

FINAL BILL REPORT

SSB 5672

C 283 L 99

Synopsis as Enacted

Brief Description: Retaliating against a whistleblower.

Sponsors: Senate Committee on State & Local Government (originally sponsored by Senators Kline, Costa, Prentice, Fraser, Fairley, Shin, Kohl-Welles, Haugen, Hargrove and McAuliffe).

Senate Committee on State & Local Government
House Committee on State Government

Background: Whistleblowers are state employees who in good faith report alleged improper governmental action to the State Auditor. This includes employees who are believed to have reported improper governmental action but who actually have not, and employees who provide information in good faith to the Auditor in connection with a whistleblower investigation. Improper governmental action does not include personnel actions.

When a whistleblower can prove both that he or she has been subjected to workplace retaliation and that the retaliation occurred as a result of the person being a whistleblower, then the remedies provided under the statutes governing the Human Rights Commission (HRC) apply. There is a list of 12 actions given as examples of retaliation.

The State Auditor refers cases of alleged retaliation to the HRC for investigation as an unfair practice. The HRC also has responsibility for investigating complaints of unfair practices due to discrimination because of race, creed, color, national origin, sex, marital status, age, or mental or physical disability. These complaints must allege violation of the law in employment, places of public accommodation, credit or insurance transactions.

In seven years, out of 65 whistleblower retaliation complaints, the HRC has found reasonable cause to believe that retaliation against a whistleblower has been, or is being committed, only once. It is argued that the whistleblower is at a disadvantage in having to prove that the reason why an agency took retaliatory action against him or her is because the person was a whistleblower. The one case where the HRC decided the whistleblower met this burden is scheduled to be heard before an administrative law judge under the Administrative Procedure Act in 1999.

Summary: If the whistleblower can prove that a retaliatory action was taken against him or her, then a cause of action for the remedies under the statutes governing the HRC is established. The agency presumed to have taken this retaliation action may rebut that presumption by proving by a preponderance of the evidence that the action was justified for reasons unrelated to the person's status as a whistleblower. A 13th example of retaliation is specified, that being an unwanted change in the location of the employee's workplace or an unwanted change in the basic nature of the employee's job.

Votes on Final Passage:

Senate	49	0	
House	96	0	(House amended)
Senate	41	1	(Senate concurred)

Effective: July 25, 1999