

ASSEMBLY, No. 1737

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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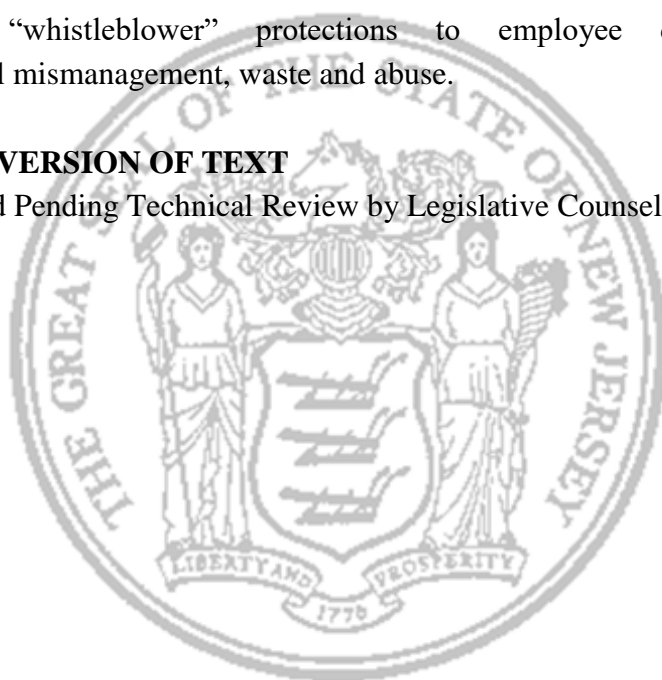
Assemblyman Conaway

SYNOPSIS

Extends “whistleblower” protections to employee disclosure of governmental mismanagement, waste and abuse.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning employer retaliation in certain cases of
 2 employee disclosure of governmental mismanagement or abuse
 3 of authority or waste of public funds and amending P.L.1986,
 4 c.105.

5
 6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 7 *of New Jersey:*

8
 9 1. Section 2 of P.L.1986, c.105 (C.34:19-2) is amended read as
 10 follows:

11 2. As used in this act:

12 a. "Employer" means any individual, partnership, association,
 13 corporation or any person or group of persons acting directly or
 14 indirectly on behalf of or in the interest of an employer with the
 15 employer's consent and shall include **all branches of State**
 16 **Government, or the several counties and municipalities thereof, or**
 17 **any other political subdivision of the State, or a school district, or**
 18 **any special district, or any authority, commission, or board or any**
 19 **other agency or instrumentality thereof** any governmental entity.

20 b. "Employee" means any individual who performs services for
 21 and under the control and direction of an employer for wages or
 22 other remuneration.

23 c. "Public body" means:

24 (1) the United States Congress, and State legislature, or any
 25 popularly-elected local governmental body, or any member or
 26 employee thereof;

27 (2) any federal, State, or local judiciary, or any member or
 28 employee thereof, or any grand or petit jury;

29 (3) any federal, State, or local regulatory, administrative, or
 30 public agency or authority, or instrumentality thereof;

31 (4) any federal, State, or local law enforcement agency,
 32 prosecutorial office, or police or peace officer;

33 (5) any federal, State or local department of an executive branch
 34 of government; or

35 (6) any division, board, bureau, office, committee or
 36 commission of any of the public bodies described in the above
 37 paragraphs of this subsection.

38 d. "Supervisor" means any individual with an employer's
 39 organization who has the authority to direct and control the work
 40 performance of the affected employee, who has authority to take
 41 corrective action regarding the violation of the law, rule or
 42 regulation of which the employee complains, or who has been
 43 designated by the employer on the notice required under section 7
 44 of this act.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 e. “Retaliatory action” means the discharge, suspension or
2 demotion of an employee, or other adverse employment action
3 taken against an employee in the terms and conditions of
4 employment.

5 f. “Improper quality of patient care” means, with respect to
6 patient care, any practice, procedure, action or failure to act of an
7 employer that is a health care provider which violates any law or
8 any rule, regulation or declaratory ruling adopted pursuant to law,
9 or any professional code of ethics.

10 g. “Abuse of authority” means a pattern of illegal, malicious,
11 fraudulent, arbitrary or capricious actions by an employer that is a
12 governmental entity, made in a manner clearly deviating from the
13 standard of care or competence that a reasonable person would
14 observe in the same situation, which has a substantial adverse affect
15 on the operations, clients, customers or employees of the entity, or
16 on the efficient accomplishment of any function of the entity
17 authorized by law, regulation, or a clear mandate of public policy
18 concerning the public health, safety or welfare or protection of the
19 environment.

20 h. “Governmental entity” means any branch of State
21 government, or any county, municipality or other political
22 subdivision of the State, or any school district or special district, or
23 any authority, commission, or board or any other agency or
24 instrumentality of the State, subdivision or district.

25 i. “Gross mismanagement” means a pattern of negligent or
26 incompetent actions by an employer that is a governmental entity,
27 made in a manner clearly deviating from the standard of care or
28 competence that a reasonable person would observe in the same
29 situation, which has a substantial adverse affect on the operations,
30 clients, customers or employees of the entity, or on the efficient
31 accomplishment of any function of the entity authorized by law,
32 regulation, or a clear mandate of public policy concerning the
33 public health, safety or welfare or protection of the environment.
34 “Gross mismanagement” does not mean the mere failure to act in
35 accordance with a particular opinion regarding management
36 techniques.

