



**House  
Legislative  
Analysis  
Section**

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**PROTECT ADVISORS OF "WHISTLEBLOWERS"**

House Bills 4667 and 4668 as introduced  
First Analysis (6-15-87)

Sponsor: Rep. Nelson W. Saunders  
Committee: Labor

***THE APPARENT PROBLEM:***

Violations of the law by corporations or by governments and by the men and women who have the power to manage them are among the greatest threats to the public welfare. Sheer size means that corruption or criminally irresponsible behavior in the conduct of government or large businesses can have grave consequences for the husbandry of our tax wealth, the condition of our environment, or the health of our economy. Because these institutions are large and impersonal, and because they are regulated by complex, and, to most people, unfamiliar statutes and rules, specific violations of the law by them often go unnoticed by the public which is the victim. The people best placed to observe and report violations are the employees of government and business, but employees are naturally reluctant to inform on an employer or a colleague. In small matters this reticence is normal and understandable, but in larger matters it is often fear of the consequences to himself or herself that prevents a person from informing the authorities of illegal actions. A person ought to be able to do his or her civic duty without fear of reprisals from an employer.

The need to encourage and protect "whistleblowers" was recognized in Public Act 196 of 1973. That law proscribed certain types of unethical activities, such as influence peddling and conflicts of interest, by public officers and employees. It was amended by Public Act 352 of 1978 to provide that public employees or officers (by which the law means state executive department personnel only) who reported violations of the act's proscriptions would be protected from retaliatory sanctions — specifically, dismissal and the withholding of pay raises and promotions.

Public Act 196 has since been amended to expand the list of retaliatory actions which could not be taken against a public employee or official who reported violations of the law to include demotion and transfer of employment location. The definition of "employee" has been expanded to include employees of the state or a political subdivision, rather than state executive branch employees only, and the definition of "public officer" has been expanded to include elected or appointed officials of the state, or a political subdivision, rather than appointed state executive branch officials only. Provisions for court action and penalties have also been provided.

Public Act 469 of 1980 created a new act to forbid employers, both public and private, to take reprisals against employees who had given information to authorities concerning possible violations of the law or who were about to give such information. It has since been found, however, that there is nothing in the act to protect those who act as advisors to those employees.

***THE CONTENT OF THE BILLS:***

House Bill 4667 would amend the Whistleblowers Protection Act to provide protection for those employees who act as advisors to employees who report or are about to report

violations, or suspected violations of state, local or federal laws. The act prohibits the firing or threatening of an employee, or discrimination against an employee with regard to compensation, terms, conditions, locations, or privileges of employment because that employee reports or is about to report a violation of the law. Employees are likewise protected if they are requested by a public body to participate in an investigation, hearing, or inquiry. A person alleging a violation of the act may bring a civil action in circuit court for injunctive relief, actual damages, or both. The action must commence within 90 days of the occurrence of the alleged violation, and an employee who claims to have been about to report a violation must give clear and convincing evidence of his or her intended action. A person violating the act is liable for a civil fine of up to \$500.

MCL 15.362

House Bill 4668 would extend the same protection to advisors of public officers and employees. The bill would amend Public Act 196 of 1973 to provide protection to public officers and employees who act as advisors to public officers or employees who report or are about to report a violation of the standards of conduct for public officers and employees. A public officer or employee who acts as an advisor to another public officer or employee for the purpose of reporting a violation would be afforded the same protection as that afforded the advisee: the advisor would not be subject to dismissal from employment or office, withholding of salary increases, withholding of promotions, demotion in employment status, or transfer of employment location. Should an advisor be subjected to any of the above sanctions for reasons other than his or her actions in reporting, or intending to report, a violation of the standards of conduct for public officers and employees, the appointing or supervisory authority, before imposing the sanction, would be required to establish by a preponderance of evidence that the sanction was not imposed because the public officer or employee reported, or intended to report, a violation.

MCL 15.342b

***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that the bill has no fiscal implications for the state. (6-10-87)

***ARGUMENTS:***

***For:***

When laws and regulations are complex and government agencies remote or seemingly inaccessible, "whistleblowers" may need the advice or assistance of a co-worker to determine whether a violation of the Whistleblower's Act has or will occur, and to determine to whom the report may be made. The bill recognizes that employees acting in an advisory capacity to a whistleblower may need the protection against discharge

H.B. 4667 & 4668 (6-15-87)

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or discrimination that is currently afforded the whistleblower.

***Against:***

Employers, both private sector and public sector, might argue that extending the law's protection will encourage frivolous suits by persons who might claim to have acted as advisors to whistleblowers. Employers would fear that persons validly discharged will use this new provision to regain their jobs and back pay. Further, the bill's language may be considered vague and overbroad as it does not define "acting as an advisor".

***POSITIONS:***

The Department of Labor supports the bills. (6-15-87)

The Michigan State AFL-CIO supports the bills. (6-15-87)

The Michigan Manufacturers Association has no position on the bills. (6-10-87)

The Michigan State Chamber of Commerce has no position on the bills. (6-10-87)