

34:19-1

LEGISLATIVE HISTORY CHECKLIST

Conscientious Employee Protection Act  
(~~"Retaliatory Action by Employers Act"~~)

NJSA: 34:19-1

CHAPTER: 105

LAWS OF: 1986

Bill No: S1105

Sponsor(s): Dorsey

Date Introduced: Pre-filed

Committee: Assembly: Labor

Senate: Labor, Indurtry and Professions

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: June 16, 1986

Senate: March 3, 1986

Date of Approval: September 5, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

Mayer, Stephen S., "N.J.'s 'Whistleblower Act,'" 3-5-87 119 N.J.L.J. 353, 376, 377

See newspaper clipping-- attached  
"Safeguards enacted for whistleblower," 9-9-86 Star Ledger.

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SENATE, No. 1105

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator DORSEY

AN ACT to protect employees from retaliatory action by employers  
and supplementing Title 34 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may cited as the \***["Retaliatory**  
2 **Action by Employers Act"]**\* *“Conscientious Employee Protec-*  
3 *tion Act.”*\*

1 2. As used in this act:

2 a. “Employer” means any individual, partnership, association,  
3 corporation or any person or group of persons acting directly or  
4 indirectly on behalf of or in the interest of an employer with the  
5 employer’s consent and shall include all branches of State Govern-  
6 ment, or the several counties and municipalities thereof, or any  
7 other political subdivision of the State, or a school district, or any  
8 special district, or any authority, commission, or board or any  
9 other agency or instrumentality thereof.

10 b. “Employee” means any individual who performs services for  
11 and under the control and direction of an employer for wages or  
12 other remuneration.

13 c. “Public body” means\*:\*

14 (1) the United States Congress, any State legislature, or any  
15 popularly-elected local governmental body, or any member or em-  
16 ployee thereof;

17 (2) any federal, State, or local judiciary, or any member or  
18 employee thereof, or any grand or petit jury;

19 (3) any federal, State, or local regulatory, administrative, or  
20 public agency or authority, or instrumentality thereof; **\*[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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted February 24, 1986.

\*\*—Assembly committee amendments adopted May 22, 1986.

21 (4) any federal, State, or local law enforcement agency, prose-  
22 cutorial office, or police or peace officer; **\*[or]\***

23 (5) any federal, State or local department of an executive branch  
24 of government; or

25 (6) any division, board, bureau, office, committee or commission  
26 of any of the public bodies described in the above paragraphs of  
27 this subsection.

28 d. "Supervisor" means any individual with an employer's orga-  
29 nization who has the authority to direct and control the work  
30 performance of the affected employee **\*\*[; or]\*\*** **\*\*,\*\*** who has  
31 **\*\*[managerial]\*\*** authority to take corrective action regarding the  
32 violation of the law, rule or regulation of which the employee  
33 complains **\*\***, or who has been designated by the employer on the  
34 notice required under section 7 of this act. **\*\***

35 e. "Retaliatory action" means the discharge, suspension or de-  
36 motion of an employee, or other adverse employment action taken  
37 against an employee in the terms and conditions of employment.

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 public  
4 body an activity, policy or practice of the employer that the em-  
5 ployee reasonably believes is in violation of a law, or a rule or  
6 regulation promulgated pursuant to law;

7 b. Provides information to, or testifies before, any public body  
8 conducting an investigation, hearing or inquiry into any violation  
9 of law, or a rule or regulation promulgated pursuant to law by  
10 the employer; or

11 c. Objects to, or refuses to participate in any activity, policy or  
12 practice which the employee reasonably believes **\*:\***

13 (1) is in violation of a law, or a rule or regulation promulgated  
14 pursuant to law;

15 (2) is fraudulent or criminal; **\*or\***

16 **\*[(3)]** will significantly compromise the recognized tenets and  
17 ethics of the employee's profession or occupation; or **]\***

18 **\*[(4)]\*** **\*(3)\*** is incompatible with a clear mandate of public  
19 policy concerning the public health, safety or welfare.

1 4. The protection against retaliatory action provided by this act  
2 pertaining to disclosure to a public body shall not apply to an  
3 employee who makes a disclosure to a public body unless the em-  
4 ployee has brought the activity, policy or practice in violation of a  
5 law, or a rule or regulation promulgated pursuant to law to the  
6 attention of a supervisor of the employee **\*by written notice\*** and  
7 has afforded the employer a reasonable opportunity to correct the

8 activity, policy or practice. Disclosure shall not be required where  
 9 the employee is reasonably certain that the activity, policy or prac-  
 10 tice is known to one or more supervisors of the employer or where  
 11 the employee reasonably fears physical harm as a result of the dis-  
 12 closure *\*\*provided, however, that the situation is emergency in*  
 13 *nature\*\**.

