

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2528

By: Cleveland

AS INTRODUCED

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

1 officer or employee of any state agency shall prohibit or take
2 disciplinary action against employees of such agency, whether
3 subject to the provisions of the Merit System or in unclassified
4 service, for:

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

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

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

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

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

3 1. Knows to be false;

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

6 3. Knows to be confidential pursuant to law.

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

13 E. As used in this section:

14 1. "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. "Probation" means that period of time, after an officer or
20 employee is found to have violated the provisions of this section
21 and corrective action is ordered, during which time that officer's
22 or employee's performance and conduct is being monitored by the
23 employing agency for further violations of the Oklahoma Personnel
24 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. An appeal to the Oklahoma Merit Protection Commission ~~must~~
5 shall identify the person on whose behalf it is made. The person
6 making the appeal ~~must~~ shall provide the Oklahoma Merit Protection
7 Commission with the name, address, and telephone number of the
8 person on whose behalf the appeal is made. The Oklahoma Merit
9 Protection Commission personnel shall verify the authorization of
10 such appeal by the person on whose behalf the appeal is made. The
11 person claiming to be aggrieved has the responsibility to cooperate
12 with the Commission in the investigation. The failure to cooperate
13 in the investigation shall be grounds for dismissal of the appeal
14 filed on behalf of the aggrieved party.

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

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

23 I. Any employee or former employee who has reported any
24 violation of state or federal law, rule or policy, mismanagement,

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

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

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