

By: Senator(s) Ross, Burton, Hawks, Kirby, Smith, Gordon, Johnson (19th), Canon, Farris, Rayborn, Moffatt, Furniss, Simmons, Hamilton, Thames, Hewes, Hall, Horhn, Walls, Carter, Frazier, Posey, Bryan, Tollison, Johnson (38th), Browning, White (29th), Dickerson, Harvey, Robertson, Stogner, Little, Minor, Mettetal, Jordan (18th), White (5th), Bean, Lee

To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2385

1 AN ACT TO AMEND SECTION 25-9-171, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITIONS OF CERTAIN TERMS AS THEY RELATE TO THE
3 PUBLIC EMPLOYEE WHISTLEBLOWER LAW; TO CREATE A NEW CODE SECTION TO
4 BE CODIFIED AS SECTION 25-9-172, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE THAT UPON RECEIPT OF A SIGNED WRITTEN COMPLAINT OF ALLEGED
6 IMPROPER GOVERNMENTAL ACTION, A STATE INVESTIGATIVE BODY SHALL
7 KEEP A RECORD OF THE COMPLAINT AND SHALL HAVE THE AUTHORITY TO
8 INVESTIGATE THE COMPLAINT IN ACCORDANCE WITH ITS POWERS AND DUTIES
9 PROVIDED BY THE LAWS OF THE STATE OF MISSISSIPPI; TO AMEND SECTION
10 25-9-173, MISSISSIPPI CODE OF 1972, TO PROHIBIT WORKPLACE REPRISAL
11 OR RETALIATORY ACTION AGAINST A PUBLIC EMPLOYEE WHISTLEBLOWER; TO
12 AMEND SECTION 25-9-175, MISSISSIPPI CODE OF 1972, TO REVISE THE
13 RIGHTS OF ACTION OF A PUBLIC EMPLOYEE WHO IS SUBJECTED TO REPRISAL
14 OR RETALIATORY ACTION; TO AMEND SECTION 25-9-177, MISSISSIPPI CODE
15 OF 1972, TO PROVIDE THAT ANY ADMINISTRATIVE REMEDIES PROVIDED FOR
16 STATE-SERVICE EMPLOYEES, OR ANY REMEDIES UNDER A GRIEVANCE OR
17 APPEAL PROCESS OF THE EMPLOYING GOVERNMENTAL ENTITY RELATING TO
18 SUSPENSION OR TERMINATION OF EMPLOYMENT OR ADVERSE PERSONNEL
19 ACTION, SHALL NOT BE EXHAUSTED OR DIMINISHED AS A RESULT OF ANY
20 LEGAL ACTION TAKEN BY THE EMPLOYEE; AND FOR RELATED PURPOSES.

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

22 SECTION 1. Section 25-9-171, Mississippi Code of 1972, is
23 amended as follows:

24 25-9-171. For purposes of Sections 25-9-171 through
25 25-9-177, the following terms shall have the meanings ascribed to
26 them herein:

27 (a) "Abuse" means acting in an arbitrary and capricious
28 manner that adversely affects the accomplishment of a function of
29 any governmental entity.

30 (b) "Governmental entity" means a board, commission,
31 department, office or other agency of the state or a political
32 subdivision of the state.

33 (c) "Employee" means any individual employed or holding
34 office in any department or agency of state or local government.

35 (d) "Improper governmental action" means any action by

36 an employee which is undertaken in the performance of the
37 employee's official duties, whether or not the action is within
38 the scope of the employee's employment:

39 (i) Which is in violation of any federal or state
40 law or regulation, is an abuse of authority, results in
41 substantial abuse, misuse, destruction, waste, or loss of public
42 funds or public resources; or

43 (ii) Which is of substantial and specific danger
44 to the public health or safety.

45 "Improper governmental action" does not include personnel
46 actions for which other remedies exist, including, but not limited
47 to, employee grievances, complaints, appointments, promotions,
48 transfers, assignments, reassignments, reinstatements,
49 restorations, reemployments, performance evaluations, reductions
50 in pay, dismissals, suspensions, demotions, violations of the
51 state personnel system or local personnel policies, alleged labor
52 agreement violations, reprimands, claims of discriminatory
53 treatment, or any personnel action which may be taken under
54 federal or state law.

55 (e) "Misuse" means an illegal or unauthorized use.

56 (f) "Personnel action" means an action that affects an
57 employee's promotion, demotion, transfer, work assignment or
58 performance evaluation.

59 (g) "State investigative body" shall mean the Attorney
60 General of the State of Mississippi, the State Auditor, the
61 Mississippi Ethics Commission, the Joint Legislative Committee on
62 Performance Evaluation and Expenditure Review or any other
63 standing committee of the Legislature, or any district attorney of
64 the State of Mississippi.

65 (h) "Use of official authority or influence" includes
66 taking, directing others to take, recommending, processing or
67 approving any personnel action such as an appointment, promotion,
68 transfer, assignment, reassignment, reinstatement, restoration,

69 reemployment, performance evaluation or other disciplinary action.

70 (i) "Waste" means an unnecessary or unreasonable
71 expenditure or use.

72 (j) "Whistleblower" means an employee who in good faith
73 reports an alleged improper governmental action to a state
74 investigative body, initiating an investigation. For purposes of
75 the provisions of this act, the term "whistleblower" also means an
76 employee who in good faith provides information to a state
77 investigative body, or an employee who is believed to have
78 reported alleged improper governmental action to a state
79 investigative body or to have provided information to a state
80 investigative body but who, in fact, has not reported such action
81 or provided such information.

