: HB 564 Use of permanent fund dividends to satisfy debts owed to the state.

DATE: May 10, 1984

HB 564 would allow the state to collect outstanding debts owed to a state agency from permanent fund dividends.

Under current law, 50% of the annual permanent fund dividend is exempt from any remedy for collection of debt. This bill would restrict the exemption by allowing the state to collect debt from the dividend.

The House State Affairs version of the bill added to the original bill all new language after the comma on line 20. The House State Affairs language would restrict the State's ability to collect debt if 1) the debt is contested and appeal is pending, or 2) the debt is within the time limit for filing an appeal. State agencies would not be able to collect any debt from the dividend unless all child support obligations were already subtracted from the dividend.

The House Finance Committee added a letter of intent which is attached to the back of the fiscal note. The letter of intent states that in certain cases it is the intent of the legislature that the Department of Revenue assign a hearing officer to consider the impact the collection of debt on a persons' health and safety.

The House adopted the letter of intent.

### Fiscal information

There is a \$45,000 fiscal note for FY '85.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 3/2/84

I. REQUEST Page 1 of 2  
Bill/Resolution No: CSHB 564 (SA)  
Title: An Act relating to use of  
permanent fund dividends to satisfy  
debts owed to the state  
Original Sponsors: Bettisworth & Cowdery  
Requestor: House State Affairs Committee  
Date of Request:

FISCAL DETAIL  
Agency Affected: Revenue  
Program Category Affected: Revenue  
Management and Collections  
BRU, Program of Subprogram(s) Affected:  
Enforcement

II. EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	45.0	49.1	28.8	15.8	8.9

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No increased expenditures are anticipated.

IV. ANALYSIS: See attached narrative.

Prepared By: Thomas C. Williams  
 Division: Enforcement

Phone: 465-2366  
 Date: March 1, 1984

Approved by Commissioner: James P. [Signature]  
 Agency: Revenue

Date: 3/2/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget

*Fiscal Note & Analysis / Revenue 3/2/84*

Enforcement Division  
Analysis of CSHB 564 (SA)  
 March 1, 1984

A. Assumptions

1. The PFD program is maintained and there are no substantive changes to the current program.
2. Individual dividend payments over the next five years are as follows:

Dividend Year	84	85	86	87	88
Paid in FY	85	86	87	88	89
Dividend Amount	\$357	\$431	\$514	\$564	\$606

3. The average accounts receivable (a/r) attachment is estimated to amount to 84-88% of the value of an attached dividend. Currently 1982 PFD a/r attachments average approximately 44% of the value of dividends attached while 1983 PFD a/r attachments average approximately 48%. Accordingly, we could expect an increase of approximately 40% of each dividend attached.
4. The number of a/r attachments on PFD applications is likely to decrease 10% per year until FY '86 and then by 50% per year. This change will result largely from the lapsing of the 6 year statute of limitations on the repeal of income taxes in 1978. Under this scenario the number of attachments would likely be as follows:

Fiscal Year	84	85	86	87	88	89
Est. Attachments	350	315	285	140	70	35

B. Program Summary

This bill requires no significant program changes.

C. Computations

<u>Dividend Year</u>	<u>Fiscal Year</u>	<u>A (2) Dividend Amount</u>	<u>x</u>	<u>A (3) Average Increase</u>	<u>x</u>	<u>A (4) Est a/r Attachment</u>	<u>=</u>	<u>Income in Revenue (x 1000)</u>
84	85	\$357	x	.40	x	315	=	\$ 45.0
85	86	431	x	.40	x	285	=	49.1
86	87	514	x	.40	x	140	=	28.8
87	88	564	x	.40	x	70	=	15.8
88	89	606	x	.40	x	35	=	8.9

Total Amount of Increase Over 5 Years \$147.6

D. Economic Impact

This bill has no significant impact on the State's economy.

E. Impact on Local Governments

This bill has no impact on Local Governments.

Enforcement Division  
Analysis of CSEB 564 (SA)  
March 1, 1984

Impact of 100% Accounts Receivable Offset on Enforcement Division Collection Activities:

Although the additional revenue collected by Enforcement is relatively small, the impact on our collection efforts may be more significant. The additional offset provision will likely allow us to close more cases with a minimal amount of collection effort when the tax liability is small. This would allow more of our current resources to be devoted to more difficult cases where the tax liability is larger.

HOUSE JOURNAL

HOUSE FINANCE COMMITTEE  
LETTER OF INTENT  
FOR  
COMMITTEE SUBSTITUTE FOR HOUSE BILL 564 (STATE AFFAIRS)

It is the intent of the legislature that the Department of Revenue designate a hearing officer who will consider the existence of unusual economic conditions in certain documented cases of economic hardship in the geographic area in which an individual resides, and the effect that using this section, to collect debts owed to the state, would have on the individuals health and safety.



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Al Adams, Chairman  
House Finance Committee

*Letter of Intent/ House Finance adopted by House May 3, 1984*

permanent fund dividend; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is deter-

mined by September 1 and permanent fund dividends for a year are paid before December 31 of that year."

*Sec. 43.23.060. Duties of the department. [Repealed, § 22 ch 102 SLA 1982.]*

**Sec. 43.23.065. Exemption of permanent fund dividends.** Fifty percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. No exemption is available under this section for permanent fund dividends taken to satisfy child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220. (§ 1 ch 102 SLA 1982)

**Cross references.** — For property exempt from execution generally, see AS 09.38.

*Sec. 43.23.070. Exemption of permanent fund dividends. [Repealed, § 22 ch 102 SLA 1982.]*

**Sec. 43.23.075. Eligibility for public assistance.** (a) In determining the eligibility of an individual under a public assistance program administered by the Department of Health and Social Services in which eligibility for assistance is based on financial need, the Department of Health and Social Services may not consider a permanent fund dividend as income or resources received by the recipient of public assistance or by a member of the recipient's household unless required to do so by federal law or regulation. The Department of Health and Social Services shall notify all recipients of public assistance of the effects of receiving a permanent fund dividend.

