

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB688 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Justin Humphrey _____

Reading Clerk

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 688

By: Bullard of the Senate

and

Humphrey of the House

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8
9 FLOOR SUBSTITUTE

10 An Act relating to state government; amending 74 O.S.
11 2011, Section 840-2.5, which relates to the
12 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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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

1 B. For purposes of this section, "agency" means any office,
2 department, commission or institution of the state government. No
3 officer or employee of any state agency shall prohibit or take
4 disciplinary action against employees of such agency, whether
5 subject to the provisions of the Merit System or in unclassified
6 service, for:

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

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

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

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

21 C. Any person who has authority to take, direct others to take,
22 recommend or approve any personnel action shall not take or fail to
23 take any personnel action with respect to any employee for filing an
24 appeal or testifying on behalf of any person filing an appeal with

1 the Oklahoma Merit Protection Commission. This section shall not be
2 construed as prohibiting disciplinary action of an employee who
3 discloses information which the employee:

- 4 1. Knows to be false;
- 5 2. Knowingly and willfully discloses with reckless disregard
6 for its truth or falsity; or
- 7 3. Knows to be confidential pursuant to law.

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

14 E. As used in this section:

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

20 2. "Probation" means that period of time, after an officer or
21 employee is found to have violated the provisions of this section
22 and corrective action is ordered, during which time that officer's
23 or employee's performance and conduct is being monitored by the
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1 employing agency for further violations of the Oklahoma Personnel
2 Act; and

3 3. "Mismanagement" means fraudulent activity, criminal misuse
4 of funds or abuse or violation of a well-established, articulated,
5 clear and compelling public policy.

6 F. An appeal to the Oklahoma Merit Protection Commission ~~must~~
7 shall identify the person on whose behalf it is made. The person
8 making the appeal ~~must~~ shall provide the Oklahoma Merit Protection
9 Commission with the name, address, and telephone number of the
10 person on whose behalf the appeal is made. The Oklahoma Merit
11 Protection Commission personnel shall verify the authorization of
12 such appeal by the person on whose behalf the appeal is made. The
13 person claiming to be aggrieved has the responsibility to cooperate
14 with the Commission in the investigation. The failure to cooperate
15 in the investigation shall be grounds for dismissal of the appeal
16 filed on behalf of the aggrieved party.

17 G. Any state employee or former state employee aggrieved
18 pursuant to this section, or any authorized third-party state
19 employee who has actual knowledge of the discipline or retaliatory
20 act taken against the whistleblower, may file an appeal with the
21 Oklahoma Merit Protection Commission within sixty (60) days of the
22 alleged violation. The Oklahoma Merit Protection Commission shall
23 promulgate rules to establish procedures for the conduct of
24 investigations. If, after investigation, the Executive Director

1 determines a violation of this section may have occurred, the
2 Executive Director shall appoint an administrative ~~law judge~~ hearing
3 officer to hear the case as provided for in Section 840-6.6 of this
4 title.

5 H. If, after the hearing, it is determined that a violation has
6 occurred, the Commission or administrative ~~law judge~~ hearing officer
7 shall order corrective action pursuant to Section 840-6.6 of this
8 title. Such corrective action shall include, but not be limited to,
9 suspension without pay, demotion or discharge. Any employee found
10 to have violated this section of law, in addition to being suspended
11 or 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 probation shall forfeit the position of the person for
16 one (1) year. Any employee, supervisor or appointing authority of
17 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.

1 I. Any employee or former employee who has reported any
2 violation of state or federal law, rule or policy, mismanagement,
3 gross waste of public funds, an abuse of authority or a substantive
4 and specific danger to public health or safety shall have, in
5 addition to any other remedy set forth in this section, the right to
6 file a civil action against the agency and individuals employed by
7 or acting on behalf of the agency in the district court where the
8 violation occurred for all damages suffered from a retaliatory
9 discharge of employment or other adverse employment action taken
10 against the employee. The employee or former employee shall be
11 entitled to recover damages in an amount not to exceed One Hundred
12 Seventy-five Thousand Dollars (\$175,000.00), in addition to costs
13 and reasonable attorney fees for the successful prosecution of the
14 action.

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

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17 58-1-8148 LRB 04/14/21

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