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## AB-403 Legislature: Legislative Employee Whistleblower Protection Act. (2017-2018)

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### Assembly Bill No. 403

#### CHAPTER 2

An act to add Article 11 (commencing with Section 9149.30) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, relating to the Legislature, and declaring the urgency thereof, to take effect immediately.

[ Approved by Governor February 05, 2018. Filed with Secretary of State February 05, 2018. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 403, Melendez. Legislature: Legislative Employee Whistleblower Protection Act.

Existing law generally protects employees who disclose illegal or improper workplace activities by prohibiting interference with, and retaliation for, making such disclosures. Existing law provides procedures for a person to file a complaint alleging violations of legislative ethics. Existing law also authorizes each house of the Legislature to adopt rules for its proceedings and to select committees necessary for the conduct of its business.

This bill would impose criminal and civil liability on a Member of the Legislature or legislative employee, as defined, who interferes with, or retaliates against, a legislative employee's exercise of the right to make a protected disclosure, which is defined as a good faith allegation made by a legislative employee to specified entities that a Member of the Legislature or a legislative employee has engaged in, or will engage in, activity that may constitute a violation of law, including sexual harassment, or a violation of a legislative standard of conduct. The bill would also impose civil liability on an entity that interferes with, or retaliates against, a legislative employee's exercise of the right to make a protected disclosure, as specified.

By creating new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

#### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Article 11 (commencing with Section 9149.30) is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, to read:

**Article 11. Legislative Employee Whistleblower Protection Act**

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

**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.

**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 by a legislative employee that is made in good faith alleging that a Member of the Legislature or legislative employee 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 protected disclosure is a disclosure that is 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:

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

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

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

(4) A state or local law enforcement agency.

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

(6) 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.

**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.

**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.

**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.

**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.

**SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

**SEC. 3.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect victims of sexual harassment and prevent further misconduct, it is necessary for this act to take effect immediately.