(b) An individual who is denied medical assistance under 42 U.S.C. 1396 — 1396p (Social Security Act, Title XIX) solely because of the receipt of a permanent fund dividend by the individual or by a member of the individual's household is eligible for state-funded medical assistance under the general relief assistance program (AS 47.25.120 — 47.25.300). The individual is entitled to receive, for a period not to exceed four months, the same level of medical assistance as the individual would have received under 42 U.S.C. 1396 — 1396p (Social Security Act, Title XIX) had there been no permanent fund dividend program.

(c) An individual who is denied assistance solely because permanent fund dividends received by the individual or by a member of the individual's household are counted as income or resources under federal

law or regulation assistance program limit in AS 47. not to exceed have received no permanent

*Sec. 43.23.0. [Repealed, § 2.*

**Sec. 43.23.0** administered l ipalities, the consider a per required to do

*Sec. 43.23.0.*

**Sec. 43.23.0**

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- (D) medical
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- (G) service in
- (8) "year" m
- 55 SLA 1983)

Effect of amen amendment added

*Sec. 43.23.10*

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SENATE STATE AFFAIRS COMMITTEE

Bill Number HB 578 Title Whistleblowing Date received 3/29

Fiscal Position	Date requested	From	Amount	Date Rec'd	
Note	Paper			Note	Paper
<u>  </u>	<u>  </u>				

CONTACTS Backup list

HEARING INFORMATION

NOTES

FINAL ACTION \_\_\_\_\_ DATE \_\_\_\_\_

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_, 1984  
Page 1 of 2

REQUEST

Bill/Resolution No.: HB 578  
Title: Re: Whistleblowing

FISCAL DETAIL

Agency Affected: Administration  
Program Category Affected: General Government

Sponsor: Ward  
Requestor: State Affairs  
Date of Request: \_\_\_\_\_

BRU, Program of Subprogram(s) Affected:  
Labor Relations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:	0	0	0	0	0	0
FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for an Analysis  
Prepared By: Bruce J. Ludwig, Acting Director  
Division: Labor Relations

Phone: 465-4404  
Date: March 9, 1984

Approved by Commissioner: Lisa Rudd  
Agency: DEPARTMENT OF ADMINISTRATION

Date: 3/13/84

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

House Bill 578  
Fiscal Note Analysis  
Prepared by Division of Labor Relations  
Department of Administration  
March 8, 1984

Page 2 of 2

Section 1 of this bill changes the use of gender descriptions to non-gender descriptors and modifies the phrasing in some instances. Paragraph 6 is added to Section 1 and continues within the same frame as the rest of the section. No changes are made in Sections 2 and 3. The final modification is in Section 4. The reference to statutes is changed to mean "through" instead of existing "and".

This department sees no fiscal impact with regard to this bill as the provisions proposed are already in effect. This bill primarily "cleans up" some of the language and does not stray from the intent of the existing statute.

7/8D2/0308-09-2



Official Business

# Alaska State Legislature

HB 578

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 7, 1984

FOR IMMEDIATE RELEASE  
CONTACT: REP. JERRY WARD  
465-4939

FILE COPY

REP. WARD INTRODUCES BILL TO PROTECT STATE EMPLOYEES  
WHO REVEAL STATE GOVERNMENT VIOLATIONS

JUNEAU - Rep. Jerry Ward has introduced a bill which would protect state employees who help reveal fraud, waste of funds or mismanagement in the state government.

Ward, R-Anchorage, also introduced legislation which would establish an employee "incentive plan" to reward employees for suggestions which improve the efficiency or economy of state operations.

Both bills are modeled after federal laws, which Ward said have proven to be highly successful nationwide.

Ward said House Bill 578 would "protect whistleblowers" who report violations of law, mismanagement, waste of funds, or abuse of authority.

"We need this law to help end the illegal activities that sometimes happen in the realm of state government," Ward said. "Sexual harassment, embezzlement and like items must not go unreported. Unfortunately, many employees are afraid to

report these activities for fear of losing their jobs. I want all of our state employees to know that we'll protect them if they report these illegal activities."

Ward said House Bill 577 would establish an incentive plan which would reward state employees who help improve the efficiency or economy of state operations.

"We're not listening to the people who really know what's going on," Ward said. "Every state employee knows what is right and wrong with their department. But most are not coming forward as much as they could because they have no incentive to, and some have many good reasons not to.

"We have had some serious problems lately with morale in many departments and I'm confident that if these bills become law, those problems would have not escalated into such major fiascos.

"In a nutshell, both of these bills will encourage employees to enthusiastically improve the way the state government works," Ward said.

As an example for the need for this legislation, Ward cited a recent case where a tip from a state employee resulted in a legislative audit which disclosed that three airplanes were missing from the Department of Public Safety.

"An employee who puts his neck out on the line like this should be praised and deserves the protection of the government," Ward said. "However, in many similar cases, the employee ends up worrying about job security."

# # # # #




ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 463-3991

June 25, 1983

MEMORANDUM

TO: Representative Jerry Ward

FROM: Betty Barton   
Legislative Analyst

RE: Employee Protection Laws  
Research Request No. 83-163

You have asked for information about state and federal statutes that provide protection to employees who disclose information regarding an employer's violation of federal, state, or local laws. During the 1970s, there was growing public concern regarding the need for improved ethical and professional standards, including support for public disclosure of any unethical or illegal practices of governmental and private organizations. Individuals increasingly called for measures which would ensure the protection from reprisal of those employees, known as "whistle blowers," who publicly criticize their organizations for perceived wrongdoing.

