

**TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH**

**LEGISLATURE**

**IN THE HOUSE OF REPRESENTATIVES**

\_\_\_\_\_  
Session, 2021

\_\_\_\_\_  
H. B. 22- **82**

**A BILL FOR AN ACT**

To enact a whistleblower protection provision for Commonwealth government employees reporting on prohibited personnel practices; and for other purposes.

**BE IT ENACTED BY THE 22<sup>ND</sup> NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

1           **Section 1. Short Title.** This Act shall be cited as the “Commonwealth-Wide  
2 Whistleblower Protection Act of 2021”.

3           **Section 2. Findings and Purpose.** The Legislature finds that within many  
4 organizations throughout the United States, including the CNMI, the occurrence of  
5 illegal and/or unethical activities has been observed. Despite such occurrences,  
6 there are certain courageous individuals, commonly known as “whistleblowers,”  
7 who are unwilling to allow such activities to prevail. These individuals are led to  
8 take a firm stance against these actions and disclose them to the appropriate law  
9 enforcement agencies and entities. Cognizant of the probable threats and/or  
10 intimidation tactics the “whistleblowers” may face, it is imperative to provide them

1 with protection measures that will protect them against any and all possible ill-  
2 intended retaliation from other employees who do not share their conscience.

3       The Legislature also finds that pursuant to 1 CMC §7841, the Public Auditor  
4 may receive complaints or information concerning any activity constituting fraud,  
5 waste, or abuse in collection and expenditure of public funds. This statute was  
6 initially enacted by CNMI Public Law 3-91 and amended by CNMI Public Law 14-  
7 60, which provided a compensation incentive for individuals who provide such  
8 disclosures. The Legislature also finds that there are other non-financial activities  
9 that constitute unethical and/or illegal activity. Cognizant of the extended period of  
10 time that has elapsed since the initial enactment of the whistleblowing statute, the  
11 Legislature finds that there is a need to enact a provision that will provide  
12 whistleblowing protections for disclosures of all unethical and/or illegal activities,  
13 including both financial and non-financial matters. In doing so, whistleblower  
14 protections can be provided to all those who disclose certain illegal and/or unethical  
15 activities, financial or non-financial.

16       Therefore, the purpose of this Act is to enact a whistleblower protection  
17 provision for Commonwealth employees reporting prohibited personnel practices  
18 and for other purposes.

19       **Section 3. Enactment.** Notwithstanding any laws or regulations to the  
20 contrary and subject to proper codification by the CNMI Law Revision  
21 Commission, the following new provision is hereby enacted:

1           **“§ 101. Prohibited Personnel Practices.**

2       (a)(1) For the purpose of this title, "prohibited personnel practice" means any action  
3       described in subsection (b).

4       (2) For the purpose of this section-

5               (A) "personnel action" means-

6                       (i) an appointment;

7                       (ii) a promotion;

8                       (iii) a disciplinary or corrective action;

9                       (iv) a detail, transfer, or reassignment;

10                      (v) a reinstatement;

11                      (vi) a restoration;

12                      (vii) a reemployment;

13                      (viii) a performance evaluation;

14                      (ix) a decision concerning pay, benefits, or awards, or  
15                      concerning education or training if the education or training  
16                      may reasonably be expected to lead to an appointment,  
17                      promotion, performance evaluation, or other action described  
18                      in this subparagraph;

19                      (x) a decision to order psychiatric testing or examination;

20                      (xi) the implementation or enforcement of any nondisclosure  
21                      policy, form, or agreement; and



1 (xii) any other significant change in duties, responsibilities, or  
2 working conditions;

3 with respect to an employee in, or applicant for, a position in an  
4 agency;

5 (B) "agency" means any entity of the Commonwealth government;

6 (C) "disability" means, with respect to an individual—

7 (i) a physical or mental impairment that substantially limits one or  
8 more major life activities of such individual;

9 (ii) a record of such an impairment; or

10 (iii) regarded as having such an impairment;

11 (D) "disclosure" means a formal or informal communication or  
12 transmission, but does not include a communication concerning policy  
13 decisions that lawfully exercise discretionary authority unless the employee  
14 or applicant providing the disclosure reasonably believes that the disclosure  
15 evidences-

16 (i) any violation of any law, rule, or regulation; or

17 (ii) gross mismanagement, a gross waste of funds, an abuse of  
18 authority, or a substantial and specific danger to public health or  
19 safety.

