

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 238**

BY SENATORS LINDSAY, BEACH, HAMILTON, IHLENFELD,

WOELFEL, JEFFRIES, ROMANO, AND FACEMIRE

[Introduced January 9, 2020; referred  
to the Committee on the Workforce; and then to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §6C-1-2, §6C-1-3, and §6C-1-4 of the Code of West Virginia, 1931,  
 2 as amended, all relating to making the state's whistleblower law also be applicable to the  
 3 private employment sector; prohibiting an employer from discharging, threatening, or  
 4 otherwise discriminating against an employee because the employee reports, or is about  
 5 to report, a violation or a suspected violation of a law or a governmental regulation to a  
 6 public body; and modifying, deleting, and defining terms.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 1. WHISTLE-BLOWER LAW.**

### **§6C-1-2. Definitions.**

1 The following words and phrases when used in this article have the meanings given to  
 2 them in this section unless the context clearly indicates otherwise:

3 ~~(a) "Appropriate authority" means a federal, state, county or municipal government body,~~  
 4 ~~agency or organization having jurisdiction over criminal law enforcement, regulatory violations,~~  
 5 ~~professional conduct or ethics, or waste; or a member, officer, agent, representative or~~  
 6 ~~supervisory employee of the body, agency or organization. The term includes, but is not limited~~  
 7 ~~to, the office of the Attorney General, the office of the State Auditor, the commission on special~~  
 8 ~~investigations, the Legislature and committees of the Legislature having the power and duty to~~  
 9 ~~investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or~~  
 10 ~~waste~~

11 (b) "Employee" means a person who performs a full or part-time service for wages, salary,  
 12 or other remuneration under a contract of hire, written or oral, express or implied. ~~for a public body~~

13 (c) "Employer" means a person ~~supervising~~ who has one or more employees, including  
 14 the employee in question. ~~a superior of that supervisor, or~~ Employer includes an agent of a public  
 15 body.

16 (d) "Good faith report" means a report of ~~conduct defined in this article as wrongdoing or~~  
 17 ~~waste~~ a violation or a suspected violation of a law, a regulation or a rule promulgated pursuant to

18 a law of this state, a political subdivision of this state, or the United States to a public body which  
 19 is made without malice or consideration of personal benefit and which the person making the  
 20 report has reasonable cause to believe is true.

21 (e) "Public body" means any of the following:

22 (1) A department, division, officer, agency, bureau, board, commission, court in its  
 23 nonjudicial functions only, council, institution, spending unit, authority or other instrumentality of  
 24 the State of West Virginia;

25 (2) A commission, council, department, agency, board, court, in its nonjudicial functions  
 26 only, official, special district, corporation or other instrumentality of a county or a municipality or a  
 27 regional or joint governing body of one or more counties or municipalities; or

28 (3) Any other body which is created by state or political subdivision authority or which is  
 29 funded by 35 percent or more by or through state or political subdivision authority, or a member  
 30 or employee of that body.

31 ~~(f) "Waste" means an employer or employee's conduct or omissions which result in~~  
 32 ~~substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from~~  
 33 ~~federal, state or political subdivision sources.~~

34 ~~(g) "Whistle-blower" means a person who witnesses or has evidence of wrongdoing or~~  
 35 ~~waste while employed with a public body and who makes a good faith report of, or testifies to, the~~  
 36 ~~wrongdoing or waste, verbally or in writing, to one of the employee's superiors, to an agent of the~~  
 37 ~~employer or to an appropriate authority.~~

38 ~~(h) "Wrongdoing" means a violation which is not of a merely technical or minimal nature~~  
 39 ~~of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a~~  
 40 ~~code of conduct or ethics designed to protect the interest of the public or the employer~~

### **§6C-1-3. Discriminatory and retaliatory actions against whistle- blowers prohibited.**

1 (a) ~~No employer may discharge, threaten or otherwise discriminate or retaliate against an~~  
 2 ~~employee by changing the employee's compensation, terms, conditions, location or privileges of~~

3 ~~employment because the employee, acting on his own volition, or a person acting on behalf of or~~  
 4 ~~under the direction of the employee, makes a good faith report or is about to report, verbally or in~~  
 5 ~~writing, to the employer or appropriate authority an instance of wrongdoing or waste~~ An employer  
 6 may not discharge, threaten, or otherwise discriminate against an employee regarding the  
 7 employee's compensation, terms, conditions, location, or privileges of employment because the  
 8 employee, or a person acting on behalf of the employee, reports or is about to report, in good  
 9 faith, verbally or in writing, a violation or a suspected violation of a law, a regulation or a rule  
 10 promulgated pursuant to a law of this state, a political subdivision of this state, or the United States  
 11 to a public body.

12 (b) No employer may discharge, threaten or otherwise discriminate or retaliate against an  
 13 employee by changing the employee's compensation, terms, conditions, location or privileges of  
 14 employment because the employee is requested or subpoenaed by an appropriate authority to  
 15 participate in an investigation, hearing or inquiry held by ~~an appropriate authority~~ a public body or  
 16 in a court action.

**§6C-1-4. Civil action by whistle-blower for violation; limitation on actions; burden of proof;  
 defense; use of evidence in civil service proceeding.**

1 (a) A person who alleges that he or she is a victim of a violation of this article may bring a  
 2 civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both,  
 3 within 180 days after the occurrence of the alleged violation.

4 (b) An employee alleging a violation of this article must show by a preponderance of the  
 5 evidence that, prior to the alleged reprisal, the employee, or a person acting on behalf of or under  
 6 the direction of the employee, had reported or was about to report in good faith, verbally or in  
 7 writing, ~~an instance of wrongdoing or waste to the employer or an appropriate authority~~ a violation  
 8 or a suspected violation of a law of this state, a political subdivision of this state, or the United  
 9 States to a public body.

10 (c) It shall be a defense to an action under this section if the defendant proves by a

11 preponderance of the evidence that the action complained of occurred for separate and legitimate  
12 reasons, which are not merely pretexts.

13 (d) An employee covered by the civil service system who contests a civil service action,  
14 believing it to be motivated by his the employee having made a disclosure of information may  
15 submit as admissible evidence any or all material relating to the action as whistle-blower and to  
16 the resulting alleged reprisal.

17 (e) As used in subsection (a) of this section, the term "damages" means damages for injury  
18 or loss caused by each violation of this article, including reasonable attorney fees.

NOTE: The purpose of this bill is to make the state's whistleblower law also be applicable to the private employment sector. The bill prohibits an employer from discharging, threatening, or otherwise discriminating against an employee because the employee reports, or is about to report, a violation or a suspected violation of a law or a governmental regulation to a public body. The bill modifies, deletes and defines terms.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.