

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1640

By: Humphrey

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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; providing for right to file civil  
action; authorizing payment for damages, costs and  
attorney fees; and providing an effective date.

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

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

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

22 B. For purposes of this section, "agency" means any office,  
23 department, commission or institution of the state government. No  
24 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 or  
8 federal law, rule or policy; mismanagement; a gross waste of public  
9 funds; an abuse of authority; or a substantial and specific danger  
10 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. "Disciplinary action" means any direct or indirect form of  
13 discipline, any dismissal, demotion, transfer, reassignment,  
14 suspension, reprimand, admonishment, warning of possible dismissal,  
15 reduction in force, reduction in rank, reduction in status, or  
16 withholding of work;

17 2. "Probation" means that period of time, after an officer or  
18 employee is found to have violated the provisions of this section  
19 and corrective action is ordered, during which time that officer's  
20 or employee's performance and conduct is being monitored by the  
21 employing agency for further violations of the Oklahoma Personnel  
22 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  
24 Executive Director shall appoint an administrative ~~law judge~~ hearing

1 officer to hear the case as provided for in Section 840-6.6 of this  
2 title.

3 H. If, after the hearing, it is determined that a violation has  
4 occurred, the Commission or administrative ~~law judge~~ hearing officer  
5 shall order corrective action pursuant to Section 840-6.6 of this  
6 title. Such corrective action shall include, but not be limited to,  
7 suspension without pay, demotion or discharge. Any employee found  
8 to have violated this section of law, in addition to being suspended  
9 or 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 recover damages in an amount not to exceed One Hundred  
10 Seventy-five Thousand Dollars (\$175,000.00), in addition to costs  
11 and reasonable attorney fees for the successful prosecution of the  
12 action.

13 SECTION 2. This act shall become effective November 1, 2021.

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15 58-1-5154 LRB 12/28/20

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