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HOUSE BILL 950

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MAX COLL

AN ACT

RELATING TO EMPLOYEES; ENACTING THE WHISTLEBLOWERS' PROTECTION ACT; PROVIDING PROTECTION TO EMPLOYEES WHO REPORT A VIOLATION OR SUSPECTED VIOLATION OF LAW OR CARRY OUT THEIR DUTIES UNDER LAW; PRESCRIBING REMEDIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Whistleblowers' Protection Act".

Section 2. PURPOSE OF ACT. -- The purpose of the Whistleblowers' Protection Act is to encourage employees to report violations of law and to carry out their duties and assignments pursuant to law and to protect employees who report violations or suspected violations of law or who carry out their duties or assignments according to applicable law from retaliatory actions by employers.

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1 Section 3. DEFINITIONS. --As used in the Whistleblowers'
2 Protection Act:

3 A. "employee" means a person who performs a service
4 for wages or other remuneration under a contract of hire,
5 written or oral, express or implied, and includes a public
6 employee;

7 B. "employer" means a person who has one or more
8 employees and includes an agent of an employer and a public
9 employer; and

10 C. "suspected violation" means what would appear to
11 a reasonable person to constitute sufficient grounds and good
12 reason to believe that under the circumstances there has been a
13 violation of law, regulation or rule.

14 Section 4. PROTECTION FROM REPORTING VIOLATIONS OF
15 LAW. --An employer shall not discharge, discipline, threaten or
16 otherwise discriminate against an employee regarding the
17 employee's compensation, terms, conditions, location or
18 privileges of employment because the employee or a person acting
19 on behalf of the employee reports verbally or in writing a
20 violation or suspected violation of law, rule or regulation to a
21 public body or to reporters of or investigators for the news
22 media or who carries out the duties or assignments of his
23 position according to applicable law, rule or regulation. This
24 provision shall not apply if the employee knew or reasonably
25 should have known that the report was false.

1 Section 5. COMPLAINT PROCEDURE-- CIVIL ACTION. --

2 A. An employee who believes that he has been
3 discharged, disciplined, threatened or in any other way
4 discriminated against because he reported a violation or
5 suspected violation of law, rule or regulation or for carrying
6 out the duties or assignments of his position according to
7 applicable law, rule or regulation may file a complaint with the
8 human rights commission within thirty days of the alleged
9 discrimination.

10 B. Upon receipt of the complaint, the human rights
11 division of the labor department has thirty days to investigate
12 the complaint and determine if the employer discriminated
13 against the employee in violation of the Whistleblowers'
14 Protection Act. The commission has five working days to make
15 its determination based on the investigation.

16 C. If the human rights commission finds in favor of
17 the complainant, it shall, as appropriate, order the employer
18 to:

- 19 (1) cease and desist from any discriminatory
20 practice against the employee;
21 (2) restore the employee to his former duties;
22 and
23 (3) pay lost wages.

24 D. Any person aggrieved by an order of the
25 commission may obtain a trial de novo in the district court of

1 the county where the discriminatory practice occurred or where
2 the respondent does business by filing a notice of appeal within
3 thirty days from the date of service of the commission's order.
4 A copy of the notice of appeal shall be served personally or by
5 certified mail, return receipt requested, at their last known
6 address on all parties who appeared before the commission and
7 shall also be served at the human rights division office in
8 Santa Fe. No order of the commission shall be superseded or
9 stayed during the appeal unless the district court so directs
10 after notice to the commission and a hearing.

11 E. If testimony at the hearing was transcribed, the
12 human rights division shall, upon receipt of the notice of
13 appeal, file so much of the transcript of the record as the
14 parties requesting the transcript designate as necessary for the
15 appeal with the district court.

16 F. Upon appeal, either party may request a jury.
17 The jurisdiction of the district court is exclusive and its
18 judgment is final, subject to further appeal to the supreme
19 court.

20 G. A court, in rendering a judgment in an action
21 brought pursuant to the Whistleblowers' Protection Act, may
22 order reinstatement of the employee, the payment of back wages,
23 full reinstatement of fringe benefits and seniority rights,
24 removal of discipline, relocation, actual damages or any other
25 appropriate remedy.

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H. In any action or proceeding under this section if the complainant prevails, the court shall allow actual damages and reasonable attorney fees, and in its discretion may allow punitive damages, and the state shall be liable the same as a private person.

Section 6. EMERGENCY. --It is necessary for the public peace, health and safety that this act take effect immediately.

State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 5, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 950

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Thomas P. Foy, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 1 Against

Yes: 9

No: Alwin

Excused: Carpenter, Larranaga, Rios

Absent: None

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