

By: Simpson, Reeves

To: Judiciary A

HOUSE BILL NO. 511

1 AN ACT TO AMEND SECTION 25-9-171, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY DEFINITION IN THE WHISTLEBLOWER LAW; TO AMEND SECTIONS
3 25-9-173 AND 25-9-175, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO
4 AMEND SECTION 25-9-177, MISSISSIPPI CODE OF 1972, TO REVISE VENUE
5 AND TO PROVIDE A STATUTE OF LIMITATIONS; AND FOR RELATED PURPOSES.

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

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

9 25-9-171. For purposes of Sections 25-9-171 through
10 25-9-177, the following terms shall have the meanings ascribed to
11 them herein:

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

15 (b) "Governmental entity" means a board, commission,
16 department, office or other agency of the state or a political
17 subdivision of the state as the term political subdivision is
18 defined in Section 11-46-1.

19 (c) "Employee" means any individual employed or holding
20 office in any department or agency of state * * * government or a
21 political subdivision as the term political subdivision is defined
22 in Section 11-46-1.

23 (d) "Improper governmental action" means any action by
24 an employee which is undertaken in the performance of the
25 employee's official duties, whether or not the action is within
26 the scope of the employee's employment:

27 (i) Which is in violation of any federal or state
28 law or regulation, is an abuse of authority, results in
29 substantial abuse, misuse, destruction, waste, or loss of public
30 funds or public resources; or

31 (ii) Which is of substantial and specific danger
32 to the public health or safety; or

33 (iii) Which is discrimination based on race or
34 gender.

35 "Improper governmental action" does not include personnel
36 actions for which other remedies exist, including, but not limited
37 to, employee grievances, complaints, appointments, promotions,
38 transfers, assignments, reassignments, reinstatements,
39 restorations, reemployments, performance evaluations, reductions
40 in pay, dismissals, suspensions, demotions, violations of the
41 state personnel system or local personnel policies, alleged labor
42 agreement violations, reprimands * * * or any personnel action
43 which may be taken under federal or state law.

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

45 (f) "Personnel action" means an action that affects an
46 employee's promotion, demotion, transfer, work assignment or
47 performance evaluation.

48 (g) "State investigative body" shall mean the Attorney
49 General of the State of Mississippi, the State Auditor, the
50 Mississippi Ethics Commission, the Joint Legislative Committee on
51 Performance Evaluation and Expenditure Review or any other
52 standing committee of the Legislature, or any district attorney of
53 the State of Mississippi.

54 (h) "Use of official authority or influence" includes
55 taking, directing others to take, recommending, processing or
56 approving any personnel action such as an appointment, promotion,
57 transfer, assignment, reassignment, reinstatement, restoration,
58 reemployment, performance evaluation or other disciplinary action.

59 (i) "Waste" means an unnecessary or unreasonable
60 expenditure or use.

61 (j) "Whistleblower" means an employee who in good faith
62 reports an alleged improper governmental action to a state
63 investigative body, initiating an investigation. For purposes of
64 the provisions of this act, the term "whistleblower" also means an
65 employee who in good faith provides information to a state
66 investigative body, or an employee who is believed to have
67 reported alleged improper governmental action to a state
68 investigative body or to have provided information to a state
69 investigative body but who, in fact, has not reported such action
70 or provided such information.

71 SECTION 2. Section 25-9-173, Mississippi Code of 1972, is
72 amended as follows:

73 25-9-173. (1) No governmental entity shall dismiss or
74 otherwise adversely affect the compensation or employment status
75 of any public employee because the public employee testified or
76 provided information to a state investigative body whether or not
77 the testimony or information is provided under oath.

78 (2) Any person who is a whistleblower, as defined in Section
79 25-9-171, and who as a result of being a whistleblower has been
80 subjected to workplace reprisal or retaliatory action, is entitled
81 to the remedies provided under Section 25-9-175. For the purpose

82 of this section, "reprisal or retaliatory action" means, but is
83 not limited to:

84 (a) Unwarranted and unsubstantiated letters of
85 reprimand or unsatisfactory performance evaluations;

86 (b) Demotion;

87 (c) Reduction in pay;

88 (d) Denial of promotion;

89 (e) Suspension;

90 (f) Dismissal; and

91 (g) Denial of employment.

92 (3) An employee who has filed a valid whistleblower
93 complaint or who is believed to have filed a valid whistleblower
94 complaint may not recover the damages and other remedies provided
95 under Section 25-9-175 unless the dismissal or adverse action
96 taken against him was the direct result of providing information
97 to a state investigative body.

98 (4) Nothing in this section prohibits a governmental entity
99 from making any decision exercising its authority to terminate,
100 suspend or discipline an employee who engages in workplace
101 reprisal or retaliatory action against a whistleblower.

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

106 SECTION 3. Section 25-9-175, Mississippi Code of 1972, is
107 amended as follows:

108 25-9-175. Any governmental entity which violates the
109 provisions of Section 25-9-173 shall be liable to the public

110 employee for back pay and reinstatement. In addition, an employee
111 whose employment is suspended or terminated or who is subjected to
112 adverse personnel action in violation of Section 25-9-173 is
113 entitled to sue for injunctive relief, compensatory damages, court
114 costs and reasonable attorney's fees; provided, however, that an
115 employee may not recover an amount that exceeds the limitations
116 provided in Section 11-46-15. Additionally, each member of any
117 governmental entity's governing board or authority may be found
118 individually liable for a civil fine of up to Ten Thousand Dollars
119 (\$10,000.00) for each violation of Section 25-9-173. In any
120 instance where the governmental entity in violation of Section
121 25-9-173 has no governing board or authority, the governmental
122 entity's executive director may be found individually liable for a
123 civil fine not to exceed Ten Thousand Dollars (\$10,000.00). If
124 the court determines that any action filed under this section by
125 an employee is frivolous and unwarranted, the court may award to
126 the employer court costs and reasonable expenses, including
127 attorney's fees, incurred in defense of actions brought by the
128 employee under this section.

129 SECTION 4. Section 25-9-177, Mississippi Code of 1972, is
130 amended as follows:

131 25-9-177. Actions to recover civil fines and other remedies
132 provided for under Section 25-9-175 may be instituted in the
133 Circuit Court for the First Judicial District of Hinds County, in
134 the circuit court in the county or judicial district where the
135 governmental entity has its principal office or in the circuit
136 court of the public employees' residence and such actions shall be
137 commenced within one (1) year after the date of the actionable

138 conduct and not after. In such actions, the public employee shall
139 prove by a preponderance of the evidence that, but for his
140 providing information or testimony to a state investigative body
141 prior to occurrence of the dismissal or any adverse action, his
142 dismissal or any adverse action taken against him would not have
143 occurred. Remedies provided for herein shall be supplemental to
144 any other remedies, judicial or administrative, provided for under
145 law. Any administrative remedies provided for state-service
146 employees under Sections 25-9-127 through 25-9-131, Mississippi
147 Code of 1972, or any remedies under a grievance or appeal process
148 of the employing governmental entity relating to suspension or
149 termination of employment or adverse personnel action, shall not
150 be exhausted or diminished as a result of any action taken by the
151 employee under Sections 25-9-175 and 25-9-177, and the employee
152 shall be required to exhaust such remedies prior to instituting an
153 action authorized under Sections 25-9-175 and 25-9-177.

154 SECTION 5. This act shall take effect and be in force from
155 and after July 1, 2000.