

By: Ross

To: Judiciary

SENATE BILL NO. 2746

1 AN ACT TO AMEND SECTION 25-9-171, MISSISSIPPI CODE OF 1972,  
2 TO CLARIFY THE DEFINITION OF THE TERM "GOVERNMENTAL ENTITY" AS IT  
3 RELATES TO THE WHISTLEBLOWER LAW; TO AMEND SECTIONS 25-9-173 AND  
4 25-9-175, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED  
5 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, claims of discriminatory  
43 treatment, or any personnel action which may be taken under  
44 federal or state law.

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

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

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

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

60 (i) "Waste" means an unnecessary or unreasonable

61 expenditure or use.

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

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

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

79 (2) Any person who is a whistleblower, as defined in Section  
80 25-9-171, and who as a result of being a whistleblower has been  
81 subjected to workplace reprisal or retaliatory action, is entitled  
82 to the remedies provided under Section 25-9-175. For the purpose  
83 of this section, "reprisal or retaliatory action" means, but is  
84 not limited to:

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

87 (b) Demotion;

88 (c) Reduction in pay;

89 (d) Denial of promotion;

90 (e) Suspension;

91 (f) Dismissal; and

92 (g) Denial of employment.

93 (3) An employee who has 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. This act shall take effect and be in force from  
130 and after July 1, 2000.