

SB 2046

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

THE STATE SENATE
Thursday, February 21, 2008

Senate Bill No. 2046
As Amended

SENATE BILL NO. 2046 - By: NICHOLS of the Senate and TERRILL of the House.

[state government - Whistleblower Act - authorizing disclosures - requiring notice - effective date]

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

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

Section 840-2.5 A. This section shall be known and may be cited as the "Whistleblower Act". The purpose of the Whistleblower Act is to encourage and protect the reporting of wrongful governmental activities and to deter retaliation against state employees for reporting those activities. No conviction of any person shall be required to afford protection for any employee under this section.

B. For purposes of this section, "agency" means any office, department, commission or institution of the state government. No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether

1 subject to the provisions of the Merit System or in unclassified
2 service, for:

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

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

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

14 4. Taking any of the above actions without giving prior notice
15 to the employee's supervisor or anyone else in the employee's chain
16 of command.

17 C. Any person who has authority to take, direct others to take,
18 recommend or approve any personnel action shall not take or fail to
19 take any personnel action with respect to any employee for filing an
20 appeal or testifying on behalf of any person filing an appeal with
21 the Oklahoma Merit Protection Commission. This section shall not be
22 construed as prohibiting disciplinary action of an employee who
23 discloses information which the employee:

1 1. Knows to be false;

2 2. Knowingly and willfully discloses with reckless disregard
3 for its truth or falsity; or

4 3. Knows to be confidential pursuant to law.

5 D. Each state agency, department, institution, board and
6 commission in all branches of state government, including all
7 institutions in The Oklahoma State System of Higher Education, shall
8 prominently post or publish a copy of this section of law in
9 locations where it can reasonably be expected to come to the
10 attention of all employees.

11 E. As used in this section:

12 1. "Disciplinary action" means any direct or indirect form of
13 discipline, any dismissal, demotion, transfer, reassignment,
14 suspension, reprimand, admonishment, warning of possible dismissal,
15 reduction in force, reduction in rank, reduction in status, or
16 withholding of work;

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

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

4 F. Any disclosure, report, or charge that a person has engaged
5 in or is engaging in any of the improper activities pursuant to
6 subsection B of this section may be made by or on behalf of any
7 person claiming to be aggrieved. A charge on behalf of a person
8 claiming to be aggrieved may be made by any person, agency, or
9 organization.

10 The written disclosure, report, or charge need not identify by
11 name the person on whose behalf it is made. The person making the
12 disclosure, report, or charge must provide the Commission with the
13 name, address, and telephone number of the person on whose behalf
14 the disclosure, report, or charge is made. The Oklahoma Merit
15 Protection Commission personnel shall verify the authorization of
16 such disclosure, report, or charge by the person on whose behalf the
17 disclosure, report, or charge is made and such person may request
18 his or her identity remain confidential, however, the Commission may
19 disclose the person's identity to the federal, state, or local
20 agencies that have agreed to keep such information confidential.
21 The person claiming to be aggrieved has the responsibility to
22 provide the Commission with notice of change of address or prolonged

1 absence from that current address during the Commissions
2 consideration of the disclosure, report, or charge.

3 G. Any employee or any former employee aggrieved pursuant to
4 this section may file an appeal with the Oklahoma Merit Protection
5 Commission within sixty (60) days of the alleged violation. The
6 Oklahoma Merit Protection Commission shall promulgate rules to
7 establish procedures for the conduct of investigations. If, after
8 investigation, the Executive Director determines a violation of this
9 section may have occurred, the Executive Director shall appoint a
10 hearing examiner to hear the case as provided for in Section 840-6.6
11 of this title.

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

1 any state agency, whether subject to the provisions of the Merit
2 System of Personnel Administration or in unclassified service, who
3 knowingly and willfully violates the provisions of this section
4 shall forfeit the position of the person and be ineligible for
5 appointment to or employment in a position in state service for a
6 period of at least one (1) year and no more than five (5) years.
7 The decision of the Commission in such cases may be appealed by any
8 party pursuant to Article II of the Administrative Procedures Act.

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

10 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-18-08
11 - DO PASS, As Amended and Coauthored.