

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 2046

By: Nichols of the Senate

and

Terrill of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to state government; amending 74 O.S.
12 2001, Section 840-2.5, as last amended by Section 1,
13 Chapter 106, O.S.L. 2003 (74 O.S. Supp. 2007, Section
14 840-2.5), which relates to the Whistleblower Act;
15 authorizing certain state employees to file an appeal
16 on behalf of certain person; and providing an
17 effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-2.5, as
20 last amended by Section 1, Chapter 106, O.S.L. 2003 (74 O.S. Supp.
21 2007, Section 840-2.5), is amended to read as follows:

22 Section 840-2.5 A. This section shall be known and may be
23 cited as the "Whistleblower Act". The purpose of the Whistleblower
24 Act is to encourage and protect the reporting of wrongful
governmental activities and to deter retaliation against state

1 employees for reporting those activities. No conviction of any
2 person shall be required to afford protection for any employee under
3 this section.

4 B. For purposes of this section, "agency" means any office,
5 department, commission or institution of the state government. No
6 officer or employee of any state agency shall prohibit or take
7 disciplinary action against employees of such agency, whether
8 subject to the provisions of the Merit System or in unclassified
9 service, for:

10 1. Disclosing public information to correct what the employee
11 reasonably believes evidences a violation of the Oklahoma
12 Constitution or law or a rule promulgated pursuant to law;

13 2. Reporting a violation of the Oklahoma Constitution, state
14 or federal law, rule or policy; mismanagement; a gross waste of
15 public funds; an abuse of authority; or a substantial and specific
16 danger to public health or safety;

17 3. Discussing the operations and functions of the agency,
18 either specifically or generally, with the Governor, members of the
19 Legislature, the print or electronic media or other persons in a
20 position to investigate or initiate corrective action; or

21 4. Taking any of the above actions without giving prior notice
22 to the employee's supervisor or anyone else in the employee's chain
23 of command.

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1 C. Any person who has authority to take, direct others to take,
2 recommend or approve any personnel action shall not take or fail to
3 take any personnel action with respect to any employee for filing an
4 appeal or testifying on behalf of any person filing an appeal with
5 the Oklahoma Merit Protection Commission. This section shall not be
6 construed as prohibiting disciplinary action of an employee who
7 discloses information which the employee:

- 8 1. Knows to be false;
- 9 2. Knowingly and willfully discloses with reckless disregard
10 for its truth or falsity; or
- 11 3. Knows to be confidential pursuant to law.

12 D. Each state agency, department, institution, board and
13 commission in all branches of state government, including all
14 institutions in The Oklahoma State System of Higher Education, shall
15 prominently post or publish a copy of this section of law in
16 locations where it can reasonably be expected to come to the
17 attention of all employees.

18 E. As used in this section:

- 19 1. "Disciplinary action" means any direct or indirect form of
20 discipline, any dismissal, demotion, transfer, reassignment,
21 suspension, reprimand, admonishment, warning of possible dismissal,
22 reduction in force, reduction in rank, reduction in status, or
23 withholding of work;

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1 2. "Probation" means that period of time, after an officer or
2 employee is found to have violated the provisions of this section
3 and corrective action is ordered, during which time that officer's
4 or employee's performance and conduct is being monitored by the
5 employing agency for further violations of the Oklahoma Personnel
6 Act; and

7 3. "Mismanagement" means fraudulent activity, criminal misuse
8 of funds or abuse or violation of a well-established, articulated,
9 clear and compelling public policy.

10 F. The written appeal must identify the person on whose behalf
11 it is made. The person making the appeal must provide the
12 Commission with the name, address, and telephone number of the
13 person on whose behalf the appeal is made. The Oklahoma Merit
14 Protection Commission personnel shall verify the authorization of
15 such appeal by the person on whose behalf the appeal is made. The
16 person claiming to be aggrieved has the responsibility to cooperate
17 with the Commission in the investigation. The failure to cooperate
18 in the investigation shall be grounds for dismissal of the appeal
19 filed on behalf of the aggrieved party.

20 G. Any state employee or any former state employee aggrieved
21 pursuant to this section, or any authorized third-party state
22 employee who has actual knowledge of the discipline or retaliatory
23 act taken against the whistleblower, may file an appeal with the
24 Oklahoma Merit Protection Commission within sixty (60) days of the

1 alleged violation. The Oklahoma Merit Protection Commission shall
2 promulgate rules to establish procedures for the conduct of
3 investigations. If, after investigation, the Executive Director
4 determines a violation of this section may have occurred, the
5 Executive Director shall appoint ~~a hearing examiner~~ an
6 administrative law judge to hear the case as provided for in Section
7 840-6.6 of this title.

8 ~~G. H.~~ If, after the hearing, it is determined that a violation
9 has occurred, the Commission or ~~hearing examiner~~ administrative law
10 judge shall order corrective action pursuant to Section 840-6.6 of
11 this title. Such corrective action shall include, but not be
12 limited to, suspension without pay, demotion or discharge. Any
13 employee found to have violated this section of law, in addition to
14 being suspended or demoted, shall be placed on probation for six (6)
15 months. Such probation shall commence on the date of the final
16 decision filed by the Commission. Any employee who is determined to
17 have violated the Oklahoma Personnel Act, Section 840-1.1 et seq. of
18 this title, while serving said probation shall forfeit the position
19 of the person for one (1) year. Any employee, supervisor or
20 appointing authority of any state agency, whether subject to the
21 provisions of the Merit System of Personnel Administration or in
22 unclassified service, who knowingly and willfully violates the
23 provisions of this section shall forfeit the position of the person
24 and be ineligible for appointment to or employment in a position in

1 state service for a period of at least one (1) year and no more than
2 five (5) years. The decision of the Commission in such cases may be
3 appealed by any party pursuant to Article II of the Administrative
4 Procedures Act.

5 SECTION 2. This act shall become effective November 1, 2008.

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