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**AMENDMENT No. 2 PROPOSED TO**

**Committee Sub. for SB NO. 2016**

**By Senator(s) Williamson**

1           **AMEND** by inserting the following after line \_\_\_\_ and  
2 **renumbering any succeeding sections:**

3           **SECTION 15.** **Short title.** Sections 15 through 23 of this act  
4 may be cited as the "Whistleblower Protection Act."

5           **SECTION 16.** **Definitions.** For purposes of Sections 15  
6 through 23 of this act, the following terms shall have the  
7 meanings ascribed herein unless the context clearly indicates  
8 otherwise:

9                   (a) "Employer" means any individual, partnership,  
10 association, corporation or any person or group of persons acting  
11 directly or indirectly on behalf of, and shall also include any  
12 public or privately owned corporation, all branches of state  
13 government, or the several counties and municipalities thereof, or  
14 any other political subdivision of the state, or a school  
15 district, or any special district, or any authority, commission,  
16 or board or any other agency or instrumentality thereof. Employer  
17 shall also include agents, contractors or subcontractors of an  
18 employer.

19                   (b) "Employee" means any individual who performs  
20 services for or under the control and direction of an employer for  
21 wages or other remuneration. Employee shall also include  
22 applicants for employment, former employees or an authorized  
23 representative of an employee.

24 (c) "Public body" means:

25 (i) The United States Congress, and state  
26 Legislature, or any popularly-elected local governmental body, or  
27 any member or employee thereof;

28 (ii) Any federal, state or local judiciary, or any  
29 member or employee thereof, or any grand or petit jury;

30 (iii) Any federal, state or local regulatory,  
31 administrative, or public agency or authority, or instrumentality  
32 thereof;

33 (iv) Any federal, state or local law enforcement  
34 agency, prosecutorial office, or police or peace officer;

35 (v) Any federal, state or local department of an  
36 executive branch of government; or

37 (vi) Any division, board, bureau, office,  
38 committee or commission of any of the public bodies described in  
39 the above items of this paragraph (c).

40 (d) "Supervisor" means any individual with an  
41 employer's organization who has the authority to direct and  
42 control the work performance of the affected employee or who has  
43 authority to take corrective action regarding the violation of the  
44 law, rule or regulation of which the employee complains.

45 (e) "Retaliatory action" means the discharge,  
46 suspension, demotion, harassment, blacklisting or the refusal to  
47 hire an employee, or other adverse employment action taken against  
48 an employee in the terms and conditions of employment, or other  
49 actions which interfere with an employee's ability to engage in  
50 protected activity set forth in Section 17 of this act.

51 (f) "Improper quality of patient care" means, with  
52 respect to patient care by an employer that is a health care  
53 provider, any practice, procedure, action or failure to act which  
54 violates any law or any rule, regulation or declaratory ruling  
55 adopted pursuant to law, or any professional code of ethics.

56 **SECTION 17. Protected activity.** An employer shall not take  
57 any retaliatory action against an employee because the employee  
58 does any of the following:

59           (a) Discloses, threatens to disclose or is about to  
60 disclose to a supervisor or to a public body, an activity, policy  
61 or practice of the employer, a co-employee or another employer,  
62 that the employee reasonably believes is in violation of a law, or  
63 a rule or regulation promulgated pursuant to law, or, in the case  
64 of an employee who is a licensed or certified health care  
65 professional, reasonably believes constitutes improper quality of  
66 patient care;

67           (b) Provides information to, or testifies before, any  
68 public body conducting an investigation, hearing or inquiry into  
69 any violation of law, or a rule or regulation promulgated pursuant  
70 to law by the employer or another employer, or, in the case of an  
71 employee who is a licensed or certified health care professional,  
72 provides information to, or testifies before, any public body  
73 conducting an investigation, hearing or inquiry into the quality  
74 of patient care;

