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To: Judiciary A

## HOUSE BILL NO. 1451

1 AN ACT TO AMEND SECTION 25-9-171, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE DEFINITIONS OF CERTAIN TERMS AS THEY RELATE TO THE  
3 PUBLIC EMPLOYEE WHISTLEBLOWER LAW; TO CREATE A NEW CODE SECTION TO  
4 BE CODIFIED AS SECTION 25-9-172, MISSISSIPPI CODE OF 1972, TO  
5 PROVIDE THAT UPON RECEIPT OF A SIGNED WRITTEN COMPLAINT OF ALLEGED  
6 IMPROPER GOVERNMENTAL ACTION, A STATE INVESTIGATIVE BODY SHALL  
7 KEEP A RECORD OF THE COMPLAINT AND SHALL HAVE THE AUTHORITY TO  
8 INVESTIGATE THE COMPLAINT IN ACCORDANCE WITH ITS POWERS AND DUTIES  
9 PROVIDED BY THE LAWS OF THE STATE OF MISSISSIPPI; TO AMEND SECTION  
10 25-9-173, MISSISSIPPI CODE OF 1972, TO PROHIBIT WORKPLACE REPRISAL  
11 OR RETALIATORY ACTION AGAINST A PUBLIC EMPLOYEE WHISTLEBLOWER; TO  
12 AMEND SECTION 25-9-175, MISSISSIPPI CODE OF 1972, TO REVISE THE  
13 RIGHTS OF ACTION OF A PUBLIC EMPLOYEE WHO IS SUBJECTED TO REPRISAL  
14 OR RETALIATORY ACTION; TO AMEND SECTION 25-9-177, MISSISSIPPI CODE  
15 OF 1972, TO PROVIDE THAT ANY ADMINISTRATIVE REMEDIES PROVIDED FOR  
16 STATE-SERVICE EMPLOYEES, OR ANY REMEDIES UNDER A GRIEVANCE OR  
17 APPEAL PROCESS OF THE EMPLOYING GOVERNMENTAL ENTITY RELATING TO  
18 SUSPENSION OR TERMINATION OF EMPLOYMENT OR ADVERSE PERSONNEL  
19 ACTION, SHALL NOT BE EXHAUSTED OR DIMINISHED AS A RESULT OF ANY  
20 LEGAL ACTION TAKEN BY THE EMPLOYEE; AND FOR RELATED PURPOSES.

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

22 SECTION 1. Section 25-9-171, Mississippi Code of 1972, is  
23 amended as follows:

24 25-9-171. For purposes of Sections 25-9-171 through  
25 25-9-177, the following terms shall have the meanings ascribed to  
26 them herein:

27 (a) "Abuse" means acting in an arbitrary and capricious  
28 manner that adversely affects the accomplishment of a function of  
29 any governmental entity.

30 (b) "Governmental entity" means a board, commission,  
31 department, office or other agency of the state or a political  
32 subdivision of the state.

33 (c) "Employee" means any individual employed or holding  
34 office in any department or agency of state or local government.

35 (d) "Improper governmental action" means any action by

36 an employee which is undertaken in the performance of the  
37 employee's official duties, whether or not the action is within  
38 the scope of the employee's employment:

39 (i) Which is in violation of any federal or state  
40 law or regulation, is an abuse of authority, results in  
41 substantial abuse, misuse, destruction, waste, or loss of public  
42 funds or public resources; or

43 (ii) Which is of substantial and specific danger  
44 to the public health or safety.

45 "Improper governmental action" does not include personnel  
46 actions for which other remedies exist, including, but not limited  
47 to, employee grievances, complaints, appointments, promotions,  
48 transfers, assignments, reassignments, reinstatements,  
49 restorations, reemployments, performance evaluations, reductions  
50 in pay, dismissals, suspensions, demotions, violations of the  
51 state personnel system or local personnel policies, alleged labor  
52 agreement violations, reprimands, claims of discriminatory  
53 treatment, or any personnel action which may be taken under  
54 federal or state law.

55 (e) "Misuse" means an illegal or unauthorized use.

56 (f) "Personnel action" means an action that affects an  
57 employee's promotion, demotion, transfer, work assignment or  
58 performance evaluation.

59 (g) "State investigative body" shall mean the Attorney  
60 General of the State of Mississippi, the State Auditor, the  
61 Mississippi Ethics Commission, the Joint Legislative Committee on  
62 Performance Evaluation and Expenditure Review or any other  
63 standing committee of the Legislature, or any district attorney of  
64 the State of Mississippi.

65 (h) "Use of official authority or influence" includes  
66 taking, directing others to take, recommending, processing or  
67 approving any personnel action such as an appointment, promotion,  
68 transfer, assignment, reassignment, reinstatement, restoration,

69 reemployment, performance evaluation or other disciplinary action.

70 (i) "Waste" means an unnecessary or unreasonable  
71 expenditure or use.

72 (j) "Whistleblower" means an employee who in good faith  
73 reports an alleged improper governmental action to a state  
74 investigative body, initiating an investigation. For purposes of  
75 the provisions of this act, the term "whistleblower" also means an  
76 employee who in good faith provides information to a state  
77 investigative body, or an employee who is believed to have  
78 reported alleged improper governmental action to a state  
79 investigative body or to have provided information to a state  
80 investigative body but who, in fact, has not reported such action  
81 or provided such information.

