

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 86

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

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

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

7 25-9-173. (1) No agency shall dismiss or otherwise
8 adversely affect the compensation or employment status of any
9 public employee because the public employee testified or provided
10 information to a state investigative body whether or not the
11 testimony or information is provided under oath.

12 (2) Any person who is a whistleblower, as defined in Section
13 25-9-171, and who as a result of being a whistleblower has been
14 subjected to workplace reprisal or retaliatory action, is entitled
15 to the remedies provided under Section 25-9-175. For the purpose
16 of this section, "reprisal or retaliatory action" means, but is
17 not limited to:

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

20 (b) Demotion;

21 (c) Reduction in pay;

22 (d) Denial of promotion;

23 (e) Suspension;

24 (f) Dismissal; and

25 (g) Denial of employment.

26 * * *

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

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

35 **SECTION 2.** Section 25-9-175, Mississippi Code of 1972, is
36 amended as follows:

37 25-9-175. Any agency which violates the provisions of
38 Section 25-9-173 shall be liable to the public employee for back
39 pay and reinstatement. In addition, an employee whose employment
40 is suspended or terminated or who is subjected to adverse
41 personnel action in violation of Section 25-9-173 is entitled to
42 sue for injunctive relief, * * * damages, court costs and
43 reasonable attorney's fees; provided, however, that an employee
44 may not recover an amount that exceeds the limitations provided in
45 Section 11-46-15. Additionally, each member of any agency's
46 governing board or authority may be found individually liable for
47 a civil fine of up to Ten Thousand Dollars (\$10,000.00) for each
48 violation of Section 25-9-173. In any instance where the agency
49 in violation of Section 25-9-173 has no governing board or
50 authority, the agency's executive director may be found
51 individually liable for a civil fine not to exceed Ten Thousand
52 Dollars (\$10,000.00). If the court determines that any action
53 filed under this section by an employee is frivolous and
54 unwarrantable, the court may award to the employer court costs and
55 reasonable expenses, including attorney's fees, incurred in
56 defense of actions brought by the employee under this section.

57 **SECTION 3.** Section 25-9-177, Mississippi Code of 1972, is
58 amended as follows:

59 25-9-177. Actions to recover civil fines, damages and other
60 remedies provided for under Section 25-9-175 may be instituted in
61 the Circuit Court for the First Judicial District of Hinds County
62 or in the circuit court of the public employees' residence. In
63 such actions, the public employee shall prove by a preponderance
64 of the evidence that, but for his providing information or
65 testimony to a state investigative body prior to occurrence of the
66 dismissal or any adverse action, his dismissal or any adverse
67 action taken against him would not have occurred. Remedies
68 provided for herein shall be supplemental to any other remedies,
69 judicial or administrative, provided for under law. Any
70 administrative remedies provided for state-service employees under
71 Sections 25-9-127 through 25-9-131, Mississippi Code of 1972, or
72 any remedies under a grievance or appeal process of the employing
73 governmental entity relating to suspension or termination of
74 employment or adverse personnel action, shall not be exhausted or
75 diminished as a result of any action taken by the employee under
76 Sections 25-9-175 and 25-9-177, and the employee shall be required
77 to exhaust such remedies prior to instituting an action authorized
78 under Sections 25-9-175 and 25-9-177.

79 **SECTION 4.** This act shall take effect and be in force from
80 and after July 1, 2004.