75           (c) Discloses, threatens to disclose or is about to  
76 disclose to a supervisor or to a public body, an activity, policy  
77 or practice of the employer, a co-employee or another employer,  
78 that the employee reasonably believes is incompatible with a clear  
79 mandate of public policy concerning the public health, safety or  
80 welfare or protection of the environment;

81           (d) Assists, or participates in a proceeding to enforce  
82 the provisions of this law; or

83           (e) Objects to, opposes or refuses to participate in  
84 any activity, policy or practice which the employee reasonably  
85 believes:

86               (i) Is in violation of a law, or a rule or  
87 regulation promulgated pursuant to law or, if the employee is a  
88 licensed or certified health care professional, constitutes  
89 improper quality of patient care;

90               (ii) Is fraudulent or criminal; or

91               (iii) Is incompatible with a clear mandate of  
92 public policy concerning the public health, safety or welfare or  
93 protection of the environment.

94           **SECTION 18.**   **Forum.**   Upon a violation of any of the  
95 provisions of Sections 15 through 23 of this act, an aggrieved  
96 employee or former employee may, within one (1) year, institute a  
97 civil action in a court of competent jurisdiction. Upon the  
98 application of any party, a jury trial shall be directed to try  
99 the validity of any claim under Sections 15 through 23 of this act  
100 specified in the suit.

101           **SECTION 19.**   **Burden of proof.**   A violation of Sections 15  
102 through 23 of this act has occurred only if the employee  
103 demonstrates, by a preponderance of the evidence, that any  
104 behavior described in Section 17 of this act was a contributing  
105 factor in the retaliatory action alleged in the complaint by the  
106 employee. However, relief may not be ordered under Section 20 of  
107 this act if the employer demonstrates by clear and convincing  
108 evidence that it would have taken the same unfavorable personnel  
109 action (retaliatory action) in the absence of such behavior.

110           **SECTION 20.**   **Remedies.**   All remedies available in common law  
111 tort actions shall be available to prevailing plaintiffs. The  
112 court shall also, where appropriate, order:

113                   (a) An injunction to restrain continued violation of  
114 this act;

115                   (b) The reinstatement of the employee to the same  
116 position held before the retaliatory action, or to an equivalent  
117 position;

118                   (c) The reinstatement of full fringe benefits and  
119 seniority rights;

120                   (d) The compensation for lost wages, benefits and other  
121 remuneration;

122                   (e) The payment by the employer of reasonable costs,  
123 expert witness and attorney's fees; and

124                   (f) Compensatory or exemplary damages.

125           **SECTION 21.**   **Posting.**   An employer shall conspicuously  
126 display notices of its employees' protections and obligations  
127 under Sections 15 through 23 of this act.

128           **SECTION 22.**   **Preemption.**   Nothing in Sections 15 through 23

129 of this act shall be deemed to diminish the rights, privileges, or  
130 remedies of any employee under any other federal or state law or  
131 regulation or under any collective bargaining agreement or  
132 employment contract. No employee may waive through a private  
133 contract any right set forth in Sections 15 through 23 of this  
134 act, except as set forth in Section 23 of this act, and no  
135 employee may be compelled to adjudicate his or her rights under  
136 Sections 15 through 23 of this act pursuant to a collective  
137 bargaining agreement or any other arbitration agreement.

138       **SECTION 23. Settlement.** The rights afforded employees under  
139 Sections 15 through 23 of this act may not be waived or modified,  
140 except through a court approved settlement agreement reached with  
141 the voluntary participation and consent of the employee and  
142 employer. An employer may not require an employee to waive, as a  
143 condition of settlement, his or her right to reasonably engage in  
144 conduct protected under Section 17 of this act.

145       **SECTION 24.** Sections 25-9-171 through 25-9-177, Mississippi  
146 Code of 1972, which provide protection to public employees from  
147 reprisal for giving information to an investigative body or  
148 agency, is hereby repealed.

149       **FURTHER, AMEND the title to conform.**