

SECOND REGULAR SESSION

HOUSE BILL NO. 2393

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MACKEY.

4871H.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Section A. Section 285.575, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 285.575, to read as follows: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 the state of Missouri or its agencies, instrumentalities, or political subdivisions, including but not limited to any public institution of higher education, a corporation wholly owned by the state of Missouri, an individual employed by an employer, or corporations and associations owned or operated by religious or sectarian organizations];~~

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

(4) "Protected person", an employee of an employer who has reported to the proper authorities an unlawful act of his or her employer; an employee of an employer who reports to his or her employer serious misconduct of the employer that violates a clear mandate of public

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.

18 policy as articulated in a constitutional provision, statute, or regulation promulgated under
19 statute; or an employee of an employer who has refused to carry out a directive issued by his or
20 her employer that if completed would be a violation of the law[~~—An employee of an employer
21 is not a protected person if:~~

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

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

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

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

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

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

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

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

46 (1) Back pay;

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

48 (3) Additionally, if a protected person proves, by clear and convincing evidence, that the
49 conduct of the employer was outrageous because of the employer's evil motive or reckless
50 indifference to the rights of others, then, such person may receive double the amount awarded
51 under subdivisions (1) and (2) of this subsection, as liquidated damages. In applying this
52 subdivision, the provisions of section 510.263 shall be applied as though liquidated damages

53 were punitive damages and as though the amounts referenced in subdivisions (1) and (2) of this
54 subsection were compensatory damages.

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

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