

SENATE BILL NO. 904

February 24, 2022, Introduced by Senators BAYER, ALEXANDER, HOLLIER, HERTEL, GEISS, CHANG, BULLOCK, MOSS, MCMORROW, POLEHANKI, WOJNO, BRINKS, IRWIN and MCCANN and referred to the Committee on Government Operations.

A bill to prohibit employers from wrongfully discharging employees; to provide for the powers and duties of certain state and local governmental officers and entities; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "wrongful discharge from employment act".

3 Sec. 3. As used in this act:

4 (a) "Constructive discharge" means an employee's decision to
5 terminate employment because of a situation created by an act or
6 omission of the employer that an objective, reasonable person would

1 find so intolerable that termination is the only reasonable
2 alternative. Constructive discharge does not include the decision
3 to terminate employment because of an employer's refusal to promote
4 the employee or improve wages, responsibilities, or other terms and
5 conditions of employment.

6 (b) "Department" means the department of labor and economic
7 opportunity.

8 (c) "Director" means the director of the department.

9 (d) "Discharge" includes constructive discharge and any other
10 termination of employment including, but not limited to, any of the
11 following:

12 (i) Resignation.

13 (ii) Elimination of the job.

14 (iii) Layoff for lack of work.

15 (iv) Failure to recall or rehire.

16 (v) Any other cutback in the number of employees.

17 (e) "Employee" means an individual who works for an employer
18 under an express or implied contract of hire. Employee does not
19 include an individual who is an independent contractor.

20 (f) "Employer" means a person that employs 1 or more
21 employees.

22 (g) "Fringe benefits" means any employer-paid vacation leave,
23 sick leave, medical insurance plan, disability insurance plan, life
24 insurance plan, or pension benefit plan in effect on the date of a
25 discharge.

26 (h) "Just cause" means reasonable job-related grounds for
27 dismissal based on a failure to satisfactorily perform job duties,
28 disruption of the employer's operation, or other legitimate
29 business reason.

1 (i) "Legitimate business reason" does not include an
2 employee's legal use of a lawful product if all of the following
3 apply:

4 (i) The use of the product is off the employer's premises
5 during nonworking hours.

6 (ii) The use of the product does not hinder the employee's
7 ability to satisfactorily perform the employee's job duties.

8 (iii) The use of the product does not violate the Federal Drug-
9 Free Workplace Program.

10 (iv) The employer is not a nonprofit organization that, as 1 of
11 its primary purposes or objectives, discourages the use of the
12 lawful product by the general public.

13 (j) "Lost wages" means the gross amount of wages that would
14 have been reported to the Internal Revenue Service as gross income
15 on form W-2 had employment not been terminated, and includes
16 additional compensation deferred at the option of the employee.

17 (k) "Person" means an individual, sole proprietorship,
18 partnership, corporation, association, or any other legal entity.

19 (l) "Public policy" means a policy in effect on the date of a
20 discharge concerning the public health, safety, or welfare
21 established by law.

22 (m) "Wrongful discharge" means a discharge if 1 or more of the
23 following conditions exist:

24 (i) The discharge was in retaliation for the employee's refusal
25 to violate public policy or for reporting a violation of public
26 policy.

27 (ii) The discharge was not for just cause and the employee had
28 completed the employer's probationary period of employment.

29 (iii) The employer violated the express provisions of its own

1 written personnel policy.

2 Sec. 5. (1) Except as otherwise provided in subsection (2), an
3 employer shall not wrongfully discharge an employee.

4 (2) During a probationary period of employment, an employee is
5 an at-will employee. An employer shall not establish a probationary
6 period of employment that is longer than 6 months. There is not a
7 probationary period of employment if either of the following apply:

8 (a) The employer fails to establish the probationary period of
9 employment before or at the time of hire.

10 (b) The employer fails to give notice to the employee of the
11 employee's probationary period of employment before or at the time
12 of hire.

13 (3) The following factors must be used to determine whether
14 just cause exists:

15 (a) Whether the employer did 1 or more of the following:

16 (i) Notified the employee of the workplace policy or rule that
17 the employee allegedly violated before the alleged violation
18 occurred.

19 (ii) Before discharging the employee, conducted a fair and
20 objective investigation to determine if the employee violated a
21 workplace policy or rule.

22 (iii) Based on the investigation conducted under subparagraph
23 (ii), obtained substantial evidence that the employee violated a
24 workplace policy or rule.

25 (iv) Applied its workplace policies and rules fairly and
26 without discrimination.

27 (b) Whether the workplace policy or rule that the employee
28 allegedly violated is related to reasonable business efficiency and
29 performance expectations for the employee.

1 (c) Whether the discharge was reasonably related to the
2 seriousness of the employee's alleged violation, taking into
3 consideration the employee's disciplinary record.

4 Sec. 7. (1) If an employer violates this act, the employee
5 affected by the violation may do either or both of the following:

6 (a) Bring an action to recover damages within 2 years after
7 the date of the violation.

8 (b) File a complaint with the department within 1 year after
9 the date of the violation.

10 (2) An employee who prevails in an action brought under
11 subsection (1)(a) may be awarded damages for 1 or more of the
12 following:

13 (a) Lost wages and fringe benefits. An award ordered under
14 this subdivision must not include wages that the employee earned or
15 could have reasonably earned less any expenses incurred by the
16 employee as a result of obtaining, searching, or relocating for
17 employment.

18 (b) Punitive damages if it is established by clear and
19 convincing evidence that the employer discharged the employee in
20 retaliation for the employee's refusal to violate public policy or
21 for reporting a violation of public policy and did so fraudulently
22 or with malice.

23 (3) The director shall enforce this act. The director shall
24 establish a system using multiple means of communication to receive
25 complaints of violations of this act and investigate complaints
26 received by the department in a timely manner.

27 (4) On receiving a complaint alleging a violation of this act,
28 the department shall investigate the complaint and attempt to
29 resolve it through mediation between the complainant and the

1 subject of the complaint, or other means. The department shall keep
2 complainants notified regarding the status of their complaint and
3 any resultant investigation. If the department determines that a
4 violation has occurred, the department shall issue to the offending
5 employer a notice of violation and the relief required of the
6 offending employer. The department shall prescribe the form and
7 wording of notices of violation, that must include the method of
8 appealing the determination of the department.

9 (5) The department may impose penalties and grant an employee
10 or former employee payment of wages lost because of a wrongful
11 discharge. The department is the trustee for the employee or former
12 employee and shall distribute and account for money collected under
13 this subsection.

14 (6) An employer that willfully violates this act is subject to
15 an administrative fine of not more than \$500.00.

16 Sec. 9. (1) Except as specifically provided in this act, this
17 act does not limit or affect any rights guaranteed an individual by
18 law.

19 (2) This act applies to public employers and public employees,
20 except to the extent that it is inconsistent with section 5 of
21 article XI of the state constitution of 1963.

22 (3) If a collective bargaining agreement or other contract
23 that is inconsistent with this act is in effect for an employee on
24 the effective date of this act, this act applies to that employee
25 beginning on the date the collective bargaining agreement or other
26 contract expires or is amended, extended, or renewed.

27 (4) This act does not apply to an employee if a collective
28 bargaining agreement or other contract in effect for the employee
29 provides for discharge only if there is just cause.

1 (5) This act does not limit an employee's right to bargain or
2 contract with an employer for protections against wrongful
3 discharge that are in addition to the employee's rights under this
4 act.

5 (6) An employer shall not require an employee to sign a waiver
6 of the employee's rights under this act. A waiver of an employee's
7 rights under this act is void.