To: Judiciary A

MISSISSIPPI LEGISLATURE REGULAR SESSION 2002
By: Representative Moak
To: Judiciary A

HOUSE BILL NO. 421

AN ACT TO AMEND SECTIONS 25-9-173, 25-9-175 AND 25-9-177, MISSISSIPPI CODE OF 1972, TO ALLOW DAMAGES IN WHISTLEBLOWER ACTIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 25-9-173, Mississippi Code of 1972, is amended as follows:

25-9-173. (1) No agency 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.

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(3) 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.

(4) 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 2. Section 25-9-175, Mississippi Code of 1972, is amended as follows:

25-9-175. Any agency 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, *** 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 agency'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 agency in violation of Section 25-9-173 has no governing board or authority, the agency'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 unwarrantable, 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 3. Section 25-9-177, Mississippi Code of 1972, is amended as follows:
25-9-177. Actions to recover civil fines, damages and other remedies provided for under Section 25-9-175 may be instituted in the Circuit Court for the First Judicial District of Hinds County or in the circuit court of the public employees' residence. In such actions, the public employee shall prove by a preponderance of the evidence that, but for his providing information or testimony to a state investigative body prior to occurrence of the dismissal or any adverse action, his dismissal or any adverse action taken against him would not have occurred. Remedies provided for herein shall be supplemental to any other remedies, judicial or administrative, provided for under law. Any administrative remedies provided for state-service employees under Sections 25-9-127 through 25-9-131, Mississippi Code of 1972, or any remedies under a grievance or appeal process of the employing governmental entity relating to suspension or termination of employment or adverse personnel action, shall not be exhausted or diminished as a result of any action taken by the employee under Sections 25-9-175 and 25-9-177, and the employee shall be required to exhaust such remedies prior to instituting an action authorized under Sections 25-9-175 and 25-9-177.

SECTION 4. This act shall take effect and be in force from and after July 1, 2002.