

SENATE, No. 1710

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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.

45 e. "Retaliatory action" means the discharge, suspension or

**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 demotion of an employee, or other adverse employment action
2 taken against an employee in the terms and conditions of
3 employment.

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

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

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

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

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

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

46
47 2. Section 3 of 1986, c.105 (C.34:19-3) is amended read as
48 follows:

- 1 3. An employer shall not take any retaliatory action against an
2 employee because the employee does any of the following:
- 3 a. Discloses, or threatens to disclose to a supervisor or to a
4 public body an activity, policy or practice of the employer, or
5 another employer~~[,]~~ with whom there is a business relationship,
6 that the employee reasonably believes:
- 7 (1) is in violation of a law, or a rule or regulation promulgated
8 pursuant to law, including any violation involving deception of, or
9 misrepresentation to, any shareholder, investor, client, patient,
10 customer, employee, former employee, retiree or pensioner of the
11 employer or any governmental entity, or, in the case of an employee
12 who is a licensed or certified health care professional, reasonably
13 believes constitutes improper quality of patient care; ~~or~~
- 14 (2) is fraudulent or criminal, including any activity, policy or
15 practice of deception or misrepresentation which the employee
16 reasonably believes may defraud any shareholder, investor, client,
17 patient, customer, employee, former employee, retiree or pensioner
18 of the employer or any governmental entity;
- 19 (3) is a substantial waste of public funds by a governmental
20 entity; or
- 21 (4) is, if the employer is a governmental entity, an abuse of
22 authority or gross mismanagement.
- 23 b. Provides information to, or testifies before, any public body
24 conducting an investigation, hearing or inquiry into any violation of
25 law, or a rule or regulation promulgated pursuant to law by the
26 employer, or another employer~~[,]~~ with whom there is a business
27 relationship, including any violation involving deception of, or
28 misrepresentation to, any shareholder, investor, client, patient,
29 customer, employee, former employee, retiree or pensioner of the
30 employer or any governmental entity, provides information to, or
31 testifies before, any public body conducting an investigation,
32 hearing or inquiry into a substantial waste of public funds by any
33 employer or into gross mismanagement or an abuse of authority by
34 an employer that is a governmental entity, or, in the case of an
35 employee who is a licensed or certified health care professional,
36 provides information to, or testifies before, any public body
37 conducting an investigation, hearing or inquiry into the quality of
38 patient care; or
- 39 c. Objects to, or refuses to participate in any activity, policy or
40 practice which the employee reasonably believes:
- 41 (1) is in violation of a law, or a rule or regulation promulgated
42 pursuant to law, including any violation involving deception of, or
43 misrepresentation to, any shareholder, investor, client, patient,
44 customer, employee, former employee, retiree or pensioner of the
45 employer or any governmental entity, or, if the employee is a
46 licensed or certified health care professional, constitutes improper
47 quality of patient care;
- 48 (2) is fraudulent or criminal, including any activity, policy or
49 practice of deception or misrepresentation which the employee

1 reasonably believes may defraud any shareholder, investor, client,
2 patient, customer, employee, former employee, retiree or pensioner
3 of the employer or any governmental entity; **[or]**

4 (3) is incompatible with a clear mandate of public policy
5 concerning the public health, safety or welfare or protection of the
6 environment;

7 (4) is a substantial waste of public funds by a governmental
8 entity; or

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

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

12
13 3. This act shall take effect immediately.

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16 STATEMENT

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

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

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