



HOUSE OF REPRESENTATIVES

What increased penalties does 4067 contain?

HB 4067 increases penalties for public and non-profit employers who try to silence employees from talking about violations of local, state, or federal law; negligence; or gross mismanagement. It is already an unlawful employment practice, but HB 4067 would add several more severe punishments:

- It gives the state the opportunity to pursue criminal charges and would classify this crime as a Class A misdemeanor, which can include prison time.
- In addition to compensatory measures already available, it adds punitive damages up to \$10,000 in civil suits.
- And it gives the whistleblower the right to a jury trial.

Who do these rules apply to?

Public employers and employees, contractors with the state and their employees, non-profit employees and board members

What protections are provided?

In addition to the increased penalties for employers who try to coerce or retaliate against whistleblowers, HB 4067 introduces two enhanced protections for employees:

- It requires all employers under this bill to provide written whistleblower policies to their employees outlining their rights, protections, and privileges under this law.
- HB 4067 also provides an affirmative defense for whistleblowers who may turn over private documents not subject to disclosure, if the whistleblower has reason to believe laws have been broken or provide evidence of mismanagement. The affirmative defense will only apply if the materials are turned over to one of the indicated sources, which include legal counsel, law enforcement, state regulatory agencies, internal management, and legislators. The intent is to provide appropriate repositories for this information, rather than go to the media which should be an act of last resort.

What is affirmative defense?

- A defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability, even if it is proven that the defendant committed the alleged acts. (Cornell Law, Wex Legal Dictionary)

What will the policies look like in practice?

- The requirements and form of the procedures were broadly defined in the bill to give employers – especially non-profits – more flexibility in compliance. This could be as simple as an email to every employee. However, the impact is significant. It will ensure all employees understand how to report abuse, assure them that they will be protected from retaliation from people in power, and encourage transparency.

Other examples of these protections?

- Many of these reforms were modeled after the federal Sarbanes-Oxley.

Amendments?

- Due to concerns over potential conflicts with attorney client privilege, we introduced amendments to remove or modify subsections 3 and 4 from section 1.
- Also, we are adding attorneys and internal management to the list of disclosable sources.