

SECOND REGULAR SESSION

HOUSE BILL NO. 1941

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MACKEY.

3227H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 285.575, RSMo, and to enact in lieu thereof one new section relating to whistleblower protections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 285.575, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 285.575, to read as follows:

285.575. 1. This section shall be known and may be cited as the "Whistleblower's Protection Act".

2. As used in this section, the following terms shall mean:

(1) "Because" or "because of", as it relates to the adverse decision or action, the person's status as a protected person was the motivating factor;

(2) "Employer", an entity that has six or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. "Employer" shall not include:

(a) The state of Missouri or its agencies, instrumentalities, or political subdivisions, including but not limited to any public institution of higher education~~[-];~~ **except that, the term "employer" shall include any elementary school and any high school, as those terms are defined in section 160.011;**

(b) A corporation wholly owned by the state of Missouri~~[-];~~

(c) An individual employed by an employer~~[-];~~ or

(d) Corporations and associations owned or operated by religious or sectarian organizations;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (3) "Proper authorities", a governmental or law enforcement agency, an officer of an
18 employee's employer, the employee's supervisor employed by the employer, or the
19 employee's human resources representative employed by the employer;

20 (4) "Protected person", an employee of an employer who has reported to the proper
21 authorities an unlawful act of his or her employer; an employee of an employer who reports to
22 his or her employer serious misconduct of the employer that violates a clear mandate of
23 public policy as articulated in a constitutional provision, statute, or regulation promulgated
24 under statute; or an employee of an employer who has refused to carry out a directive issued
25 by his or her employer that if completed would be a violation of the law~~[-An employee of an
26 employer is not a protected person if:~~

27 ~~(a) The employee is a supervisory, managerial, or executive employee or an officer of
28 his or her employer and the unlawful act or serious misconduct reported concerns matters
29 upon which the employee is employed to report or provide professional opinion; or~~

30 ~~(b) The proper authority or person to whom the employee makes his or her report is
31 the person whom the employee claims to have committed the unlawful act or violation of a
32 clear mandate of public policy];~~

33 (5) "The motivating factor", the employee's protected classification actually played a
34 role in the adverse decision or action and had a determinative influence on the adverse
35 decision or action.

36 3. This section is intended to codify the existing common law exceptions to the at-
37 will employment doctrine and to limit their future expansion by the courts. This section, in
38 addition to chapter 213 and chapter 287, shall provide the exclusive remedy for any and all
39 claims of unlawful employment practices.

40 4. It shall be an unlawful employment practice for an employer to discharge an
41 individual defined as a protected person in this section because of that person's status as a
42 protected person.

43 5. A protected person aggrieved by a violation of this section shall have a private
44 right of action for actual damages for violations of this section but not for punitive damages.
45 However, if a private right of action for damages exists under another statutory or regulatory
46 scheme, whether under state or federal law, no private right of action shall exist under this
47 ~~[statute]~~ **section.**

48 6. Any party to any action initiated under this section may demand a trial by jury.

49 7. A protected person aggrieved by a violation of this section shall have a private
50 right of action that may be filed in a court of competent jurisdiction. The only remedies
51 available in such an action shall be:

52 (1) Back pay;

53 (2) Reimbursement of medical bills directly related to a violation of this section; and

54 (3) Additionally, if a protected person proves, by clear and convincing evidence, that
55 the conduct of the employer was outrageous because of the employer's evil motive or reckless
56 indifference to the rights of others, then, such person may receive double the amount awarded
57 under subdivisions (1) and (2) of this subsection, as liquidated damages. In applying this
58 subdivision, the provisions of section 510.263 shall be applied as though liquidated damages
59 were punitive damages and as though the amounts referenced in subdivisions (1) and (2) of
60 this subsection were compensatory damages.

61 8. The court, in addition to the damages set forth in subsection 7 of this section, may
62 award the prevailing party court costs and reasonable attorney fees; except that a prevailing
63 respondent may be awarded reasonable attorney fees only upon a showing that the case was
64 without foundation.

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