

By: Senator(s) Ross, Burton, Hawks, Kirby, To: Judiciary
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

SENATE BILL NO. 2385
(As Sent to Governor)

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; or

45 (iii) Which is discrimination based on race or
46 gender.

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

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

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

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

67 (h) "Use of official authority or influence" includes
68 taking, directing others to take, recommending, processing or

69 approving any personnel action such as an appointment, promotion,
70 transfer, assignment, reassignment, reinstatement, restoration,
71 reemployment, performance evaluation or other disciplinary action.

72 (i) "Waste" means an unnecessary or unreasonable
73 expenditure or use.

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

84 SECTION 2. The following shall be codified as Section
85 25-9-172, Mississippi Code of 1972:

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

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

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

102 (4) In any case to which this section applies, the identity
103 of the whistleblower shall be kept confidential unless the state
104 investigative body determines that the information has been
105 provided other than in good faith, or unless the confidentiality
106 requirement conflicts with Article 1, Chapter 4 of Title 25,
107 Mississippi Code of 1972.

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

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

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

121 (a) Unwarranted and unsubstantiated letters of
122 reprimand or unsatisfactory performance evaluations;

123 (b) Demotion;

124 (c) Reduction in pay;

125 (d) Denial of promotion;

126 (e) Suspension;

127 (f) Dismissal; and

128 (g) Denial of employment.

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

134 (4) Nothing in this section prohibits a governmental entity

135 from making any decision exercising its authority to terminate,
136 suspend or discipline an employee who engages in workplace
137 reprisal or retaliatory action against a whistleblower.

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

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

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

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

166 25-9-177. Actions to recover civil fines and other remedies
167 provided for under Section 25-9-175 may be instituted in the

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

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