82 SECTION 2. The following shall be codified as Section
83 25-9-172, Mississippi Code of 1972:

84 25-9-172. (1) Upon receipt of a signed written complaint of
85 alleged improper governmental action, a state investigative body
86 shall keep a record of the complaint and shall have the authority
87 to investigate the complaint in accordance with its powers and
88 duties provided by the laws of the State of Mississippi.

89 (2) Each state investigative body shall develop and maintain
90 a standard form for use by the whistleblower when reporting
91 alleged improper governmental action. Such form shall require as
92 a minimum the name, address and telephone number of the
93 whistleblower, and a description of the alleged improper
94 governmental action.

95 (3) If any state investigative body receives a complaint
96 that contains allegations outside its expertise, then the state
97 investigative body may refer the complaint to another state
98 investigative body unless contrary to the laws of the State of
99 Mississippi.

100 (4) In any case to which this section applies, the identity
101 of the whistleblower shall be kept confidential unless the state

102 investigative body determines that the information has been
103 provided other than in good faith, or unless the confidentiality
104 requirement conflicts with Article 1, Chapter 4 of Title 25,
105 Mississippi Code of 1972.

106 SECTION 3. Section 25-9-173, Mississippi Code of 1972, is
107 amended as follows:

108 25-9-173. (1) No agency shall dismiss or otherwise
109 adversely affect the compensation or employment status of any
110 public employee because the public employee testified or provided
111 information to a state investigative body whether or not the
112 testimony or information is provided under oath.

113 (2) Any person who is a whistleblower, as defined in Section
114 25-9-171, and who as a result of being a whistleblower has been
115 subjected to workplace reprisal or retaliatory action is entitled
116 to the remedies provided under Section 25-9-175. For the purpose
117 of this section, "reprisal or retaliatory action" means, but is
118 not limited to:

119 (a) Unwarranted and unsubstantiated letters of
120 reprimand or unsatisfactory performance evaluations;

121 (b) Demotion;

122 (c) Reduction in pay;

123 (d) Denial of promotion;

124 (e) Suspension;

125 (f) Dismissal; and

126 (g) Denial of employment.

127 (3) An employee who has filed a valid whistleblower
128 complaint may not recover the damages and other remedies provided
129 under Section 25-9-175 unless the dismissal or adverse action
130 taken against him was the direct result of providing information
131 to a state investigative body.

132 (4) Nothing in this section prohibits a governmental entity
133 from making any decision exercising its authority to terminate,
134 suspend or discipline an employee who engages in workplace

135 reprisal or retaliatory action against a whistleblower.

136 (5) A governmental entity is not precluded from taking any
137 action in accordance with established personnel policies against
138 an employee who knowingly and intentionally provides false
139 information to a state investigative body.

140 SECTION 4. Section 25-9-175, Mississippi Code of 1972, is
141 amended as follows:

142 25-9-175. Any agency which violates the provisions of
143 Section 25-9-173 shall be liable to the public employee for back
144 pay and reinstatement. In addition, an employee whose employment
145 is suspended or terminated or who is subjected to adverse
146 personnel action in violation of Section 25-9-173 is entitled to
147 sue for injunctive relief, compensatory damages, court costs and
148 reasonable attorney's fees; provided, however, that an employee
149 may not recover an amount that exceeds the limitations provided in
150 Section 11-46-15. Additionally, each member of any agency's
151 governing board or authority may be found individually liable for
152 a civil fine of up to Ten Thousand Dollars (\$10,000.00) for each
153 violation of Section 25-9-173. In any instance where the agency
154 in violation of Section 25-9-173 has no governing board or
155 authority, the agency's executive director may be found
156 individually liable for a civil fine not to exceed Ten Thousand
157 Dollars (\$10,000.00). If the court determines that any action
158 filed under this section by an employee is frivolous and
159 unwarrantable, the court may award to the employer court costs and
160 reasonable expenses, including attorney's fees, incurred in
161 defense of actions brought by the employee under this section.

162 SECTION 5. Section 25-9-177, Mississippi Code of 1972, is
163 amended as follows:

164 25-9-177. Actions to recover civil fines and other remedies
165 provided for under Section 25-9-175 may be instituted in the
166 Circuit Court for the First Judicial District of Hinds County or
167 in the circuit court of the public employees' residence. In such

168 actions, the public employee shall prove by a preponderance of the
169 evidence that, but for his providing information or testimony to a
170 state investigative body prior to occurrence of the dismissal or
171 any adverse action, his dismissal or any adverse action taken
172 against him would not have occurred. Remedies provided for herein
173 shall be supplemental to any other remedies, judicial or
174 administrative, provided for under law. * * * Any administrative
175 remedies provided for state-service employees under Sections
176 25-9-127 through 25-9-131, Mississippi Code of 1972, or any
177 remedies under a grievance or appeal process of the employing
178 governmental entity relating to suspension or termination of
179 employment or adverse personnel action, shall not be exhausted or
180 diminished as a result of any action taken by the employee under
181 Sections 25-9-175 and 25-9-177, and the employee shall be required
182 to exhaust such remedies prior to instituting an action authorized
183 under Sections 25-9-175 and 25-9-177.

184 SECTION 6. This act shall take effect and be in force from
185 and after its passage.