20 (E) "relative" means, with respect to an individual, a person who is related  
21 to the individual as father, mother, son, daughter, brother, sister, uncle, aunt,

1 first cousin, nephew (son of brother or sister), niece (daughter of brother or  
2 sister), husband, wife, father-in-law, mother-in-law, son-in-law, daughter-  
3 in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson,  
4 stepdaughter, stepbrother, stepsister, half brother, or half sister.

5 (b) Any employee who has authority to take, direct others to take, recommend, or  
6 approve any personnel action, shall not, with respect to such authority-

7 (1) discriminate for or against any employee or applicant for  
8 employment-

9 (A) on the basis of race, color, religion, sex, or national origin;

10 (B) on the basis of age;

11 (C) on the basis of sex;

12 (D) on the basis of disability; or

13 (E) on the basis of marital status or political affiliation, as  
14 prohibited under any law, rule, or regulation;

15 (2) solicit or consider any recommendation or statement, oral or  
16 written, with respect to any individual who requests or is under  
17 consideration for any personnel action unless such recommendation  
18 or statement is based on the personal knowledge or records of the  
19 person furnishing it and consists of-

20 (A) an evaluation of the work performance, ability, aptitude, or  
21 general qualifications of such individual; or

1 (B) an evaluation of the character, loyalty, or suitability of such  
2 individual;

3 (3) coerce the political activity of any person (including the providing  
4 of any political contribution or service), or take any action against any  
5 employee or applicant for employment as a reprisal for the refusal of  
6 any person to engage in such political activity;

7 (4) deceive or willfully obstruct any person with respect to such  
8 person's right to compete for employment;

9 (5) influence any person to withdraw from competition for any  
10 position for the purpose of improving or injuring the prospects of any  
11 other person for employment;

12 (6) grant any preference or advantage not authorized by law, rule, or  
13 regulation to any employee or applicant for employment (including  
14 defining the scope or manner of competition or the requirements for  
15 any position) for the purpose of improving or injuring the prospects  
16 of any particular person for employment;

17 (7) appoint, employ, promote, advance, or advocate for appointment,  
18 employment, promotion, or advancement, in or to a civilian position  
19 any individual who is a relative of such employee if such position is  
20 in the agency in which such employee is serving as a public official



1 or over which such employee exercises jurisdiction or control as such  
2 an official;

3 (8) take or fail to take, or threaten to take or fail to take, a personnel  
4 action with respect to any employee or applicant for employment  
5 because of-

6 (A) any disclosure of information by an employee or applicant  
7 which the employee or applicant reasonably believes evidences-

8 (i) any violation of any law, rule, or regulation, or

9 (ii) gross mismanagement, a gross waste of funds, an abuse  
10 of authority, or a substantial and specific danger to public  
11 health or safety,

12 if such disclosure is not specifically prohibited by law;

13 (B) any disclosure to the Attorney General, or to the Office of the  
14 Public Auditor to receive such disclosures, of information which  
15 the employee or applicant reasonably believes evidences-

16 (i) any violation (other than a violation of this section) of any  
17 law, rule, or regulation, or

18 (ii) gross mismanagement, a gross waste of funds, an abuse  
19 of authority, or a substantial and specific danger to public  
20 health or safety; or

1 (C) any disclosure to the Legislature (including any  
2 committee of the Legislature) by any employee of an agency or  
3 applicant for employment at an agency of information described  
4 in subparagraph (B).

5 (9) take or fail to take, or threaten to take or fail to take, any personnel  
6 action against any employee or applicant for employment because of-

7 (A) the exercise of any appeal, complaint, or grievance right  
8 granted by any law, rule, or regulation-

9 (i) with regard to remedying a violation of paragraph (8); or

10 (ii) other than with regard to remedying a violation of  
11 paragraph (8);

12 (B) testifying for or otherwise lawfully assisting any individual  
13 in the exercise of any right referred to in subparagraph (A)(i) or  
14 (ii);

15 (C) cooperating with or disclosing information to the Public  
16 Auditor (or any other component responsible for internal  
17 investigation or review) of an agency, or Attorney General, in  
18 accordance with applicable provisions of law; or

19 (D) refusing to obey an order that would require the individual to  
20 violate a law, rule, or regulation;