Legal Background

American case law traditionally has provided some limited protections from administrative punishment to whistle blowers in public employment. According to a report prepared by the Congressional Research Service, the law generally was shaped in 1892 by Judge Wendell Holmes who ruled in McAuliffe v. Mayor of New Bedford (155 Mass. 216; 29 N.E. 519) that while there is a constitutional right to free speech, there is no constitutional right to public employment.<sup>1</sup> This position was modified in 1968 in Pickering v. Bd. of Ed. (391 U.S. 563) when the U.S. Supreme Court held that a public worker cannot be deprived of his or her constitutional rights as a condition of employment.

Some statutory protections are also found at the federal level. For example, federal employees may testify before Congress about the agencies in which they work. The right to petition Congress is established in 5 U.S.C. 7102; and 18 U.S.C. 1505 prohibits interfering with a worker who is giving testimony to Congress. However, the law does not extend to employees who disclose information to bodies other than Congress.

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<sup>1</sup> Judith H. Parris, Government Division, Congressional Research Service, The Library of Congress, Major Issues System, "Whistle Blowers' in the Executive Branch," Issue Brief Number IB78006, January 26, 1978.

Representative Ward

June 25, 1983

Page 2

There are also several notable limitations placed on an employee's freedom to disclose information. Federal officials, for example, may not disclose classified data unless specifically authorized by the Freedom of Information Act or other U.S. statutes.

#### Federal Legislation Establishing Employee Protection

In 1978, Senate Bill 2640 was enacted.<sup>2</sup> This bill, which was the culmination of President Carter's Personnel Management Project, provided an extensive reorganization of the U.S. Civil Service Commission. Included in the bill was an employee protection provision; the primary purpose of which was to "safeguard employees, tenured and nontenured, who 'blew the whistle' on illegal or improper official conduct."

As the bill was initially introduced, it prohibited Civil Service employers from dispensing any sanctions against employees who publicly disclosed a violation of a law, rule, or regulation (assuming that the disclosure in itself did not constitute a violation of the law). The bill was subsequently broadened so that an employee would be protected in disclosing any information that reflected significant mismanagement, flagrant waste of funds; abuse of authority, or a substantial and specific danger to the health and safety of the public.<sup>3</sup> The bill was also modified so that agencies would not be encouraged to establish unwarranted internal "rules or regulations" against disclosure. As amended, only those disclosures that are specifically exempted by statute, e.g., substantive data pertaining to national intelligence, are prohibited.

Under the statute, the head of each executive branch agency has responsibility for overseeing compliance with relevant civil service laws.

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<sup>2</sup> Public Law 95-454. A copy of the statute is located in Appendix A.

<sup>3</sup> According to the legislative history of the bill, the intent of Congress was to limit protection to specific and significant impairment of public safety. As an example, the legislative history states that a general criticism by an employee that the Environmental Protection Agency is inadequately protecting the environment would not be protected under the statute; however, an employee's disclosure regarding the unsafe design of the cooling system of a Nuclear Regulatory Commission reactor would presumably be protected.

### State Legislation Protecting Whistle Blowers

Essentially, there are two approaches available for states in establishing protection for whistle blowers: 1) through administrative rules and procedures -- as exemplified in the federal statute -- and 2) through the courts.

Professional opinion is divided as to whether or not a state statute is necessary if an administrative approach is utilized. By some interpretations, administrative protections can be effectively established through executive orders or regulations. Several administrative mechanisms are available for processing whistle blowing grievances, including establishing an independent personnel board to review employee grievances and establishing an inspector general or ombudsman. In addition, the federal government and some states have considered establishing incentives for employees who produce innovative or noteworthy work as well as penalties for those responsible for inefficiency or unfavorable practices.

To establish remedies through the court system, there are also several available options that have been considered at both the state and federal level. Of these, the most commonly utilized approach is to provide for civil penalties against an agency when an employer has unduly retaliated against an employee. However, legislation can also be drafted to impose civil penalties on the individual who was responsible for the retaliation. Another option, which was presented for congressional consideration, is to establish a legal defense fund to be made available to employees with alleged grievances.

Colorado has enacted legislation that provides for protection through the administrative approach, while Michigan has established remedies through the courts.

Colorado State Employee Protection Law - Colorado enacted a whistleblower protection law in the fall of 1979.<sup>4</sup> Included in the statute's legislative declaration is the following statement:

The general assembly...declares that employees of the state of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs. To help achieve [this and other objectives], the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

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<sup>4</sup> A copy of the Colorado statute is in Appendix B.

Representative Ward

June 25, 1983

Page 4

As enacted, the statute prohibits a state employer or supervisor from initiating a disciplinary action against an employee due to his or her disclosure of information. However, protection does not extend to an employee who knowingly discloses false information or who discloses information that is legally required to be held confidential. Under the provisions of the statute, an employee "who wishes to disclose information" is obligated to "make a good faith effort" to provide the employer or the general assembly with the information to be disclosed prior to the time of its disclosure.

The law enables any employee in the state personnel system to file a written complaint with the state personnel board if an alleged retaliatory measure has been directed against him. If upon review the charges appear to have a reasonable basis, the state personnel director is required to notify the employer of the findings. The employer may then petition the board for a hearing on the matter.

If the board determines that a violation against an employee has occurred, the board is required to order compensation to the employee for any costs incurred in the proceeding. The board also is required to order relief including, but not limited to, reinstatement, back pay, restoration of any loss in credited service, and expungement of any damaging personnel records of the employee. If a specific employer or supervisor is found to have personally initiated the retaliation initiated against the employee, a description of the offense is to be placed within the employer's personnel records.