1 5. Upon a violation of any of the provisions of this act, an ag-  
 2 grieved employee or former employee may institute a civil action  
 3 in a court of competent jurisdiction, within one year, for relief  
 4 which may include, and which the court may order, the following:  
 5 a. An injunction to restrain continued violation of this act;  
 6 b. The reinstatement of the employee to the same position held  
 7 before the retaliatory action, or to an equivalent position;  
 8 c. The reinstatement of full fringe benefits and seniority rights;  
 9 d. The compensation for lost wages, benefits and other remunera-  
 10 tion;  
 11 e. The payment by the employer of reasonable costs, and at-  
 12 torney's fees;  
 13 f. Punitive damages; or  
 14 g. An assessment of a civil fine of not more than **\*[\$20,000.00]\***  
 15 **\*\$1,000.00\*** for **\*[each]\*** *\*the first\** violation of the act *\*and not*  
 16 *more than \$5,000.00 for each subsequent violation,\** which shall be  
 17 paid to the State Treasurer for deposit in the General Fund.

1 6. A court, upon notice of motion in accordance with the Rules  
 2 Governing the Courts of the State of New Jersey, may also order  
 3 that reasonable **\*\*[attorney's]\*\*** *\*\*attorneys'\*\*\** fees and court  
 4 costs be awarded to an employer if the court determines that an  
 5 action brought by an employee under this act was without basis  
 6 in law or in fact. However, an employee shall not be assessed  
 7 **\*\*[attorney's]\*\*** *\*\*attorneys'\*\*\** fees under this section if, after  
 8 exercising reasonable and diligent efforts after filing a suit, the  
 9 employee files a voluntary dismissal concerning the employer,  
 10 within a reasonable time after determining that the employer  
 11 would not be found to be liable for damages.

1 7. An employer shall conspicuously display notices of its em-  
 2 ployees' protections and obligations under this act, and use other  
 3 appropriate means to keep its employees so informed. *\*\*Each*  
 4 *notice posted pursuant to this section shall include the name of*  
 5 *the person or persons the employer has designated to receive*  
 6 *written notifications pursuant to section 4 of this act.\*\**

1 8. Nothing in this act shall be deemed to diminish the rights,  
 2 privileges, or remedies of any employee under any other federal  
 3 or State law or regulation or under any collective bargaining agree-

4 ment or employment contract; except that the institution of an  
5 action in accordance with this act shall be deemed a waiver of the  
6 rights and remedies available under any other contract, collective  
7 bargaining agreement, State law, rule or regulation or under the  
8 common law.

1 9. This act shall take effect immediately.

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LABOR RELATIONS AND EMPLOYMENT  
Designated the "Conscientious Employee Protection Act".

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*Sponsor Statement  
original bill*

*51105 (1986)*

STATEMENT

This bill prohibits an employer from discharging, suspending or demoting a public or private employee who:

a. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes violates a law or rule or regulation promulgated pursuant to law;

b. Provides information to, or testifies before, any public body conducting an investigation or hearing into any violation by the employer of a law or rule or regulation thereof; or

c. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes is in violation of a law or rule or regulation thereof; is fraudulent or criminal; or is incompatible with a clear mandate of public policy concerning the public health, safety or welfare.

Before an employee discloses to a public body an activity, policy or practice of the employer that is in violation of a law or rule or regulation thereof, he must bring it to the attention of a supervisor and afford the employer a reasonable opportunity to correct the activity, policy or practice. If he does not do so, he will not be protected by this act from a retaliatory action. However, he is not required to inform the employer if he is reasonably certain that the activity, policy or practice is known to one or more supervisors or if he reasonably fears physical harm as a result of the disclosure.

If an employer violates the provisions of this act, the employee may bring a civil suit, without one year, for relief which may include:

- a. An injunction to restrain continued violation of this act;
- b. Reinstatement of the employee to the same or equivalent position;
- c. Reinstatement of full fringe benefits and seniority rights;
- d. Payment of lost wages and benefits;
- e. Payment of reasonable costs and attorney's fees;
- f. Punitive damages; or
- g. Civil fine of not more than \$1,000.00 for a first offense and not more than \$5,000.00 for each subsequent offense payable to the State.

With certain exceptions, a court may order reasonable attorney's fees and court costs to an employer if an employee brings an action under this act which has no basis in law or in fact.

An employer must conspicuously display notices of its employees' protections and obligations under this act.

SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO

**SENATE, No. 1105**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 24, 1986

This bill, as amended, prohibits an employer from discharging, suspending or demoting a public or private employee who:

a. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes violates a law or rule or regulation promulgated pursuant to law;

b. Provides information to, or testifies before, any public body conducting an investigation or hearing into any violation by the employer of a law or rule or regulation thereof; or

c. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes is in violation of a law or rule or regulation thereof; is fraudulent or criminal; or is incompatible with a clear mandate of public policy concerning the public health, safety or welfare.

Before an employee discloses to a public body an activity, policy or practice of the employer that is in violation of a law or rule or regulation thereof, he must notify a supervisor of it in writing and afford the employer a reasonable opportunity to correct the activity, policy or practice. If he does not do so, he will not be protected by this act from a retaliatory action. However, he is not required to inform the employer if he is reasonably certain that the activity, policy or practice is known to one or more supervisors or if he reasonably fears physical harm as a result of the disclosure.

