

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1533

By: Standridge

AS INTRODUCED

An Act relating to the Whistleblower Act; amending 74 O.S. 2011, Section 840-2.5, which relates to the Whistleblower Act; renaming act; modifying language; modifying definitions; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2011, 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 "Oklahoma Whistleblower Act". The purpose of the Oklahoma 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

1 disciplinary action against employees of such agency, whether
2 subject to the provisions of the Merit System or in unclassified
3 service, for:

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

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

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

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

18 C. Any person who has authority to take, direct others to take,
19 recommend or approve any personnel action shall not take or fail to
20 take any personnel action with respect to any employee for filing an
21 appeal or testifying on behalf of any person filing an appeal with
22 the Oklahoma Merit Protection Commission. This section shall not be
23 construed as prohibiting disciplinary action of an employee who
24 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. "Agency" means any office, department, commission or
13 institution of the state government;

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

19 ~~2.~~ 3. "Mismanagement" means fraudulent activity, criminal
20 misuse of funds or abuse or violation of a well-established,
21 articulated, clear and compelling public policy; and

22 4. "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 identify the person on whose behalf it is made. The person making
9 the appeal must provide the Oklahoma Merit Protection Commission
10 with the name, address, and telephone number of the person on whose
11 behalf the appeal is made. The Oklahoma Merit Protection Commission
12 personnel shall verify the authorization of such appeal by the
13 person on whose behalf the appeal is made. The person claiming to
14 be aggrieved has the responsibility to cooperate with the Commission
15 in the investigation. The failure to cooperate in the investigation
16 shall be grounds for dismissal of the appeal filed on behalf of the
17 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~~ on probation shall forfeit the position of the person
16 for one (1) year. Any employee, supervisor or appointing authority
17 of 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.

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

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