To: Judiciary

MISSISSIPPI LEGISLATURE REGULAR SESSION 2003
By: Senator(s) Williamson

SENATE BILL NO. 2545

AN ACT TO CREATE THE MISSISSIPPI WHISTLEBLOWER PROTECTION ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE THAT AN EMPLOYER SHALL NOT TAKE ANY RETALIATORY ACTION AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE ENGAGES IN CERTAIN PROTECTED ACTIVITIES; TO PROVIDE THAT AN AGGRIEVED EMPLOYEE OR FORMER EMPLOYEE MAY WITHIN ONE YEAR INSTITUTE A CIVIL ACTION UPON A VIOLATION OF ANY OF THE PROVISIONS OF THIS ACT; TO PROVIDE THAT REMEDIES AVAILABLE IN COMMON LAW TORT ACTIONS SHALL BE AVAILABLE TO PREVAILING PLAINTIFFS; TO REQUIRE EMPLOYERS TO CONSPICUOUSLY DISPLAY NOTICES OF EMPLOYEE PROTECTIONS AND OBLIGATIONS UNDER THIS ACT; TO PROVIDE THAT THE RIGHTS AFFORDED EMPLOYEES UNDER THIS ACT MAY NOT BE WAIVED OR MODIFIED, EXCEPT THROUGH A COURT APPROVED SETTLEMENT AGREEMENT REACHED WITH THE VOLUNTARY PARTICIPATION AND CONSENT OF THE EMPLOYEE AND EMPLOYER; TO REPEAL SECTIONS 25-9-171 THROUGH 25-9-177, MISSISSIPPI CODE OF 1972, WHICH PROVIDE PROTECTION TO PUBLIC EMPLOYEES FROM REPRISAL FOR GIVING INFORMATION TO AN INVESTIGATIVE BODY OR AGENCY; AND FOR RELATED PURPOSES.

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

SECTION 1. Short title. This act may be cited as the "Mississippi Whistleblower Protection Act."

SECTION 2. Definitions. For purposes of this act, the following terms shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Employer" means any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of, and shall also include any public or privately-owned corporation, all branches of state government, or the several counties and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission or board or any other agency or instrumentality thereof. Employer shall also include agents, contractors or subcontractors of an employer.
(b) "Employee" means any individual who performs services for or under the control and direction of an employer for wages or other remuneration. Employee shall also include applicants for employment, former employees or an authorized representative of an employee.

(c) "Public body" means:

(i) The United States Congress, State Legislature, any popularly-elected local governmental body or any member or employee thereof;

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

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

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

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

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

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

(e) "Retaliatory action" means the discharge, suspension, demotion, harassment, blacklisting or the refusal to hire an employee, or other adverse employment action taken against an employee in the terms and conditions of employment, or other actions which interfere with an employee's ability to engage in protected activity set forth in Section 3 of this act.
"Improper quality of patient care" means, with respect to patient care by an employer that is a health care provider, any practice, procedure, action or failure to act which violates any law or any rule, regulation or declaratory ruling adopted pursuant to law, or any professional code of ethics.

SECTION 3. Protected activity. An employer shall not take any retaliatory action against an employee because the employee does any of the following:

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

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

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

(d) Assist, or participates in a proceeding to enforce the provisions of this law; or
(e) Objects to, opposes or refuses to participate in any activity, policy or practice which the employee reasonably believes:

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

(ii) Is fraudulent or criminal; or

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

SECTION 4. Forum. Upon a violation of any of the provisions of this act, an aggrieved employee or former employee may, within one (1) year, institute a civil action in a court of competent jurisdiction. Upon the application of any party, a jury trial shall be directed to try the validity of any claim under this act specified in the suit.

SECTION 5. Burden of proof. A violation of this act has occurred only if the employee demonstrates, by a preponderance of the evidence, that any behavior described in Section 3 of this act was a contributing factor in the retaliatory action alleged in the complaint by the employee. However, relief may not be ordered under Section 6 of this act if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action (retaliatory action) in the absence of such behavior.

SECTION 6. Remedies. All remedies available in common law tort actions shall be available to prevailing plaintiffs. The court shall also, where appropriate, order:

(a) An injunction to restrain continued violation of this act;
(b) The reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position;
(c) The reinstatement of full fringe benefits and seniority rights;
(d) The compensation for lost wages, benefits and other remuneration;
(e) The payment by the employer of reasonable costs, expert witness and attorney's fees; and
(f) Compensatory or exemplary damages.

SECTION 7. Posting. An employer shall conspicuously display notices of its employees; protections and obligations under the provisions of this act.

SECTION 8. Preemption. Nothing in this act shall be deemed to diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation or under any collective bargaining agreement or employment contract. No employee may waive through a private contract any right set forth in this act, except as set forth in Section 9 of this act, and no employee may be compelled to adjudicate his or her rights under this act pursuant to a collective bargaining agreement or any other arbitration agreement.

SECTION 9. Settlement. The rights afforded employees under this act may not be waived or modified, except through a court-approved settlement agreement reached with the voluntary participation and consent of the employee and employer. An employer may not require an employee to waive, as a condition of settlement, his or her right to reasonably engage in conduct protected under Section 3 of this act.

SECTION 10. Sections 25-9-171, 25-9-172, 25-9-173, 25-9-175 and 25-9-177, Mississippi Code of 1972, which provide protection to public employees from reprisal for giving information to an investigative body or agency, is hereby repealed.
SECTION 11. This act shall take effect and be in force from and after July 1, 2003.