

By: Senator(s) Williamson

To: Judiciary, Division A

SENATE BILL NO. 2332

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

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

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

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

24 (a) "Employer" means any individual, partnership,
25 association, corporation or any person or group of persons acting
26 directly or indirectly on behalf of, and shall also include any
27 public or privately-owned corporation, all branches of state
28 government, or the several counties and municipalities thereof, or
29 any other political subdivision of the state, or a school
30 district, or any special district, or any authority, commission or
31 board or any other agency or instrumentality thereof. Employer
32 shall also include agents, contractors or subcontractors of an
33 employer.

34 (b) "Employee" means any individual who performs
35 services for or under the control and direction of an employer for
36 wages or other remuneration. Employee shall also include
37 applicants for employment, former employees or an authorized
38 representative of an employee.

39 (c) "Public body" means:

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

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

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

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

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

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

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

60 (e) "Retaliatory action" means the discharge,
61 suspension, demotion, harassment, blacklisting or the refusal to
62 hire an employee, or other adverse employment action taken against
63 an employee in the terms and conditions of employment, or other
64 actions which interfere with an employee's ability to engage in
65 protected activity set forth in Section 3 of this act.

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

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

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

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

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

96 (d) Assist, or participates in a proceeding to enforce
97 the provisions of this law; or

98 (e) Objects to, opposes or refuses to participate in
99 any activity, policy or practice which the employee reasonably
100 believes:

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

105 (ii) Is fraudulent or criminal; or

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

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

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

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

127 (a) An injunction to restrain continued violation of
128 this act;

129 (b) The reinstatement of the employee to the same
130 position held before the retaliatory action, or to an equivalent
131 position;

132 (c) The reinstatement of full fringe benefits and
133 seniority rights;

134 (d) The compensation for lost wages, benefits and other
135 remuneration;

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

138 (f) Compensatory or exemplary damages.

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

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

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

158 **SECTION 10.** Sections 25-9-171, 25-9-172, 25-9-173, 25-9-175
159 and 25-9-177, Mississippi Code of 1972, which provide protection
160 to public employees from reprisal for giving information to an
161 investigative body or agency, are hereby repealed.

162 **SECTION 11.** This act shall take effect and be in force from
163 and after July 1, 2004.