82 SECTION 2. The following shall be codified as Section  
83 25-9-172, Mississippi Code of 1972:

84 25-9-172. (1) Upon receipt of a signed written complaint of  
85 alleged improper governmental action, a state investigative body  
86 shall keep a record of the complaint and shall have the authority  
87 to investigate the complaint in accordance with its powers and  
88 duties provided by the laws of the State of Mississippi.

89 (2) Each state investigative body shall develop and maintain  
90 a standard form for use by the whistleblower when reporting  
91 alleged improper governmental action. Such form shall require as  
92 a minimum the name, address and telephone number of the  
93 whistleblower, and a description of the alleged improper  
94 governmental action.

95 (3) If any state investigative body receives a complaint  
96 that contains allegations outside its expertise, then the state  
97 investigative body may refer the complaint to another state  
98 investigative body unless contrary to the laws of the State of  
99 Mississippi.

100 (4) In any case to which this section applies, the identity  
101 of the whistleblower shall be kept confidential unless the state

102 investigative body determines that the information has been  
103 provided other than in good faith, or unless the confidentiality  
104 requirement conflicts with Article 1, Chapter 4 of Title 25,  
105 Mississippi Code of 1972.

106 SECTION 3. Section 25-9-173, Mississippi Code of 1972, is  
107 amended as follows:

108 25-9-173. (1) No agency shall dismiss or otherwise  
109 adversely affect the compensation or employment status of any  
110 public employee because the public employee testified or provided  
111 information to a state investigative body whether or not the  
112 testimony or information is provided under oath.

113 (2) Any person who is a whistleblower, as defined in Section  
114 25-9-171, and who as a result of being a whistleblower has been  
115 subjected to workplace reprisal or retaliatory action is entitled  
116 to the remedies provided under Section 25-9-175. For the purpose  
117 of this section, "reprisal or retaliatory action" means, but is  
118 not limited to:

119 (a) Unwarranted and unsubstantiated letters of  
120 reprimand or unsatisfactory performance evaluations;

121 (b) Demotion;

122 (c) Reduction in pay;

123 (d) Denial of promotion;

124 (e) Suspension;

125 (f) Dismissal; and

126 (g) Denial of employment.

127 (3) An employee who has filed a valid whistleblower  
128 complaint may not recover the damages and other remedies provided  
129 under Section 25-9-175 unless the dismissal or adverse action  
130 taken against him was the direct result of providing information  
131 to a state investigative body.

132 (4) Nothing in this section prohibits a governmental entity  
133 from making any decision exercising its authority to terminate,  
134 suspend or discipline an employee who engages in workplace

135 reprisal or retaliatory action against a whistleblower.

136 SECTION 4. Section 25-9-175, Mississippi Code of 1972, is  
137 amended as follows:

138 25-9-175. Any agency which violates the provisions of  
139 Section 25-9-173 shall be liable to the public employee for back  
140 pay and reinstatement. In addition, an employee whose employment  
141 is suspended or terminated or who is subjected to adverse  
142 personnel action in violation of Section 25-9-173 is entitled to  
143 sue for injunctive relief, compensatory damages, court costs and  
144 reasonable attorney's fees; provided, however, that an employee  
145 may not recover an amount that exceeds the limitations provided in  
146 Section 11-46-15. Additionally, each member of any agency's  
147 governing board or authority may be found individually liable for  
148 a civil fine of up to Ten Thousand Dollars (\$10,000.00) for each  
149 violation of Section 25-9-173. In any instance where the agency  
150 in violation of Section 25-9-173 has no governing board or  
151 authority, the agency's executive director may be found  
152 individually liable for a civil fine not to exceed Ten Thousand  
153 Dollars (\$10,000.00). If the court determines that any action  
154 filed under this section by an employee is frivolous and  
155 unwarrantable, the court may award to the employer court costs and  
156 reasonable expenses incurred in defense of actions brought by the  
157 employee under this section.

158 SECTION 5. Section 25-9-177, Mississippi Code of 1972, is  
159 amended as follows:

160 25-9-177. Actions to recover civil fines and other remedies  
161 provided for under Section 25-9-175 may be instituted in the  
162 Circuit Court for the First Judicial District of Hinds County or  
163 in the circuit court of the public employees' residence. In such  
164 actions, the public employee shall prove by a preponderance of the  
165 evidence that his dismissal or any adverse action taken against  
166 him was the direct result of providing information or testimony to  
167 a state investigative body. Remedies provided for herein shall be

168 supplemental to any other remedies, judicial or administrative,  
169 provided for under law. \* \* \* Any administrative remedies  
170 provided for state-service employees under Sections 25-9-127  
171 through 25-9-131, Mississippi Code of 1972, or any remedies under  
172 a grievance or appeal process of the employing governmental entity  
173 relating to suspension or termination of employment or adverse  
174 personnel action, shall not be exhausted or diminished as a result  
175 of any action taken by the employee under Section 25-9-175.

176 SECTION 6. This act shall take effect and be in force from  
177 and after its passage.