The administrative approach is generally established in order to provide a means of resolving disputes internally. Under the Colorado law, an employer or employee who is dissatisfied with the findings of the board may take the case to district court.

According to Marilyn Heckel, who administers the employee protection law in Colorado, the statute has been used infrequently since its enactment. Only three or four cases have been filed since the program's inception in 1979. While this may be attributable in part to an absence of complaints, Ms. Heckel observed that there are also some weaknesses in the statute that may be deterring employees from utilizing it.

Ms. Heckel noted that the most significant problem is that the review and hearing process is not timely. The first case filed under the law took almost three years for a determination to be made. The board ruled against the employee, and the employee then filed a complaint in the district court. The judge dismissed the case on a technicality. According to Ms. Heckel, the employee, who presumably believed enough in the legitimacy of his complaint to pursue it for three years, was left with no available recourse and abundant legal bills.

Ms. Heckel also noted that several provisions of the statute were drafted with overly broad potential applications. As an example, Ms. Heckel noted that there is no statute of limitations included within the law. Conceivably, an employee could choose to disclose information pertaining to a violation that occurred ten years ago.

According to Ms. Heckel, staff have discussed the need for revision of the law, but the need is viewed to be a relatively low priority.

Michigan Whistleblowers' Protection Act - No state law offers as extensive protection to employees as that afforded through the Michigan statute.<sup>5</sup> Enacted in 1980, this law may apply to any employee, including individuals within both the public and private sectors of employment. Under the law's provisions, an employer shall not "discharge, threaten, or otherwise discriminate against an employee" for reporting a violation, or suspected violation, of a law, rule, or regulation.

Unlike the Colorado law, the Michigan statute establishes civil action for injunctive relief or damages in the county circuit court as the first measure of recourse for employees who have experienced an alleged violation. The burden of proof is placed on an employee to "show by clear and convincing evidence" that at the time of conflict with his employer, the employee was about to report a suspected violation.

The statute also establishes remedies to be ordered as the judge considers appropriate. In rendering a judgment, a court shall order the reinstatement of the employee, the payment in the employee's favor of back wages, full reinstatement of fringe benefits and seniority, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including both attorney and witness fees.

According to Lee Schwartz, a legislative aide to Michigan Senator James Barcia who was instrumental in the law's enactment, a determination was made to use the court approach in order to make certain that employee protection was not used "frivolously" and would only be used for serious and significant cases.

Mr. Schwartz stated that there have been 10 known cases filed since the law was passed. Of these, the majority have been filed against public agencies; however, several pertain to private sector employers. According to Mr. Schwartz, his office has found no means of evaluating the effectiveness of the law or determining the extent to which the statute is being utilized. All cases are initially filed within Michigan circuit courts, which have no available system of tracking specific categories of cases.

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<sup>5</sup> A copy of the Michigan statute is located in Appendix C.

Representative Ward  
June 25, 1983  
Page 6

The U.S. Supreme Court recently ruled on a naval case pertaining to whistle blowing. To date, our research sources have been unable to obtain detailed information regarding the implications of the decision. When we are provided this information, we will transmit it to your office.

We hope this information has assisted you. Please do not hesitate to contact us if you have additional research questions.

bb

Attachments

**Attachment A:**

**Civil Service Reform Act of 1978  
(excerpted portions pertaining to whistle blowing)**

under an administrative interpretative regulation approved by the district court as reasonable and not challenged on appeal, it did not constitute "active duty" within the meaning of this section, defining who is a "preference eligible" veteran. *Hroussard v. U. S. Postal Service*, C.A.Tex.1982, 674 F.2d 1103.

§ 2100. Air traffic controller; Secretary

For the purpose of this title—

(1) "air traffic controller" or "controller" means an employee of the Department of Transportation or the Department of Defense who, as determined under regulations prescribe by the Secretary, is actively engaged in the separation and control of air traffic, or is the immediate supervisor of an employee actively engaged in the separation and control of air traffic, in an air traffic control facility; and

(2) "Secretary", when used in connection with "air traffic controller" or "controller", means the Secretary of Transportation with respect to controllers in the Department of Transportation, and the Secretary of Defense with respect to controllers in the Department of Defense.

As amended Pub.L. 96-347, § 1(a), Sept. 12, 1980, 94 Stat. 1150.

1980 Amendment. Pub.L. 96-347 substituted in section catchline "controller; Secretary" for "controller" and in section included employees of the Department of Defense within the meaning of air traffic controller or controller and defined the term "Secretary" to mean Secretary of Transportation with respect to controllers in the Department of Transportation and Secretary of Defense with respect to controllers in the Department of Defense. Effective Date of 1980 Amendment. Section 3 of Pub.L. 96-347 provided that: "This Act [amending sections 2100, 3307, 3381 to 3385, and 8335 of this title and enacting a provision set out as a note under section 8335 of this title] shall take effect on the later of— "(1) October 1, 1980, or "(2) the thirtieth day after the date of the enactment of this Act [Sept. 12, 1980]." Legislative History. For legislative history and purpose of Pub.L. 96-317, see 1980 U. S. Code Cong. and Adm. News, p. 2714.

CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec. 2301. Merit system principles.	Sec. 2301. Responsibility of the General Accounting Office.
2302. Prohibited personnel practices.	2305. Coordination with certain other provisions of law.
2303. Prohibited personnel practices in the Federal Bureau of Investigation.	

§ 2301. Merit system principles

(a) This section shall apply to—

- (1) an Executive agency;
- (2) the Administrative Office of the United States Courts; and
- (3) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for superior performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance. Inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(a)

(2) (C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1113.

Effective Date. Section effective on day after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, p. 523.

Cross References. Principles included in personnel management system of General Accounting Office, see section 732 of Title 31, Money and Finance.