1           (10) discriminate for or against any employee or applicant for  
2           employment on the basis of conduct which does not adversely affect  
3           the performance of the employee or applicant or the performance of  
4           others; except that nothing in this paragraph shall prohibit an agency  
5           from taking into account in determining suitability or fitness any  
6           conviction of the employee or applicant for any crime under the laws  
7           of the Commonwealth;

8           (11) take or fail to take any other personnel action if the taking of or  
9           failure to take such action violates any law, rule, or regulation  
10          implementing, or directly concerning, the respective merit system  
11          principles;

12          (12) implement or enforce any nondisclosure policy, form, or  
13          agreement, if such policy, form, or agreement-

14                (A) does not contain the following statement: "These provisions  
15                are consistent with and do not supersede, conflict with, or  
16                otherwise alter the employee obligations, rights, or liabilities  
17                created by existing statute or Executive order relating to (1)  
18                communications to the Legislature, (2) the reporting to Attorney  
19                General or the Office of the Public Auditor of a violation of any  
20                law, rule, or regulation, or mismanagement, a gross waste of  
21                funds, an abuse of authority, or a substantial and specific danger

1 to public health or safety, or (3) any other whistleblower  
2 protection. The definitions, requirements, obligations, rights,  
3 sanctions, and liabilities created by controlling Executive orders  
4 and statutory provisions are incorporated into this agreement and  
5 are controlling.”; or

6 (B) prohibits or restricts an employee or applicant for  
7 employment from disclosing to the Legislature, the Office of the  
8 Public Auditor, the Attorney General, or any other agency  
9 component responsible for internal investigation or review any  
10 information that relates to any violation of any law, rule, or  
11 regulation, or mismanagement, a gross waste of funds, an abuse  
12 of authority, or a substantial and specific danger to public health  
13 or safety, or any other whistleblower protection; or

14 (13) access the medical record of another employee or an applicant  
15 for employment as a part of, or otherwise in furtherance of, any  
16 conduct described in paragraphs (1) through (12).

17 This subsection shall not be construed to authorize the withholding of  
18 information from the Legislature or the taking of any personnel action  
19 against an employee who discloses information to the Legislature. For  
20 purposes of paragraph (8), (i) any presumption relating to the performance  
21 of a duty by an employee whose conduct is the subject of a disclosure as

1 defined under subsection (a)(2)(D) may be rebutted by substantial evidence,  
2 and (ii) a determination as to whether an employee or applicant reasonably  
3 believes that such employee or applicant has disclosed information that  
4 evidences any violation of law, rule, regulation, gross mismanagement, a  
5 gross waste of funds, an abuse of authority, or a substantial and specific  
6 danger to public health or safety shall be made by determining whether a  
7 disinterested observer with knowledge of the essential facts known to and  
8 readily ascertainable by the employee or applicant could reasonably  
9 conclude that the actions of the Government evidence such violations,  
10 mismanagement, waste, abuse, or danger.

11 (c)(1) In this subsection-

12 (A) the term "new employee" means an individual-

13 (i) appointed to a position as an employee on or after the date of  
14 enactment of this subsection; and

15 (ii) who has not previously served as an employee; and

16 (B) the term "whistleblower protections" means the protections against and  
17 remedies for a prohibited personnel practice described in paragraph (b)(8)  
18 or in subparagraphs (b)(9)(A)(i), (B), (C), or (D).

19 (2) The head of each agency shall be responsible for-

20 (A) preventing prohibited personnel practices;



1 (B) complying with and enforcing applicable civil service laws, rules,  
2 and regulations and other aspects of personnel management; and

3 (C) ensuring, in consultation with the Attorney General and the Office  
4 of the Public Auditor, that employees of the agency are informed of the  
5 rights and remedies available to under this section, including-

6 (i) information with respect to whistleblower protections available  
7 to new employees during a probationary period; and

8 (ii) the role of the Attorney General with respect to whistleblower  
9 protections.

10 (3) The head of each agency shall ensure that the information described in  
11 paragraph (2) is provided to each new employee of the agency not later than  
12 180 days after the date on which the new employee is appointed.

13 (4) The head of each agency shall make available information regarding  
14 whistleblower protections applicable to employees of the agency on the  
15 public website of the agency and on any online portal that is made available  
16 only to employees of the agency, if such portal exists.

