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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 2. LEGISLATIVE DEPARTMENT [8902 - 10606] (Division 2 enacted by Stats. 1943, Ch. 134.)

PART 1. LEGISLATURE [8902 - 9937] (Part 1 enacted by Stats. 1943, Ch. 134.)

CHAPTER 1.5. General [9000 - 9149.41] (Heading of Chapter 1.5 renumbered from Chapter 1 by Stats. 1966, 1st Ex. Sess., Ch. 163.)

ARTICLE 11. Legislative Employee Whistleblower Protection Act [9149.30 - 9149.36] (Article 11 added by Stats. 2018, Ch. 2, Sec. 1.)

9149.30. This article shall be known and may be cited as the Legislative Employee Whistleblower Protection Act.

(Added by Stats. 2018, Ch. 2, Sec. 1. (AB 403) Effective February 5, 2018.)

9149.31. The Legislature finds and declares that, in addition to existing retaliation protections under Section 1102.5 of the Labor Code and under the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), it is necessary to establish a specific process for legislative employees who report legal and ethical violations, so that they may do so without fear of retribution.

(Added by Stats. 2018, Ch. 2, Sec. 1. (AB 403) Effective February 5, 2018.)

9149.32. For the purposes of this article, the following terms have the following meanings:

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

(b) "Legislative employee" means an individual, other than a Member of either house of the Legislature, who is, or has been, employed by either house of the Legislature. "Legislative employee" includes volunteers, interns, fellows, and applicants.

(c) "Protected disclosure" means a communication that is both of the following:

(1) Made by a legislative employee in good faith alleging that any of the following engaged in, or will engage in, activity that may constitute a violation of any law, including sexual harassment, or of a legislative code of conduct:

(A) A Member of the Legislature.

(B) A legislative employee.

(C) A person who is neither a Member of the Legislature nor a legislative employee whose behavior affects a Member or legislative employee who is engaged in a work-related activity.

(2) Protected under the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or made to any of the following entities:

(A) The Senate Committee on Rules, or its publicly identified designee.

(B) The Assembly Committee on Rules, or its publicly identified designee.

(C) The Joint Committee on Rules, or its publicly identified designee.

(D) A state or local law enforcement agency.

(E) A state agency authorized to investigate potential violations of state law.

(F) An individual with authority over the legislative employee, or another legislative employee who has authority to investigate, discover, or correct the violation or noncompliance.

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

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

(Amended by Stats. 2018, Ch. 952, Sec. 1. (SB 419) Effective September 30, 2018.)

9149.33. (a) A Member of the Legislature or legislative employee shall not directly or indirectly use or attempt to use that individual's official authority or influence for the purpose of interfering with the right of a legislative employee to make a protected disclosure.

(b) An individual who violates this section is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in a county jail for a period not to exceed one year.

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

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

(Added by Stats. 2018, Ch. 2, Sec. 1. (AB 403) Effective February 5, 2018.)

9149.34. An individual who intentionally retaliates against a legislative employee for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in a county jail for a period not to exceed one year.

(Added by Stats. 2018, Ch. 2, Sec. 1. (AB 403) Effective February 5, 2018.)

9149.35. (a) In addition to all other penalties, rights, and remedies provided by law, an individual or entity that intentionally retaliates against a legislative employee for having made a protected disclosure is liable in a civil action for damages brought by a legislative employee.

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

(2) If liability is established under paragraph (1), the prevailing plaintiff is entitled to recover reasonable attorney's fees and costs.

(3) Punitive damages may be awarded by the court if the acts of the offending party are proven to be fraudulent, oppressive, or malicious.

(Added by Stats. 2018, Ch. 2, Sec. 1. (AB 403) Effective February 5, 2018.)

9149.36. (a) This article does not limit the application of any other rights or remedies under federal or state law, and any penalties imposed or damages awarded under this article are in addition to those provided under any other federal or state law, including, but not limited to, Section 1102.5 of the Labor Code and the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code).

(b) This article does not limit the authority conferred upon the Attorney General, any state or federal law enforcement agency, or any other commission, department, or agency authorized to investigate the Legislature.

(Added by Stats. 2018, Ch. 2, Sec. 1. (AB 403) Effective February 5, 2018.)