Primary References

28 U.S.C. § 11.  
5 U.S.C. § 30.  
5 U.S.C. Officers and Public Employees § 49 to 51, 53 to 55.  
U.S. Code, Title 5, § 30, 37, 62 to 64.

Purpose

Primary purpose of this chapter was to safeguard employees, tenured and nontenured, who "blew the whistle" on illegal or improper official conduct. *Wren v. Merit Systems Protection Bd.*, C.A.D.C. 1982, 681 F.2d 807.

§ 2302. Prohibited personnel practices

(a) (1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b) of this section.

(2) For the purpose of this section—

(A) "personnel action" means—

- (i) an appointment;
- (ii) a promotion;
- (iii) an action under chapter 76 of this title or other disciplinary or corrective action;
- (iv) a detail, transfer, or reassignment;

- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of title;
- (ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this paragraph; and
- (x) any other significant change in duties or responsibility which is inconsistent with the employee's salary or grade level with respect to an employee in, or applicant for, a covered position in an agency;

(B) "covered position" means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

- (i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or
  - (ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.
- (C) "agency" means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—
- (i) a Government corporation;
  - (ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or
  - (iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

- (1) discriminate for or against any employee or applicant for employment—
  - (A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
  - (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
  - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
  - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
  - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
  - (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
  - (B) an evaluation of the character, loyalty, or suitability of

- (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
- (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;
- (8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—
  - (A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
    - (i) a violation of any law, rule, or regulation, or
    - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
 If such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
  - (B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—
    - (i) a violation of any law, rule, or regulation, or
    - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;
- (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or
- (11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

- (1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;
(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;
(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or
(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114.

References in Text. Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), referred to in subsecs. (b) and (d), is classified to section 2000e-10 of Title 42, The Public Health and Welfare.

Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), referred to in subsecs. (b) and (d), are classified to sections 631 and 633a of Title 29, Labor.

Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), referred to in subsec. (b) and (d), is classified to section 206(d) of Title 29.

Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), referred to in subsecs. (b) and (d), is classified to section 791 of Title 29.

The civil service laws, referred to in subsec. (c), are set out in this title. See, particularly, section 3301 et seq. of this title.

Effective Date. Section effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, D. 2723.

Cross References. Personnel practices prohibited by personnel management system of General Accounting Office, see section 732 of Title 31, Money and Finance.

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1. Retaliation
In proceeding concerning job demotion of employee of Veterans Administration, United States Merit Systems Protection

to prove by a preponderance of the evidence that the demotion was a reprisal for "whistleblowing." Alley v. Veterans Admin. Medical Center, C.A.S. 1982, 600 F.2d 151.

In case in which special counsel contended in effect that four deputy marshals' transfers to different duty stations were in retaliation for engaging in protected activities, Board, which upheld transfers of three deputies, had not isolated principle to effect that knowledge of employees' protected activities on part of one with ultimate responsibility for a personnel action could support inference of retaliatory intent where Board had determined that those who effected the transfers had no knowledge of the protected activities and that those with knowledge had no effect. Frazier v. Merit Systems Protection Bd., 1982, 672 F.2d 150, 217 U.S.App.D.C. 297.

2. Standards
To establish that agency action utilizing unapproved performance criteria was "based on" a prohibited personnel practice, petitioner would have to show that her performance, while falling the "unacceptable performance" standard, was satisfactory under other applicable statutory standards. Darby v. Internal Revenue Service, 1982, 672 F.2d 102, 217 U.S.App.D.C. 330.

3. Whistle-blowing protections—Generally
"Whistleblowing" provisions of this chapter work only as a defense to disciplinary action. Martin v. Lauer, C.A.D. C.1982, 690 F.2d 24.

4. Disclosure of protected information

In regard to a government employee deciding whether to "blow the whistle" on government fraud, waste, abuse or illegality, the legal question of whether disclosure is prohibited by law is of critical importance to the whistleblower, and he must be allowed to consult his attorney for an answer to that question absent some strong governmental interest in limiting such communications. Martin

3. Right of action
In enacting this section Congress did not take away from probationary employees their preexisting right to seek redress of constitutional violations in district court actions, and limit of statutory remedy provided probationary employees governing adverse personnel action based on "whistleblowing" does not preclude resort to independent action alleging violation of rights under U.S.C.A. Const. Amend. 1 in adverse personnel action based on criticism of agency practices and/or procedures. Horrell v. U. S. In-

tern. Communications Agency, C.A.D.C. 1982, 682 F.2d 981.
A purported whistle blower has no private right of action under this section prohibiting an official from taking adverse personnel action against an employee as reprisal for "whistleblowing" on official violations of law, waste and abuse of authority, and in case of probationary employee, the office of special counsel in the exclusive avenue of relief for alleged prohibited personnel practices under this section. Id.

§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

- (1) a violation of any law, rule, or regulation, or
(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, "personnel action" means any action described in clauses (1) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policy-making, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title. Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1117.

Effective Date. Section effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, p. 2723.

§ 2304. Responsibility of the General Accounting Office

(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

- (1) significant actions taken by the Board to carry out its functions under this title; and
(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118.

Effective Date. Section effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, p. 2723.

Attachment B:  
Colorado Employee Protection Law

or until an examination  
is completed.

§ 26-2-2; L. 73, p. 426.

he termination of his self-chosen  
employment, to return to state employment  
and receive all the rights and privileges  
accrued if he had never left  
state employment. State Civil Serv.  
Fleming, 183 Colo. 71, 514 P.2d  
cert. denied, 415 U.S. 977, 94 S.  
Ed. 2d 873 (1974).