17 (5) Any employee to whom the head of an agency delegates authority for  
18 any aspect of personnel management shall, within the limits of the scope of  
19 the delegation, be responsible for the activities described in paragraph (2).

20 (d) This section shall not be construed to extinguish or lessen any effort to  
21 achieve equal employment opportunity through affirmative action or any

1 right or remedy available to any employee or applicant for employment in  
2 the civil service under applicable laws-

3 (1) prohibiting discrimination on the basis of race, color, religion, sex,  
4 or national origin;

5 (2) prohibiting discrimination on the basis of age;

6 (3) prohibiting discrimination on the basis of sex;

7 (4) prohibiting discrimination on the basis of disability; or

8 (5) the provisions of any law, rule, or regulation prohibiting  
9 discrimination on the basis of marital status or political affiliation.

10 (f)(1) A disclosure shall not be excluded from subsection (b)(8) because-

11 (A) the disclosure was made to a supervisor or to a person who  
12 participated in an activity that the employee or applicant reasonably  
13 believed to be covered by subsection (b)(8)(A)(i) and (ii);

14 (B) the disclosure revealed information that had been previously  
15 disclosed;

16 (C) of the employee's or applicant's motive for making the disclosure;

17 (D) the disclosure was not made in writing;

18 (E) the disclosure was made while the employee was off duty;

19 (F) the disclosure was made before the date on which the individual  
20 was appointed or applied for appointment to a position; or

1 (G) of the amount of time which has passed since the occurrence of the  
2 events described in the disclosure.

3 (2) If a disclosure is made during the normal course of duties of an  
4 employee, the principal job function of whom is to regularly investigate and  
5 disclose wrongdoing (referred to in this paragraph as the "disclosing  
6 employee"), the disclosure shall not be excluded from subsection (b)(8) if  
7 the disclosing employee demonstrates that an employee who has the  
8 authority to take, direct other individuals to take, recommend, or approve  
9 any personnel action with respect to the disclosing employee took, failed to  
10 take, or threatened to take or fail to take a personnel action with respect to  
11 the disclosing employee in reprisal for the disclosure made by the disclosing  
12 employee.

13 **§ 102. Penalties.**

14 Any person in violation of §101 shall be liable to the Commonwealth  
15 government for a civil penalty ranging from \$1,000 to \$10,000.  
16 Furthermore, if a person is found guilty of such violation, such person's  
17 employment shall be terminated immediately.

18 **§ 103. Whistleblower Awards to Individuals Who Report**  
19 **Underpayments of Taxes Levied Under the Laws of the**  
20 **Commonwealth.**



- 1           (a) The Division of Revenue and Taxation, under regulations prescribed  
2           by the Department of Finance, is authorized to pay, from the monies  
3           appropriated to the Division of Revenue and Taxation in any fiscal  
4           year, such sums as necessary for: (1) detecting underpayments of tax  
5           levied under the laws enacted in the Commonwealth, or (2) detecting  
6           and bringing to trial and punishment persons guilty of violating the tax  
7           laws enacted in the Commonwealth or conniving at the same, in cases  
8           where such expenses are not otherwise provided for by law. Any  
9           amount payable under the preceding sentence shall be paid from the  
10          proceeds of amounts collected by reason of the information provided,  
11          and any amount so collected shall be available for such payments.
- 12          (b) Awards to Whistleblowers.
- 13               (1) If the Division proceeds with any administrative or judicial action  
14               described in Subsection (a) based on information brought to the  
15               Division's attention by an individual, such individual shall, subject to  
16               Paragraph (2), receive as an award at least fifteen percent (15%), but  
17               not more than thirty percent (30%), of the collected proceeds  
18               (including penalties, interest, additions to tax, and additional amounts)  
19               resulting from the action (including any related actions) or from any  
20               settlement in response to such action. The determination of the amount  
21               of such award by the Division of Revenue and Taxation shall depend

1           upon the extent to which the individual substantially contributed to  
2           such action within the ranges as prescribed in this Section.

