

2018 -- S 2578

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LC004911
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- RHODE ISLAND LEGISLATIVE
EMPLOYEE WHISTLE BLOWER PROTECTION ACT

Introduced By: Senators Nesselbush, Jabour, Euer, P Fogarty, and Sheehan

Date Introduced: March 01, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 36 of the General Laws entitled "PUBLIC OFFICERS AND
2 EMPLOYEES" is hereby amended by adding thereto the following chapter:

3 CHAPTER 15.1

4 THE RHODE ISLAND LEGISLATIVE EMPLOYEE WHISTLEBLOWER PROTECTION

5 ACT

6 **36-15.1-1. Short title.**

7 This chapter shall be known and may be cited as "The Rhode Island Legislative
8 Employee Whistleblower Protection Act."

9 **36-15.1-2. Legislative findings.**

10 It is hereby found and declared that, in addition to existing retaliation protections under
11 federal and state law, it is necessary to establish a specific process for legislative employees who
12 report legal and ethical violations, so that they may do so without fear of retribution.

13 **36-15.1-3. Definitions.**

14 When used in this chapter, the following words and phrases are construed as follows:

15 (1) "Interfere" means to intimidate, threaten, coerce, or command, or attempt to
16 intimidate, threaten, coerce, or command a legislative employee who attempts to make a
17 protected disclosure.

18 (2) "Legislative employee" means an individual, other than a state legislator, who is, or

1 has been, employed by the state and assigned to conduct work with, on behalf of, at the direction
2 of, or in furtherance of legislative work to include work for an individual legislator, the house of
3 representatives or the senate. "Legislative employee" shall include volunteers, interns, and
4 applicants for state employment.

5 (3) "Legislator" means any elected member of the state house of representatives or of the
6 senate.

7 (4) "Protected disclosure" means a communication by a legislative employee that is made
8 in good faith alleging that a legislator or legislative employee has engaged in, or intends to
9 engage in, activity that may constitute a violation of federal or state law, including prohibition of
10 sexual harassment, or a violation of the code of ethics. Protected disclosure may be made to a
11 supervisor, any state or local law enforcement agency, or the state ethics commission.

12 (5) "Retaliate" means to take any action that would dissuade a reasonable individual from
13 making or supporting a protected disclosure, including issuing a reprisal, threatening, coercing, or
14 taking any similarly improper action against a legislative employee who makes a protected
15 disclosure.

16 (6) "Use of official authority or influence" means and includes promising to confer, or
17 conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing
18 others to take, or recommending, processing, or approving, any personnel action, including an
19 appointment, promotion, transfer, assignment, performance evaluation, suspension, or other
20 disciplinary action.

21 **36-15.1-4. Penalty for interfering with right to make disclosure.**

22 (a) A legislator or legislative employee shall not directly or indirectly use or attempt to
23 use that individual's official authority or influence for the purpose of interfering with the right of
24 a legislative employee to make a protected disclosure.

25 (b) An individual who violates this section is subject to a fine not to exceed ten thousand
26 dollars (\$10,000) and imprisonment for a period not to exceed two (2) years, or both.

27 (c) In addition to all other penalties, rights, or remedies provided by law, an individual or
28 entity that uses or attempts to use their official authority or influence for the purpose of
29 interfering with the right of a legislative employee to make a protected disclosure is liable in a
30 civil action for damages brought by a legislative employee.

31 (d) This section shall not be construed to authorize an individual to disclose information
32 the disclosure of which is prohibited by law.

33 **36-15.1-5. Penalty for retaliation.**

34 An individual who intentionally retaliates against a legislative employee for having made

1 a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and
2 imprisonment for a period not to exceed two (2) years, or both.

3 **36-15.1-6. Civil remedies.**

4 (a) In addition to all other penalties, rights, and remedies provided by law, an individual
5 or entity that intentionally retaliates against a legislative employee for having made a protected
6 disclosure is liable in a civil action for damages brought by a legislative employee.

7 (b)(1) In any civil action, once it has been demonstrated by a preponderance of the
8 evidence that an activity protected by this chapter was a contributing factor in the alleged
9 retaliation against a legislative employee, the burden of proof is on the offending party to
10 demonstrate by clear and convincing evidence that the alleged action would have occurred for
11 legitimate, independent reasons even if the legislative employee had not made a protected
12 disclosure.

13 (2) If liability is established under this chapter, the prevailing plaintiff is entitled to
14 recover reasonable attorneys' fees and costs.

15 (3) Punitive damages may be awarded by the court if the acts of the offending party are
16 proven to be in violation of § 28-5-29.1.

17 **36-15.1-7. Remedies not exclusive.**

18 This chapter does not limit the application of any other rights or remedies under federal
19 or state law, and any penalties imposed or damages awarded under this article are in addition to
20 those provided under any other federal or state law.

21 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- RHODE ISLAND LEGISLATIVE
EMPLOYEE WHISTLE BLOWER PROTECTION ACT

1 This act would create the Legislative Employee Whistleblower Protection Act which
2 would provide protections and civil remedies for legislative employees who report criminal or
3 ethical violations of legislators or legislative employees. Criminal penalties of up to a ten
4 thousand dollar (\$10,000) fine and two (2) years of imprisonment, or both, are provided for
5 violation of the legislative employee's right to make a disclosure or for retaliation.

6 This act would take effect upon passage.

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