Reinstatement contingent upon returning  
to service. Reinstatement is con-  
tingent upon the employee returning to state  
employment within one year after the period  
of absence or additional service imposed.  
Civil Serv. Comm'n v. Fleming,  
183 Colo. 71, 514 P.2d 1135 (1973), cert.  
denied, 415 U.S. 977, 94 S. Ct. 1564, 39 L. Ed.

guard. (1) The provisions  
of this section shall apply to the  
payment by this state  
of the compensation of any  
employee who is appointed  
to a position in part 3  
of this article if the employee  
retains his status after

who was a member of the  
armed forces of the United  
States and who received  
compensation from the  
armed forces for a period of time  
preceding fifteen days.

§ 26-2-3.

part 3 shall apply to any  
employee who entered the armed  
services or who was engaged in national

## HOURS

offices in the executive and  
legislative branches shall be and remain open for

business daily, except on Saturdays, Sundays, and legal holidays, from the  
hour of 8:30 a.m. until the hour of 5:00 p.m.; except that nothing in this  
section shall affect the validity of any act performed by either of said depart-  
ments before or after the hours specified in this section.

(2) Notwithstanding the provisions of subsection (1) of this section, when  
a city or city and county and the suburban area within a ten-mile radius of  
the boundaries thereof have a population in excess of fifty thousand inhabi-  
tants, the offices of any executive department of the state government locat-  
ed therein may vary its business hours from those indicated in subsection  
(1) of this section whenever the executive director of the principal depart-  
ment, with the approval of the governor, determines that such adjustment  
of hours will help alleviate peak traffic conditions and provide a more even  
flow of traffic for the purpose of creating safer highway conditions.

(3) Written notice of the variance permitted under subsection (2) of this  
section shall be given to the local news media of such cities or cities and  
counties not less than two weeks preceding the effective date of such vari-  
ance.

Source: R & RE, L. 72, p. 180, § 1; C.R.S. 1963, § 26-3-1.

24-50-402. Appointment by outgoing officers prohibited. No state, county,  
or city appointive office, the term of which expires on or after the time fixed  
by law for the qualification of the officer having the authority to make such  
appointment, shall be filled by the outgoing appointing officer.

Source: R & RE, L. 72, p. 180, § 1; C.R.S. 1963, § 26-3-2.

## ARTICLE 50.5

### State Employee Protection

24-50.5-101.	Legislative declaration.	24-50.5-105.	Civil action.
24-50.5-102.	Definitions.	24-50.5-106.	Notice to state auditor.
24-50.5-103.	Retaliation prohibited.	24-50.5-107.	Reports to general assembly and governor.
24-50.5-104.	Complaints by state personnel system employees.		

24-50.5-101. Legislative declaration. The general assembly hereby declares  
that the people of Colorado are entitled to information about the workings  
of state government in order to reduce the waste and mismanagement of  
public funds, to reduce abuses in government authority, and to prevent illegal  
and unethical practices. The general assembly further declares that employees  
of the state of Colorado are citizens first and have a right and a responsibility  
to behave as good citizens in our common efforts to provide sound manage-  
ment of governmental affairs. To help achieve these objectives, the general  
assembly declares that state employees should be encouraged to disclose  
information on actions of state agencies that are not in the public interest

and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

Source: L. 79, p. 965, § 1.

**24-50.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.

(2) "Disclosure of information" means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency.

(3) "Employee" means any person employed by a state agency.

(4) "State agency" means any board, commission, department, division, section, or other agency of the executive, legislative, or judicial branch of state government.

(5) "Supervisor" means any board, commission, department head, division head, or other person who supervises or is responsible for the work of one or more employees.

Source: L. 79, p. 965, § 1.

**24-50.5-103. Retaliation prohibited.** (1) Except as provided in subsection (2) of this section, no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This section shall not apply to:

(a) An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;

(b) An employee who discloses information from public records which are closed to public inspection pursuant to section 24-72-204;

(c) An employee who discloses information which is confidential under any other provision of law.

(2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good faith effort to provide to his supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure.

Source: L. 79, p. 966, § 1.

**24-50.5-104. Complaints by state personnel system employees.** (1) Any employee in the state personnel system may file a written complaint with the state personnel board alleging a violation of section 24-50.5-103 if the employee demonstrates that reasonable communication to his supervisor,

appointing authority, or member of the general assembly has occurred in regard to the alleged violation. The state personnel board shall cause an investigation of the charges to be made by the state personnel director. If the investigation establishes that there is a reasonable basis for the charges, the appointing authority or supervisor shall be given written notice thereof. Within ten days after he receives such notice, the appointing authority or supervisor may petition the board for a hearing on the matter, and the board shall grant such hearing.

(2) If the state personnel board after hearing determines that a violation of section 24-50.5-103 has occurred, or if the investigation establishes a reasonable basis for the charges and no hearing is requested, the board shall order the appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, and expungement of the records of the employee who disclosed information, and, in addition, the state personnel board shall order that the employee filing the complaint be reimbursed for any costs incurred in the proceeding. Such reimbursement shall be made out of moneys appropriated to the agency which employs such employee. Judicial review of any determination by the state personnel board under this subsection (2) may be had in accordance with section 24-4-106.

(3) It shall be a defense in any disciplinary proceeding against an employee under section 24-50-125 that such proceeding was initiated in violation of section 24-50.5-103, and the issue of the violation of section 24-50.5-103 shall be determined by the state personnel board as a part of the disciplinary proceeding.

(4) Whenever the state personnel board determines that an appointing authority or supervisor has violated section 24-50.5-103, it shall cause an entry to that effect to be made in the supervisor's personnel records.

Source: L. 79, p. 966, § 1.

**24-50.5-105. Civil action.** Any employee not in the state personnel system, or any employee in the state personnel system who has filed a complaint under section 24-50.5-104 (1) but no reasonable basis was found for the charges, may bring a civil action in the district court alleging a violation of section 24-50.5-103. If the employee prevails, the employee may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

Source: L. 79, p. 967, § 1.

