

STAFF MEASURE SUMMARY

CARRIER: Sen. Gelser

Senate Committee On Judiciary

Fiscal: Has minimal fiscal impact**Revenue:** No Revenue Impact**Action Date:** 02/23/16**Action:** Do Pass With Amendments To The A-Eng Bill. (Printed B-Eng.)**Meeting Dates:** 02/22, 02/23**Vote:**

Yeas: 5 - Gelser, Kruse, Prozanski, Rosenbaum, Thatcher

Prepared By: Channa Newell, Counsel**WHAT THE MEASURE DOES:**

Provides affirmative defense to employee who discloses, in good faith with objectively reasonable belief, information on violation of state, federal, or local law, rule, or regulation so long as disclosure is to state regulatory agency, law enforcement, a manager at same employer, or licensed attorney in furtherance of obtaining legal advice on alleged violation. Requires information disclosed to be accessed lawfully for protections. Requires allegations against coworkers or supervisors to be related to course and scope of employment. Specifies measure applies only to nonprofits that receive public funds, including grants. Removes defense in cases in which information is stated in commercial exclusive negotiation agreement with public or nonprofit employer, so long as not related to employment. Removes defense in cases in which information is stated in commercial nondisclosure agreement with public or nonprofit employer, so long as not related to employment. Requires public and nonprofit employers establish and implement policy on employee rights and requires policy be delivered to each employee. Prohibits attorney who discloses information relating to representation of a client from using defense and applies attorney rules of professional conduct to disclosures. Subject to said rules, allows disclosure by public employee who is an attorney to Attorney General if reporting violation by employee's public or nonprofit employer. Clarifies attorney-client privilege extends to information disclosed, if applicable. Requires disclosure of certain protected information, such as the federal Health Insurance Portability and Accountability Act (HIPAA) protected information, only in accordance with federal law. Specifies that affirmative defense does not apply if another party discloses at employee's direction. Clarifies measure includes nonprofit employees and members of board on nonprofit as employee for purposes of measure. Specifies knowledge, as used in act, means actual knowledge. Makes violation of measure Class A misdemeanor.

ISSUES DISCUSSED:

- Concerns with disclosure of sensitive commercial information
- Narrow scope of measure as applies to small nonprofits
- Importance of encouraging workers who observe abuse or violations to report appropriately
- Consensus amendments

EFFECT OF COMMITTEE AMENDMENT:

Clarifies effect on attorney client privilege in regards to disclosure. Removes allowance of damages in amount not exceeding \$10,000, but specifies measure does not limit other remedies. Removes defense if reporting to member of legislative assembly. Requires disclosure of certain protected information, such as HIPAA protected information, only in accordance with federal law. Specifies that affirmative defense does not apply if another party discloses at employee's direction. Removes defense in cases in which information is stated in commercial exclusive negotiation agreement with public or nonprofit employer, so long as not related to employment. Removes defense in cases in which information is stated in commercial nondisclosure agreement with public or nonprofit employer, so long as not related to employment. Applies measure to nonprofits that receive public funds. Clarifies relationship of nonprofit board member within measure.

BACKGROUND:

Oregon's whistleblower statute, ORS 659A.199, makes an unlawful employment practice for an employer to "discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation." The statutes continue to enumerate prohibited conduct by employers, including prohibiting employees from engaging with Legislators or staff or threatening disciplinary action for disclosure of information that the employee reasonably believes is evidence of a violation of federal or state law.

House Bill 4067 B expands the whistleblower statutes to include an affirmative defense to criminal or civil charges brought about as a result of an employee's good faith and objectively reasonable disclosure of information that the employee believes shows a violation of state, federal, or local law, regulation, or rule.