

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
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H. B. No. 452

Introduced by HONORABLE JUAN EDGARDO "SONNY" M. ANGARA

EXPLANATORY NOTE

The government needs a new institutional mechanism for integrity and accountability to avoid scandals and restore credibility in the public service. The litmus test for such reforms is the government's treatment of whistleblowers.

Whistleblowers are the primary vehicle through which misconduct is exposed. But witnesses to misconduct can expect retaliation for speaking out. Those who "blow the whistle" are most often fired and become ostracized from friends and co-workers. They are accused of having a grievance with their employer or trying to profit from their accusations. The fear generated by such retaliation creates a chilling effect on the willingness of the people to come forward.

Hence, this bill seeks to strengthen accountability by supporting and protecting the right of employees to speak out about wrongdoing on the job.



JUAN EDGARDO "SONNY" M. ANGARA
Representative
Lone District, Province of Aurora

Introduced by Honorable JUAN EDGARDO "SONNY" M. ANGARA

AN ACT
ESTABLISHING A WHISTLEBLOWER BILL OF RIGHTS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. This Act shall be known as the ***"Whistleblower Protection Act of 2010."***

SEC. 2. Definitions. As used in this Act:

- a) "Employer" means any individual, partnership, association, corporation, or any person or group of persons acting directly or indirectly, and shall also include any public or privately owned corporation, all branches of government, or any other political subdivision, or a school district, or any special district, or any authority, commission, or board, or any other agency or instrumentality thereof. Employer shall also include agents, contractors, or subcontractors of an employer.
- b) "Employee" means any individual who performs services for or under the control and direction of an employer for wages or other remuneration. Employee shall also include applicants for employment, former employees, or an unauthorized representative of an employee.
- c) "Public body" means: (1) the Congress, or any popularly-elected local governmental body, or any member or employee thereof; (2) the judiciary, or any member or employee thereof; (3) any regulatory, administrative or public agency, or authority, or instrumentality thereof; (4) any law enforcement agency, prosecutorial office, or police or peace officer; (5) any department of an executive branch of government; or (6) any division, board, bureau, office, committee, or commission of any of the public bodies described in the above paragraphs of this section.
- d) "Supervisor" means any individual with an employer's organization who has the authority to direct and control the work performance of the affected employee or who has authority to take corrective action regarding the violation of the law, rule, or regulation of which the employee complains.

- e) "Retaliatory action" means the discharge, suspension, demotion, harassment, blacklisting, or the refusal to hire an employee, or other adverse employment action taken against an employee in the terms and conditions of employment, or other actions which interfere with an employee's ability to engage in protected activity set forth in pertinent laws.
- f) "Improper quality of patient care" means, with respect to patient care by an employer that is a health care provider, any practice, procedure, action, or failure to act which violates any law or any rule, regulation, or declaratory ruling adopted pursuant to law, or any professional code of ethics.

SEC. 3. Protected Activity. An employer shall not take any retaliatory action against an employee because the employee does any of the following:

- a) Discloses, threatens to disclose, or is about to disclose to a supervisor or to a public body, an activity, policy, or practice of the employer, a co-employee, or another employer, that the employee reasonably believes is in violation of a law or a rule or regulation promulgated pursuant to law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care.
- b) Provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer or another employer, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into the quality of patient care.
- c) Discloses, threatens to disclose, or is about to disclose to a supervisor or to a public body, an activity, policy, or practice of the employer, a co-employee, or another employer, that the employee reasonably believes is incompatible with a clear mandate of public policy concerning the public health and safety or welfare or protection of the environment.
- d) Assists or participates in a proceeding to enforce the provisions of this law.
- e) Objects to, opposes, or refuses to participate in any activity, policy, or practice which the employee reasonably believes –

- 1) is in violation of a law, or a rule or regulation promulgated pursuant to law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
- 2) is fraudulent or criminal; or
- 3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

SEC. 4. *Forum.* Upon a violation of any of the provisions of this Act, an aggrieved employee or former employee may, within one (1) year, institute a civil action in a court of competent jurisdiction.

SEC. 5. *Burden of Proof.* A violation of this statute has occurred only if the employee demonstrates, by a preponderance of the evidence that any behavior described in Section 3 was a contributing factor in the retaliatory action alleged in the complaint by the employee. However, relief may not be ordered under Section 6 if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action (retaliatory action) in the absence of such behavior.

SEC. 6. *Remedies.* All remedies available in tort actions shall be available to the prevailing plaintiffs. The court shall also, where appropriate, order:

- a) An injunction to restrain continued violation of this Act;
- b) The reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position;
- c) The reinstatement of full fringe benefits and seniority rights;
- d) The compensation for lost wages, benefits, and other remuneration;
- e) The payment by the employer of reasonable costs, and attorney's fees; or
- f) Compensatory or exemplary damages.

SEC. 7. *Posting.* An employer shall conspicuously display notices of its employees' protections and obligations under this Act.

SEC. 8. *Preemption.* Nothing in this Act shall be deemed to diminish the rights, privileges, or remedies of any employee under any law or regulation or under any collective bargaining agreement or employment contract. No employee may waive through a private

contract any right set forth in this Act, except as set forth in Section 9, and no employee may be compelled to adjudicate his or her rights under this Act pursuant to a collective bargaining agreement or any other arbitration agreement.

SEC. 9. *Settlement.* The rights afforded employees under this Act may not be waived or modified, except through a court approved settlement agreement reached with the voluntary participation and consent of the employee and employer. An employer may not require an employee to waive, as a condition of settlement, his or her right to reasonably engage in conduct protected under Section 3 of this Act.

SEC. 10. *Separability Clause.* If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 11. *Repealing Clause.* Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

SEC. 12. *Effectivity Clause.* This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,