

**ACT 166**

H.B. NO. 467

A Bill for an Act Relating to Whistleblowers' Protection.

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

SECTION 1. The legislature finds that public employees may possess information about improper activities such as waste, fraud, and misconduct occur-

ring in state and local government, but may not report the information because of fear of retaliation by their supervisors. Greater protection for public employees is necessary to encourage them to come forward with information that will help ensure the efficiency and integrity of state and local government.

The purpose of this Act is to provide additional protection to public employees who report violations of the law and other improper activities.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§78- Whistleblowers; notice.** (a) Upon receipt of any complaint made pursuant to section 378- , the department of labor and industrial relations shall inform the complainant of the complainant’s rights under the law.

(b) The department of labor and industrial relations shall prescribe the content and the posting of notices pertaining to the application of sections 378- and 396-8(e).”

SECTION 3. Chapter 378, Hawaii Revised Statutes, is amended by designating sections 378-61 to 378-69, as subpart A and inserting a title before section 378-61, to read as follows:

“A. General Provisions”

SECTION 4. Chapter 378, Hawaii Revised Statutes, is amended by adding a new subpart to part V to be appropriately designated and to read as follows:

“B. Public Employees

**§378- Protected disclosure by a public employee.** (a) In addition to any other protections under this part, a public employer shall not discharge, threaten, or otherwise discriminate against a public employee regarding the public employee’s compensation, terms, conditions, location, or privileges of employment because the public employee, or a person acting on behalf of the public employee, reports or is about to report to the public employer or a public body, verbally or in writing:

- (1) Any violation or suspected violation of a federal, state, or county law, rule, ordinance, or regulation; or
- (2) Any violation or suspected violation of a contract executed by the State, a political subdivision of the State, or the United States, unless the employee knows that the report is false.

(b) Every public employer shall post notices pertaining to the application of sections 378- and 396-8(e), as shall be prescribed by the department of labor and industrial relations, in conspicuous places in every workplace.”

SECTION 5. Section 378-61, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Public employee” means any employee of the State or any county, or the political subdivision and agencies of the State or any county, any employee under contract with the State or any county, any civil service employee, any probationary or provisional employee of the State or county, and any employee of any general contractor or subcontractor undertaking the execution of a contract with a governmental contracting agency, as defined in section 104-1.

“Public employer” means the State and any county, the political subdivisions and agencies of the State and any county, and any general contractor or subcontractor undertaking the execution of a contract with a governmental contracting agency, as defined in section 104-1, and includes any agent thereof.”

SECTION 6. Section 378-64, Hawaii Revised Statutes, is amended to read as follows:

**“[§378-64] Remedies ordered by court.** A court, in rendering a judgment in an action brought pursuant to this part, shall order, as the court considers appropriate, reinstatement of the employee[,] or public 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.”

SECTION 7. Section 378-65, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person or public employer who violates this part shall be fined not less than \$500 nor more than \$5,000 for each violation.”

SECTION 8. Section 378-66, Hawaii Revised Statutes, is amended to read as follows:

**“[§378-66] Collective bargaining and confidentiality rights, takes precedence.** (a) This [part] subpart 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 [part.] subpart. Where a collective bargaining agreement provides inferior rights and remedies to those provided in this [part.] subpart, the provisions of this [part] subpart shall supersede and take precedence over the rights, remedies, and procedures provided in collective bargaining agreements.”

SECTION 9. Section 378-67, Hawaii Revised Statutes, is amended to read as follows:

**“[§378-67] Compensation for employee participation in investigation, hearing, or inquiry.** This [part] subpart 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 378-62 of this [part.] subpart.”

SECTION 10. Section 378-68, Hawaii Revised Statutes, is amended to read as follows:

**“[§378-68] Notices of employee protections and obligations.** An employer shall post notices and use other appropriate means to keep the employ-

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er's employees informed of their protections and obligations under this ~~[part.]~~  
subpart."

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect upon its approval.

(Approved June 27, 2011.)

**Note**

1. Edited pursuant to HRS §23G-16.5.