

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 56th Legislature (2018)

4   HOUSE BILL 2528

                              By: Cleveland of the House

5   and

6   Fry of the Senate

7  
8  
9                               AS INTRODUCED

10           An Act relating to state government; amending 74 O.S.  
11           2011, Section 840-2.5, which relates to the  
12           Whistleblower Act; providing for right to file civil  
                  action; authorizing payment of costs and attorney  
                  fees; and providing an effective date.

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

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

19           Section 840-2.5   A.   This section shall be known and may be  
20   cited as the "Whistleblower Act".   The purpose of the Whistleblower  
21   Act is to encourage and protect the reporting of wrongful  
22   governmental activities and to deter retaliation against state  
23   employees for reporting those activities.   No conviction of any  
24

1 person shall be required to afford protection for any employee under  
2 this section.

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

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

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

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

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

23 C. Any person who has authority to take, direct others to take,  
24 recommend or approve any personnel action shall not take or fail to

1 take any personnel action with respect to any employee for filing an  
2 appeal or testifying on behalf of any person filing an appeal with  
3 the Oklahoma Merit Protection Commission. This section shall not be  
4 construed as prohibiting disciplinary action of an employee who  
5 discloses information which the employee:

6 1. Knows to be false;

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

9 3. Knows to be confidential pursuant to law.

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

16 E. As used in this section:

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

22 2. "Probation" means that period of time, after an officer or  
23 employee is found to have violated the provisions of this section  
24 and corrective action is ordered, during which time that officer's

1 or employee's performance and conduct is being monitored by the  
2 employing agency for further violations of the Oklahoma Personnel  
3 Act; and

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

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

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

1 investigations. If, after investigation, the Executive Director  
2 determines a violation of this section may have occurred, the  
3 Executive Director shall appoint an administrative law judge to hear  
4 the case as provided for in Section 840-6.6 of this title.

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

1       I. Any employee or former employee who has reported any  
2 violation of state or federal law, rule or policy, mismanagement,  
3 gross waste of public funds, an abuse of authority, or a substantive  
4 and specific danger to public health or safety shall have in  
5 addition to any other remedy set forth in this section the right to  
6 file a civil action against the agency and individuals employed by  
7 or acting on behalf of the agency in the district court where the  
8 violation occurred for all damages suffered from a retaliatory  
9 discharge of employment or other adverse employment action taken  
10 against the employee. The employee or former employee shall be  
11 entitled to recovery of costs and reasonable attorney fees for the  
12 successful prosecution of the action.

13       SECTION 2. This act shall become effective November 1, 2018.

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15       COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT OVERSIGHT AND  
16       ACCOUNTABILITY, dated 02/12/2018 - DO PASS, As Coauthored.