

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 172

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, 2006.