**24-50.5-106. Notice to state auditor.** Whenever the state personnel board finds that a violation of section 24-50.5-103 involving the disclosure of information concerning waste of public funds or mismanagement of a state agency has occurred, it shall transmit a copy of the investigation report to the state auditor, who shall proceed in accordance with section 2-3-101 (3) (c), C.R.S. 1973.

Source: L. 79, p. 967, § 1.

24-50.5-107. Reports to general assembly and governor. The state personnel board shall report annually to the general assembly and the governor concerning the complaints filed, hearings held, and actions taken pursuant to this article.

Source: L. 79, p. 967, § 1.

**PUBLIC EMPLOYEES' RETIREMENT SYSTEMS**

**ARTICLE 51**

**Public Employees' Retirement Systems**

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**PART 7**

**PUBLIC EMPLOYEES' SOCIAL**

Attachment C:

Michigan Whistle Blower Protection Act

15.345 PUBLIC OFFICERS AND EMPLOYEES

(4) When a recommendation to an appointing authority is made by the board concerning an unclassified employee or appointee, the appointing authority shall take appropriate disciplinary action which may include dismissal.

P.A.1973, No. 196, § 5, Imd. Eff. Jan. 8, 1974.

Library References

States 67, 73.

C.J.S. States §§ 120, 131, 130 to 138, 140.

Notes of Decisions

In general 1  
Closed sessions 2

behalf of the agency. Op.Atty.Gen.1980, No. 5646.

1. In general

The son of a member of the barrier free design board may be employed by the board without violation of the ethical standards of § 15.341 et seq., although a member of the barrier free design board may not participate in any case in which his or her son appears on

2. Closed sessions

The state board of ethics is subject to the Open Meetings Act, § 15.261, and when it meets in closed session for the protection of individual rights, it must comply with the provisions of said act, with respect to the calling and holding of the closed session. Op.Atty.Gen. 1980, No. 5760.

15.346 Rules

Sec. 6. The board may promulgate rules governing its own procedures pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. For a period of 1 year following the effective date of this act the board shall have full authority to exercise all of its functions in accordance with temporary rules of procedure promulgated by the board. Both the temporary and permanent rules of the board shall provide that:

(a) The board may request the attendance of any witness whose testimony, in the judgment of the board, will aid in the conduct of its investigations.

(b) A person appearing before the board shall submit either sworn or unsworn testimony as the board may decide and may at all times be represented and accompanied by counsel.

(c) A record of testimony taken before the board or a hearing officer designated by it shall be made in the manner prescribed by the board.

(d) The board may, when it appears necessary for the protection of individual rights, hold its meetings and hearings in private. All other meetings and hearings shall be open to the public.

P.A.1973, No. 196, § 6, Imd. Eff. Jan. 8, 1974.

WHISTLEBLOWERS' PROTECTION 15.361

Notes of Decisions

1. In general

Records and files concerning any dismissed complaint or terminated investigation by the state board of ethics may be suppressed to protect an individual's privacy, but may only be disposed of by the state board of ethics in accordance with § 18.13c. Op.Atty.Gen. 1980, No. 5760.

15.347 Appropriation

Sec. 7. There is appropriated from the general fund of the state an amount necessary to implement this act but not to exceed \$10,000.00 for the fiscal year ending June 30, 1974.

P.A.1973, No. 196, § 7, Imd. Eff. Jan. 8, 1974.

Library References

States 131.

C.J.S. States §§ 230, 234 to 239.

15.348 Effect on other acts

Sec. 8. The provisions of this act shall not supersede the provisions of any other acts heretofore or hereinafter enacted and shall be interpreted and administered to the extent not inconsistent with other acts.

P.A.1973, No. 196, § 8, Imd. Eff. Jan. 8, 1974.

M.S.L.A.

'WHISTLEBLOWERS' PROTECTION ACT

Caption editorially supplied

Library References

M.L.P. Employment §§ 1, 23, 151.

M.L.P. State § 6.

P.A.1980, No. 469, Eff. March 31, 1981

AN ACT to provide protection to employees who report a violation or suspected violation of state, local, or federal law; to provide protection to employees who participate in hearings, investigations, legislative inquiries, or court actions; and to prescribe remedies and penalties.

The People of the State of Michigan enact:

15.361 Definitions

Sec. 1. As used in this act:

(a) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, ex-

press or implied. Employee includes a person employed by the state or a political subdivision of the state except state classified civil service.

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

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

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

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

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

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

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.

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

(vi) The judiciary and any member or employee of the judiciary.  
P.A.1980, No. 469, § 1, Eff. March 31, 1981.

### 15.362 Discharge of, threats to or discrimination against employee for reporting violations of law

Sec. 2. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

P.A.1980, No. 469, § 2, Eff. March 31, 1981.

#### Library References

Labor Relations ☞7.

C.J.S. Labor Relations ¶ 2 et seq.

### 15.363 Civil actions for injunctive relief or damages

Sec. 3. (1) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.

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

(4) An employee shall show by clear and convincing evidence that they or a person acting on their behalf was about to report, verbally or in writing, a violation or a suspected violation of a law of this state, a political subdivision of this state, or the United States to a public body.

P.A.1980, No. 469, § 3, Eff. March 31, 1981.

#### Library References

Action ☞3,  
Injunction ☞25.

C.J.S. Actions ¶ 9.  
C.J.S. Injunctions ¶¶ 41, 42, 54.

### 15.364 Remedies ordered by court

Sec. 4. A court, in rendering a judgment in an action brought pursuant to this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

P.A.1980, No. 469, § 4, Eff. March 31, 1981.

#### Library References

Officers ☞78.

C.J.S. Officers and Public Employees  
¶¶ 114 to 116, 221.