If an employer violates the provisions of this act, the employee may bring a civil suit, within one year, for relief which may include:

- a. An injunction to restrain continued violation of this act;
- b. Reinstatement of the employee to the same or equivalent position;
- c. Reinstatement of full fringe benefits and seniority rights;
- d. Payment of lost wages and benefits;
- e. Payment of reasonable costs and attorney's fees;
- f. Punitive damages; or
- g. Civil fine of not more than \$1,000.00 for a first offense and not more than \$5,000.00 for each subsequent offense payable to the State.

## Senate Statement

2

With certain exceptions, a court may order reasonable attorney's fees and court costs to an employer if an employee brings an action under this act which has no basis in law or in fact.

An employer must conspicuously display notices of its employees' protection and obligations under this act.

This bill was pre-filed for introduction in the 1986 session pending technical review. As reported, the bill includes the changes required by technical review.

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ASSEMBLY LABOR COMMITTEE

STATEMENT TO

**SENATE, No. 1105**

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with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 22, 1986

The Assembly Labor Committee reports favorably, with committee amendments, Senate Bill No. 1105 (OCR).

As amended by the committee, this bill makes it unlawful for an employer, whether public or private, to discharge, suspend, or demote an employee when:

- a. The employee discloses, or threatens to disclose, to a supervisor or a public body, a policy, activity, or practice of the employer that the employee reasonably believes is unlawful;
- b. The employee provides information to, or testifies before, a public body conducting an investigation or inquiring into the employer's violations of a law, rule, or regulation; or
- c. The employee objects to, or refuses to participate in, any activity, policy, or practice which the employee reasonably believes is unlawful, fraudulent or criminal, or incompatible with a clear mandate of public policy concerning public health, safety, or welfare.

If an employer violates the provisions of this bill, the employee could sue the employer for damages. The suit must be initiated within one year and may include any of the following forms of relief:

- a. An injunction to restrain continued violation of this act;
- b. Reinstatement of the employee to the same or an equivalent position;
- c. Reinstatement of full fringe benefits and seniority rights;
- d. Payment of lost wages and benefits;
- e. Payment of reasonable costs and attorneys' fees;
- f. Punitive damages;
- g. Civil fines, payable to the State, of not more than \$1,000.00 for a first offense and not more than \$5,000.00 for each subsequent offense. With certain exceptions, a court could order an employee to pay reasonable attorney's fees and court costs, if the employee brings an action under the provisions of this bill which has no basis in law or in fact.

## Assembly Statement

2

To be covered by the protections of this bill, an employee choosing to disclose information about an unlawful activity, policy, or practice being carried out by the employer, would be required to notify, in writing, a supervisor or a designated representative of the employer about the unlawful conduct or policy and must afford the employer a reasonable opportunity to correct it. If the employee fails to provide written notification, he would not be protected under the provisions of this bill from retaliatory action by the employer. However, written notification from the employee would not be required in an emergency situation, when the employee is reasonably certain that the unlawful conduct is known to one or more supervisors or when the employee fears physical harm as a result of the disclosure.

Finally, employers are required under this bill to display notices of the employee's protections and obligations under this act. The notice must contain the name of the person or persons designated by the employer to receive written notifications from employees about their intention to disclose an unlawful activity, policy or practice.

As amended by the committee, the bill requires employers to designate a person or persons to receive notifications from employees and to include the name of the person or persons on the notice that must be posted under the bill. The committee also amended the definition of "supervisor" to include any individual with authority to take corrective action regarding the activity, practice, or policy about which the employee complains. Prior to this amendment, the bill's definition of "supervisor" included only individuals with "managerial authority." Finally, the committee amended the bill's requirements for written notification to the employer. The committee amendments would relieve the employee from written notification requirements only in emergency situations when the employee is reasonably certain that the activity, policy, or the practice is known to one or more supervisors or when the employee reasonably fears harm as a result of the disclosure.

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# OFFICE OF THE GOVERNOR

## NEWS RELEASE

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Contact: CARL GOLDEN  
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: MON., SEPT. 8, 1986

Governor Thomas H. Kean yesterday signed legislation to prohibit retaliatory action by an employer against an employee who discloses illegal activities on the part of the employer.

The so-called "whistle blower bill," S-1105, was sponsored by Senator John Dorsey, R-Morris.

The legislation, effective immediately, prohibits the firing, suspension or demotion of an employee who discloses wrongdoing or illegal activity; who testifies before a public body concerning illegal activity; or who refuses to participate in an action which he or she believes to be in violation of the law.

The legislation provides that the protection will not be afforded unless the employee gives written notice to a supervisor of the alleged illegal activity and has given the employer a reasonable amount of time to correct the situation.

An employee who is discharged, suspended or demoted may seek relief through the courts within one year of the violation.

"It is most unfortunate --- but, nonetheless, true --- that conscientious employees have been subjected to firing, demotion or suspension for calling attention to illegal activity on the part of his or her employer," Kean said.

S-1105 Signed  
Page 2  
September 8, 1986

"It is just as unfortunate that illegal activities have not been brought to light because of the deep-seated fear on the part of an employee that his or her livelihood will be taken away without recourse," the Governor said.

The legislation requires that employers display notices in the workplace of an employees' rights under the law, including the names of persons to whom written notices of violations should be directed.

# # # #