

**ACT 267**

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**H.B. NO. 5**

**A Bill for an Act Relating to the Whistleblowers' Protection Act.**

*Be It Enacted by the Legislature of the State of Hawaii:*

**820**

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## “CHAPTER WHISTLEBLOWERS’ PROTECTION ACT

§ -1 **Definitions.** As used in this chapter:

“Employee” means a person who performs a service for wages or other remuneration under a contract for hire, written or oral, express or implied. Employee includes a person employed by the State or a political subdivision of the State.

“Employer” means a person who has one or more employees. Employer includes an agent of an employer or of the State or a political subdivision of the State.

“Person” means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

“Public body” means:

- (1) A state officer, employee, agency, department, division, bureau, board, commission, committee, council, authority, or other body in the executive branch of state government;
- (2) An agency, board, commission, committee, council, member, or employee of the legislative branch of the state government;
- (3) A county, city, intercounty, intercity, or regional governing body, a council, special district, or municipal corporation, or a board, department, commission, committee, council, agency, or any member or employee thereof;
- (4) 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;
- (5) A law enforcement agency or any member or employee of a law enforcement agency; or
- (6) The judiciary and any member or employee of the judiciary.

§ -2 **Discharge of, threats to, or discrimination against employee for reporting violations of law.** 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:

- (1) The employee, or a person acting on behalf of the employee, reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of a law or rule adopted pursuant to law of this State, a political subdivision of this State, or the United States, unless the employee knows that the report is false; or
- (2) 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.

§ -3 **Civil actions for injunctive relief or damages.** (a) A person who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief, or actual damages, or both within ninety days after the occurrence of the alleged violation of this chapter.

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

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

**§ -4 Remedies ordered by court.** A court, in rendering a judgment in an action brought pursuant to this chapter, shall order, as the court considers appropriate, reinstatement of the employee, 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's fees and witness fees, if the court determines that the award is appropriate.

**§ -5 Penalties for violations.** (a) A person who violates this chapter shall be fined not more than \$500 for each violation.

(b) A civil fine which is ordered pursuant to this chapter shall be deposited with the director of finance to the credit of the general fund of the State.

**§ -6 Collective bargaining and confidentiality rights, takes precedence.** (a) This chapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement, nor to permit disclosures which would diminish or impair the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection.

(b) Where a collective bargaining agreement provides an employee rights and remedies superior to the rights and remedies provided herein, contractual rights shall supersede and take precedence over the rights, remedies, and procedures provided in this chapter. Where a collective bargaining agreement provides inferior rights and remedies to those provided in this chapter, the provisions of this chapter shall supersede and take precedence over the rights, remedies, and procedures provided in collective bargaining agreements.

**§ -7 Compensation for employee participation in investigation, hearing, or inquiry.** This chapter 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 of this chapter.

**§ -8 Notices of employee protections and obligations.** An employer shall post notices and use other appropriate means to keep the employer's employees informed of their protections and obligations under this chapter.

**§ -9 Conflict with common law, precedence.** The rights created herein shall not be construed to limit the development of the common law nor to preempt the common law rights and remedies on the subject matter of discharges which are contrary to public policy. In the event of a conflict between the terms and provisions of this chapter and any other law on the subject the more beneficial provisions favoring the employee shall prevail."

**SECTION 2.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 3.** This Act shall take effect upon its approval.

(Approved June 24, 1987.)