

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1852

By: Shelton

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5  
6 AS INTRODUCED

7 An Act relating to state government; amending 74 O.S.  
8 2011, Section 840-2.5, which relates to the  
9 Whistleblower Act; increasing time limit to file  
10 appeal; and providing an effective date.

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

12 SECTION 1. AMENDATORY 74 O.S. 2011, Section 840-2.5, is  
13 amended to read as follows:

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

21 B. For purposes of this section, "agency" means any office,  
22 department, commission or institution of the state government. No  
23 officer or employee of any state agency shall prohibit or take  
24 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:

24 1. Knows to be false;

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

3        3. Knows to be confidential pursuant to law.

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

10       E. As used in this section:

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

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

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

1 F. An appeal to the Oklahoma Merit Protection Commission must  
2 identify the person on whose behalf it is made. The person making  
3 the appeal must provide the Oklahoma Merit Protection Commission  
4 with the name, address, and telephone number of the person on whose  
5 behalf the appeal is made. The Oklahoma Merit Protection Commission  
6 personnel shall verify the authorization of such appeal by the  
7 person on whose behalf the appeal is made. The person claiming to  
8 be aggrieved has the responsibility to cooperate with the Commission  
9 in the investigation. The failure to cooperate in the investigation  
10 shall be grounds for dismissal of the appeal filed on behalf of the  
11 aggrieved party.

12 G. Any state employee or former state employee aggrieved  
13 pursuant to this section, or any authorized third-party state  
14 employee who has actual knowledge of the discipline or retaliatory  
15 act taken against the whistleblower, may file an appeal with the  
16 Oklahoma Merit Protection Commission within ~~sixty (60)~~ ninety (90)  
17 days of the alleged violation. The Oklahoma Merit Protection  
18 Commission shall promulgate rules to establish procedures for the  
19 conduct of investigations. If, after investigation, the Executive  
20 Director determines a violation of this section may have occurred,  
21 the Executive Director shall appoint an administrative law judge to  
22 hear the case as provided for in Section 840-6.6 of this title.

23 H. If, after the hearing, it is determined that a violation has  
24 occurred, the Commission or administrative law judge shall order

1 corrective action pursuant to Section 840-6.6 of this title. Such  
2 corrective action shall include, but not be limited to, suspension  
3 without pay, demotion or discharge. Any employee found to have  
4 violated this section of law, in addition to being suspended or  
5 demoted, shall be placed on probation for six (6) months. Such  
6 probation shall commence on the date of the final decision filed by  
7 the Commission. Any employee who is determined to have violated the  
8 Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, while  
9 serving said probation shall forfeit the position of the person for  
10 one (1) year. Any employee, supervisor or appointing authority of  
11 any state agency, whether subject to the provisions of the Merit  
12 System of Personnel Administration or in unclassified service, who  
13 knowingly and willfully violates the provisions of this section  
14 shall forfeit the position of the person and be ineligible for  
15 appointment to or employment in a position in state service for a  
16 period of at least one (1) year and no more than five (5) years.  
17 The decision of the Commission in such cases may be appealed by any  
18 party pursuant to Article II of the Administrative Procedures Act.

19 SECTION 2. This act shall become effective November 1, 2013.  
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21 54-1-5223 LRB 01/08/13  
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