37 j. “Substantial waste of public funds” means conduct or
38 omissions, made in a manner clearly deviating from the standard of
39 care or competence that a reasonable person would observe in the
40 same situation, of any employer, including an employer which is a
41 governmental entity, which result or could reasonably be expected
42 to result, at once or over a period of time, in the misuse, destruction,
43 loss, or expenditure without valuable result, of a substantial amount
44 of moneys or resources belonging to or deriving from a
45 governmental entity.

46 (cf: P.L.1997, c.98, s.1)

1 2. Section 3 of 1986, c.105 (C.34:19-3) is amended read as
2 follows:

3 3. An employer shall not take any retaliatory action against an
4 employee because the employee does any of the following:

5 a. Discloses, or threatens to disclose to a supervisor or to a
6 public body an activity, policy or practice of the employer, or
7 another employer~~[],~~ with whom there is a business relationship,
8 that the employee reasonably believes:

9 (1) is in violation of a law, or a rule or regulation promulgated
10 pursuant to law, including any violation involving deception of, or
11 misrepresentation to, any shareholder, investor, client, patient,
12 customer, employee, former employee, retiree or pensioner of the
13 employer or any governmental entity, or, in the case of an employee
14 who is a licensed or certified health care professional, reasonably
15 believes constitutes improper quality of patient care; ~~or~~

16 (2) is fraudulent or criminal, including any activity, policy or
17 practice of deception or misrepresentation which the employee
18 reasonably believes may defraud any shareholder, investor, client,
19 patient, customer, employee, former employee, retiree or pensioner
20 of the employer or any governmental entity;

21 (3) is a substantial waste of public funds by a governmental
22 entity; or

23 (4) is, if the employer is a governmental entity, an abuse of
24 authority or gross mismanagement.

25 b. Provides information to, or testifies before, any public body
26 conducting an investigation, hearing or inquiry into any violation of
27 law, or a rule or regulation promulgated pursuant to law by the
28 employer, or another employer~~[],~~ with whom there is a business
29 relationship, including any violation involving deception of, or
30 misrepresentation to, any shareholder, investor, client, patient,
31 customer, employee, former employee, retiree or pensioner of the
32 employer or any governmental entity, provides information to, or
33 testifies before, any public body conducting an investigation,
34 hearing or inquiry into a substantial waste of public funds by any
35 employer or into gross mismanagement or an abuse of authority by
36 an employer that is a governmental entity, or, in the case of an
37 employee who is a licensed or certified health care professional,
38 provides information to, or testifies before, any public body
39 conducting an investigation, hearing or inquiry into the quality of
40 patient care; or

41 c. Objects to, or refuses to participate in any activity, policy or
42 practice which the employee reasonably believes:

43 (1) is in violation of a law, or a rule or regulation promulgated
44 pursuant to law, including any violation involving deception of, or
45 misrepresentation to, any shareholder, investor, client, patient,
46 customer, employee, former employee, retiree or pensioner of the
47 employer or any governmental entity, or, if the employee is a

1 licensed or certified health care professional, constitutes improper
2 quality of patient care;

3 (2) is fraudulent or criminal, including any activity, policy or
4 practice of deception or misrepresentation which the employee
5 reasonably believes may defraud any shareholder, investor, client,
6 patient, customer, employee, former employee, retiree or pensioner
7 of the employer or any governmental entity; **[or]**

8 (3) is incompatible with a clear mandate of public policy
9 concerning the public health, safety or welfare or protection of the
10 environment;

11 (4) is a substantial waste of public funds by a governmental
12 entity; or

13 (5) is, if the employer is a governmental entity, an abuse of
14 authority or gross mismanagement.

15 (cf: P.L.2005, c.329, s.1)

16
17 3. This act shall take effect immediately.
18
19

20 STATEMENT

21
22 This bill provides protection against employer retaliation for an
23 employee who makes disclosures, provides testimony, or objects or
24 refuses to participate in any activity, policy or practice of the
25 employer, or another employer in a business relationship with the
26 employer, which the employee reasonably believes is a substantial
27 waste of public funds by a governmental entity or is a gross
28 mismanagement or an abuse of authority by an employer that is a
29 governmental entity.

30 The bill defines both “gross mismanagement” and “abuse of
31 authority” as a pattern of actions by an employer that is a
32 governmental entity, made in a manner clearly deviating from the
33 standard of care or competence that a reasonable person would
34 observe in the same situation, which has a substantial adverse affect
35 on the operations, clients, customers or employees of the entity, or
36 on the efficient accomplishment of any function of the entity
37 authorized by law, regulation, or a clear mandate of public policy
38 concerning the public health, safety or welfare or protection of the
39 environment. The difference is that “gross mismanagement”
40 concerns actions which are “negligent or incompetent” while “abuse
41 of authority” concerns actions which are “illegal, malicious,
42 fraudulent, arbitrary or capricious.”

43 The bill defines "substantial waste of public funds" as conduct or
44 omissions, made in a manner clearly deviating from the standard of
45 care or competence that a reasonable person would observe in the
46 same situation, of any employer, including one which is a
47 governmental entity, which result or could reasonably be expected

A1737 QUIJANO, VAINIERI HUTTLE

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1 to result, at once or over a period of time, in the misuse, destruction,
2 loss, or expenditure without valuable result, of a substantial amount
3 of moneys or resources belonging to or deriving from a
4 governmental entity.