

AMENDED IN ASSEMBLY MARCH 19, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 289

Introduced by Assembly Member Melendez

February 11, 2015

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 289, as amended, Melendez. Legislature: Legislative Employee Whistleblower Protection Act.

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 prohibit interference with the right of legislative employees, as defined, to make protected disclosures of ethics violations and would prohibit retaliation against legislative employees who have made protected disclosures. This bill would establish a procedure for legislative employees to report violations of the bill to the Legislature. The bill would also impose civil and criminal liability on a person who interferes with a legislative employee's right to make a protected disclosure or who engages in retaliatory acts, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

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

4
 5 Article 11. Legislative Employee Whistleblower Protection Act
 6

7 9149.30. This article shall be known and may be cited as the
 8 Legislative Employee Whistleblower Protection Act.

9 9149.31. The Legislature finds and declares that legislative
 10 employees should be free to report ethical violations without fear
 11 of retribution.

12 9149.32. For the purposes of this article, the following terms
 13 have the following meanings:

14 (a) “Legislative employee” means an individual, other than a
 15 Member of either house of the Legislature, who is currently
 16 employed by either house of the Legislature.

17 (b) “Protected disclosure” means the filing of a complaint
 18 ~~alleging a violation of Article 2 of Chapter 1 of this part or of any~~
 19 *with any of the following:*

20 (1) *The Joint Legislative Ethics Committee pursuant to Section*
 21 *8944, alleging a violation by a member of the Legislature.*

22 (2) *The Senate Committee on Legislative Ethics, alleging that*
 23 *a Member, officer, or employee of the Senate violated any standard*
 24 *of conduct, as defined by the standing rules of either house of the*
 25 ~~*Legislature:*~~ *the Senate.*

26 (3) *The Assembly Legislative Ethics Committee, alleging that*
 27 *a Member of the Assembly violated any standard of conduct, as*
 28 *defined by the standing rules of the Assembly.*

29 (4) *The Assembly Rules Committee, alleging that an employee*
 30 *of the Assembly violated Article 2 of Chapter 1 of this part.*

31 (5) *An ethics ombudsperson designated by either house of the*
 32 *Legislature to receive information about potential ethical*
 33 *violations.*

1 (c) “Use of official authority or influence” includes promising
2 to confer, or conferring, any benefit; effecting, or threatening to
3 effect, any reprisal; or taking, or directing others to take, or
4 recommending, processing, or approving, any personnel action,
5 including; appointment, promotion, transfer, assignment,
6 performance evaluation, suspension, or other disciplinary action.

7 9149.33. (a) A Member of the Legislature or legislative
8 employee shall not directly or indirectly use or attempt to use that
9 person’s official authority or influence ~~for the purpose of~~
10 ~~intimidating, threatening, coercing, commanding, or attempting~~
11 ~~to intimidate, threaten, coerce, or command, or attempt to~~
12 ~~intimidate, threaten, coerce, or command,~~ a legislative employee
13 for the purpose of interfering with the right of the legislative
14 employee to make a protected disclosure.

15 (b) Except to the extent that a Member of the Legislature is
16 immune from liability under the doctrine of legislative immunity,
17 a person who violates this section is subject to a fine not to exceed
18 ten thousand dollars (\$10,000) and imprisonment in a county jail
19 for a period not to exceed one year.

20 (c) In addition to all other penalties provided by law, except to
21 the extent that a Member of the Legislature is immune from
22 liability under the doctrine of legislative immunity, a person who
23 violates this section ~~shall be~~ *is* liable in a civil action for damages
24 brought by a legislative employee.

25 (d) ~~Nothing in this~~ *This* section shall *not* be construed to
26 authorize an individual to disclose information otherwise prohibited
27 by or under law.

28 (e) This section is not intended to prevent a supervisor, manager,
29 or other officer of the Legislature from taking, directing others to
30 take, recommending, or approving any personnel action or from
31 taking or failing to take a personnel action with respect to any
32 legislative employee if the supervisor, manager, or other officer
33 reasonably believes any action or inaction is justified on the basis
34 of evidence separate ~~and apart~~ from the fact that the person has
35 made a protected disclosure.

36 9149.34. A legislative employee may file a written complaint
37 ~~with either his or her supervisor or manager, or with any other~~
38 ~~officer designated by the~~ house of the Legislature ~~pursuant to its~~
39 ~~rules by which he or she is employed,~~ alleging actual or attempted
40 acts of reprisal, retaliation, threats, coercion, or similar improper

1 acts prohibited by Section 9149.33 *for having made a protected*
2 *disclosure*. The complaint, together with a sworn statement under
3 penalty of perjury that the contents of the complaint are true, or
4 are believed by the affiant to be true, shall be filed within one year
5 of the most recent improper act complained about.

6 9149.35. Except to the extent that a Member of the Legislature
7 is immune from liability under the doctrine of legislative immunity,
8 a person who intentionally engages in acts of reprisal, retaliation,
9 threats, coercion, or similar acts against a legislative employee for
10 having made a protected disclosure is subject to a fine not to exceed
11 ten thousand dollars (\$10,000) and imprisonment in a county jail
12 for a period not to exceed one year.

13 9149.36. (a) In addition to all other penalties provided by law,
14 except to the extent that a Member of the Legislature is immune
15 from liability under the doctrine of legislative immunity, a person
16 who intentionally engages in acts of reprisal, retaliation, threats,
17 coercion, or similar acts against a legislative employee for having
18 made a protected disclosure ~~shall be~~ *is* liable in a civil action for
19 damages brought by a legislative employee.

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

28 (2) Punitive damages may be awarded by the court if the acts
29 of the offending party are proven to be malicious. If liability is
30 established, the injured party ~~shall~~ *is* also ~~be~~ entitled to reasonable
31 attorney's fees as provided by law.

32 (c) A legislative employee is not required to file a complaint
33 pursuant to Section 9149.34 before bringing an action for civil
34 damages.

35 (d) This section is not intended to prevent a supervisor, manager,
36 or other officer of the Legislature from taking, directing others to
37 take, recommending, or approving any personnel action or from
38 taking or failing to take a personnel action with respect to any
39 legislative employee if the supervisor, manager, or other officer
40 reasonably believes any action or inaction is justified on the basis

1 of evidence separate and apart from the fact that the person has
2 made a protected disclosure.

3 (e) For purposes of this section, “legislative employee” ~~shall~~
4 ~~include~~ *includes* a former employee of the Legislature.

5 9149.37. This article does not diminish the rights, privileges,
6 or remedies of a legislative employee under any other federal or
7 state law.

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

O