## 15.365 Penalties for violations

Sec. 5. (1) A person who violates this act shall be liable for a civil fine of not more than \$500.00.

(2) A civil fine which is ordered pursuant to this act shall be submitted to the state treasurer for deposit in the general fund.

P.A.1980, No. 469, § 5, Eff. March 31, 1981.

## Library References

Labor Relations ☞1056.

C.J.S. Labor Relations § 1011.

## 15.366 Collective bargaining rights

Sec. 6. This act shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

P.A.1980, No. 469, § 6, Eff. March 31, 1981.

## Library References

Labor Relations ☞257.

C.J.S. Labor Relations §§ 239 to 250.

## 15.367 Compensation for employee participation in investigation, hearing or inquiry

Sec. 7. This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 2<sup>1</sup> of this act.

P.A.1980, No. 469, § 7, Eff. March 31, 1981.

<sup>1</sup> Section 15.362.

## 15.368 Notices of employee protections and obligations

Sec. 8. An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act.

P.A.1980, No. 469, § 8, Eff. March 31, 1981.

## Library References

Labor Relations ☞7.

C.J.S. Labor Relations § 2 et seq.

## 15.369 Short title

Sec. 9. This act shall be known and may be cited as "the whistleblowers' protection act".

P.A.1980, No. 469, § 9, Eff. March 31, 1981.

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## POLITICAL ACTIVITIES OF PUBLIC EMPLOYEES

*Caption editorially supplied*

## Library References

M.L.P. State § 6.

P.A.1976, No. 169, Imd. Eff. June 25

AN ACT to regulate certain political activities by certain public employees; to prescribe the powers and duties of certain state agencies; and to provide penalties. Amended by P.A.1979, No. 15, § 1, Imd. Eff. May 24.

*The People of the State of Michigan enact:*

## 15.401 Public employee defined

Sec. 1. As used in this act, "public employee" means an employee of the state classified civil service, or an employee of a political subdivision of the state who is not an elected official.

P.A.1976, No. 169, § 1, Imd. Eff. June 25.

## Library References

Elections ☞311.

C.J.S. Elections § 324.

## Notes of Decisions

In general 1  
Civil service commission 2  
Job performance 5  
Public employees 3  
Rules and regulations 6  
Volunteers 4

ture to enact statute providing that employee of state classified civil service may engage in certain political activities. *Id.*

The Political Freedom Act was enacted to permit civil service employees and employees of political subdivisions of the state to engage in certain political activities. Council 11, Am. Federation of State, County and Municipal Emp. (AFSCME), AFL-CIO v. Michigan Civil Service Commission (1978) 274 N.W.2d 804, 87 Mich.App. 420, affirmed 292 N.W.2d 442, 408 Mich. 385.

State cannot require individual to relinquish rights guaranteed him or her by U.S.C.A.Const. Amend. 1 as a condition of public employment, and when political activities of public employee are unrelated to his or her job responsibilities, the employee must be treated as a member of the general public for purpose of adjudicating U.S.C.A.Const. Amend. rights. *Id.*

## 1. In general

Legislature of state is empowered to enact laws to promote and regulate political campaigns and candidacies. Council No. 11, Am. Federation of State, County and Municipal Emp. (AFSCME), AFL-CIO v. Michigan Civil Service Commission (1980) 292 N.W.2d 442, 408 Mich. 385.

There is no provision in State Constitution which plainly, or by fair implication, empowers the state civil service commission to regulate the off-duty political activity of classified civil servants or which in any manner preemptively conflicts with power of legisla-

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HB 577, (cont'd)

Introduced February 6 and referred to State Affairs, Finance.

Whistle-  
blowing  
(reprisals)

HOUSE BILL NO. 578, by Rep. Ward. Prohibits a state department, agency, official, officer or any other state employee from taking or failing to take a personnel action as a reprisal for a disclosure of information. Disclosed information would be that type of information an employee reasonably believes constitutes a violation of state law or regulation, mismanagement, gross waste of funds, abuse of authority, or represents a substantial and specific danger to public health or safety. The head of each state agency would be responsible for the prevention of prohibited personnel practices. The head of agencies with employees who are exempt or partially exempt would be responsible for designating an employee to receive evidence of violations, and who would act on the information.

This law would not authorize the withholding of information from the legislature or the implementation of an adverse personnel action against an employee who discloses information to the legislature. Defines "personnel action" to mean ". . . (1) an appointment, (2) a promotion; (3) a disciplinary or corrective action; (4) a detail, transfer, or reassignment; (5) a reinstatement; (6) a restoration; (7) a reemployment; (8) a performance evaluation; (9) a decision concerning pay, benefits, or awards; or (10) a decision concerning education or training if the education or training would lead to appointment, promotion, performance evaluation, or other action described under this subsection."

Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced February 6 and referred to State Affairs.

Junior ROTC  
Instructors  
(included in  
Teachers'  
Retirement)

HOUSE BILL NO. 579, by Rep. Furnace. Would allow a Junior Reserve Officer Training Corps (ROTC) instructor who is responsible for student supervision, who is certified as a teacher by the Dept. of Education, and who has direct student contact for five or more hours a day to be eligible under the Teachers' Retirement System. The Junior ROTC instructor would also be included in the definition of "teacher" under AS 14.20 (Teachers and School Officials). Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced February 6 and referred to Health, Education & Social Services.

Water  
Pollution  
(prevention/  
abatement)

HOUSE BILL NO. 580, by Rep. Ringstad. Relates to the prevention and abatement of water pollution. Amends the policy of the state in relation to water, land and air pollution, stating that it is the policy of the state ". . . to develop and manage the basic resources of water, land and air in an economically and environmentally sound manner to the end that the state may fulfill its responsibility as trustee of the environment