3           (2) Award in Case of Less Substantial Contribution. (A) In the event  
4           the action described in Paragraph (1) is one which the Division  
5           determines to be based principally on disclosures of specific  
6           allegations (other than information provided by the individual  
7           described in Paragraph (1)) resulting from a judicial or administrative  
8           hearing, from a governmental report, hearing, audit, or investigation,  
9           or from the news media, the Division may award such sums as it  
10          considers appropriate, but in no case more than ten percent (10%) of  
11          the collected proceeds (including penalties, interest, additions to tax,  
12          and additional amounts) resulting from the action (including any  
13          related actions) or from any settlement in response to such action,  
14          taking into account the significance of the individual's information  
15          and the role of such individual and any legal representative of such  
16          individual in contributing to such action. (B) Nonapplication of  
17          Paragraph Where Individual is Original Source of Information.  
18          Subparagraph (A) shall not apply if the information resulting in the  
19          initiation of the action described in Paragraph (1) was originally  
20          provided by the individual described in Paragraph (1).

1 (3) Reduction in or Denial of Award. If the Tax Enforcement Division  
2 determines that the claim for an award under Paragraph (1) or (2) is  
3 brought by an individual who planned and initiated the actions that led  
4 to the underpayment of tax or actions described in Subsection (a)(2),  
5 then the Division may appropriately reduce such award. If such  
6 individual is convicted of criminal conduct arising from the role  
7 described in the preceding sentence, the Division shall deny any  
8 award.

9 (4) Appeal of Award Determination. Any determination regarding an  
10 award under Paragraph (1), (2), or (3) may, within thirty (30) days of  
11 such determination, be appealed to the CNMI Judiciary (and the  
12 CNMI Judiciary shall have jurisdiction with respect to such matter).

13 (5) Application of this Subsection. This Subsection shall apply with  
14 respect to any action: (A) against any taxpayer, but in the case of any  
15 individual, only if such individual's gross income exceeds Two  
16 Hundred Thousand Dollars (\$200,000) for any taxable year subject to  
17 such action, and (B) if the tax, penalties, interest, additions to tax, and  
18 additional amounts in dispute exceed Two Million Dollars  
19 (\$2,000,000).

20 (6) Additional rules. (A) No Contract Necessary. No contract with the  
21 Division of Revenue and Taxation is necessary for any individual to



1 receive an award under this Subsection. (B) Representation. Any  
2 individual described in Paragraph (1) or (2) may be represented by  
3 counsel. (C) Submission of Information. No award may be made under  
4 this Subsection based on information submitted to the Division unless  
5 such information is submitted under penalty of perjury.

6 (7) If the government of the Commonwealth elects not to proceed with  
7 the action, the Division shall award not less than thirty percent (30%)  
8 of the collected proceeds (including penalties, interest, additions to  
9 tax, and additional amounts) resulting from the action (including any  
10 related actions) or from any settlement in response to such action. Such  
11 person shall also receive an amount for reasonable expenses which the  
12 court finds to have been necessarily incurred, plus reasonable  
13 attorneys' fees and costs. All such expenses, fees, and costs shall be  
14 awarded against the defendant.

15 **Section 4. Amending 1 CMC § 7841.**

16 1 CMC § 7841 is amended to add the following subsection:

17 (e) The Division of Revenue and Taxation is authorized to pay monies from the  
18 sums appropriated to it in a given fiscal year to comply with subsection (d) of this  
19 section. The Department of Finance shall promulgate regulations to establish the  
20 procedure for such payment, which shall be made within six months of the  
21 information being brought forward.

1           **Section 5. Severability.** If any provisions of this Act or the application of  
 2 any such provision to any person or circumstance should be held invalid by a court  
 3 of competent jurisdiction, the remainder of this Act or the application of its  
 4 provisions to persons or circumstances other than those to which it is held invalid  
 5 shall not be affected thereby.

6           **Section 6. Savings Clause.** This Act and any repealer contained herein  
 7 shall not be construed as affecting any existing right acquired under contract or  
 8 acquired under statutes repealed or under any rule, regulation, or order adopted  
 9 under the statutes. Repealers contained in this Act shall not affect any proceeding  
 10 instituted under or pursuant to prior law. The enactment of the Act shall not have  
 11 the effect of terminating, or in any way modifying, any liability, civil or criminal,  
 12 which shall already be in existence on the date this Act becomes effective.

13           **Section 7. Effective Date.** This Act shall take effect upon its approval by  
 14 the Governor, or its becoming law without such approval.

Prefiled: 10/25/2021

Date: 10/25/2021

Introduced by:

Rep. Leila H.F.C. Staffler

Reviewed for Legal Sufficiency by:

House Legal Counsel

Denita Kaipat Yangetmai  
 Yangetmai