To: Judiciary

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001
By: Senator(s) Ross
To: Judiciary

SENATE BILL NO. 2045

AN ACT TO AMEND SECTION 25-9-171, MISSISSIPPI CODE OF 1972,
TO CLARIFY THE DEFINITION OF THE TERM "GOVERNMENTAL ENTITY" AS IT
RELATES TO THE WHISTLEBLOWER LAW; TO AMEND SECTIONS 25-9-173 AND
25-9-175, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED
PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) "Waste" means an unnecessary or unreasonable expenditure or use.
(j) "Whistleblower" means an employee who in good faith reports an alleged improper governmental action to a state investigative body, initiating an investigation. For purposes of the provisions of this act, the term "whistleblower" also means an employee who in good faith provides information to a state investigative body, or an employee who is believed to have reported alleged improper governmental action to a state investigative body or to have provided information to a state investigative body but who, in fact, has not reported such action or provided such information.

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

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

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

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

(b) Demotion;

(c) Reduction in pay;

(d) Denial of promotion;

(e) Suspension;

(f) Dismissal; and

(g) Denial of employment.

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

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

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

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

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

SECTION 4. This act shall take effect and be in force from and after July 1, 2001.