



Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6486

## HEALTH CARE WHISTLEBLOWERS

House Bill 4960 (Substitute H-4)  
First Analysis (11-29-93)

Sponsor: Rep. Paul Baade  
Committee: Public Health

### ***THE APPARENT PROBLEM:***

The Whistleblowers' Protection Act forbids employers from discharging, threatening, or otherwise discriminating against employees who report known or suspected violations of law or ordinance. However, enforcement mechanisms under the law are limited to civil remedies: a whistleblower can go to court to obtain an injunction or a damage award or both, and the court can in addition impose a civil fine of up to \$500 (paid into the general fund). This can pose a problem for people who want to report problems but wish to preserve their anonymity while complaints are being investigated by authorities; the after-the-fact protections of the whistleblower act do not necessarily protect a person from embarrassment or discrimination from the employer.

Of particular concern is the need to provide adequate protection for health care workers who may report inadequate care or other public health hazards. Under Public Act 79 of 1993, which will take effect April 1, 1993, the Public Health Code will provide some protection by forbidding a health facility or agency from retaliating against an employee who testifies in a malpractice trial or who reports malpractice or a violation of the code's articles on controlled substances or occupations. And, licensees and registrants who report violations committed by other licensees and registrants will be given confidentiality until any disciplinary proceedings are initiated. However, there is no whistleblower protection for reporting violations of the article on health facilities, nor is there explicit protection of the identity of someone making a complaint about a hospital, even though, apparently, anonymity may be promised by state regulators in the Department of Public Health.

Critics of the department's handling of certain complaints have cited examples where anonymity was promised but not given to nurses who complained of conditions that could affect patient care. For example, union representatives report

that at one hospital, certain nurses who were union activists complained of short staffing and were promised anonymity pending investigation of the complaint; the state investigator, however, named the nurses at the outset of the investigation, and following this, hospital administration issued a memorandum critical of the nurses.

Nurses and other health care professionals have a moral and (under Public Act 79) legal responsibility to report known or suspected violations of the Public Health Code. Many feel that protections for applying to reports on health professionals should also apply to complaints regarding hospitals.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Public Health Code to do the following:

\*\* extend health code whistleblower protection (which will take effect April 1, 1994) to complaints of violations of the article governing facilities. (That protection now applies to complaints of violations of the articles governing controlled substances and occupations, and forbids employers from retaliating in certain ways against employees who report known or suspected violations to authorities.)

\*\*protect the confidentiality of complaints made by health care workers regarding violations of the article governing facilities. Unless a complainant gave written permission to be named, the Department of Public Health would keep his or her identity confidential until any disciplinary proceedings were initiated and the complainant was needed to testify. This protection also would be provided to people assisting department investigations, as well as complainants. The department would give a complainant opportunity to withdraw a complaint before disclosure of his or her identity.

**\*\*provide immunity from civil or criminal liability for complainants and those assisting in departmental investigations, and state that such people are protected under the Whistleblowers' Protection Act. The immunity would be for employees or contract employees of health facilities or agencies who were acting in good faith; the bill would establish a presumption that someone making a report or assisting the department was acting in good faith.**

MCL 333.20176

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency says that the bill would have no significant fiscal implications. (11-19-93)

### ***ARGUMENTS:***

#### ***For:***

The bill would fill the gaps in the whistleblower protections of the Public Health Code. It would protect those who report problems involving facilities such as hospitals. It would protect the confidentiality of complainants until their testimony was needed, and it would ensure that a complainant was given the opportunity to withdraw his or her complaint before his or her identity was disclosed. Analogous protections are already afforded to health care professionals who report problems involving other health professionals, and to nursing home employees who report abuses at nursing homes.

### ***POSITIONS:***

The Service Employees International Union (SEIU) supports the bill. (11-19-93)

The Department of Public Health has no formal position on the bill at this time. (11-19-93)