

SECOND REGULAR SESSION

HOUSE BILL NO. 1221

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SEIGFREID (Sponsor),
WALSH AND DAVIS (122) (Co-sponsors).

Read 1st time January 22, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4067L.011

AN ACT

To repeal sections 105.055 and 610.028, RSMo, and to enact in lieu thereof two new sections relating to state employee reporting of alleged violations.

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

Section A. Sections 105.055 and 610.028, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 105.055 and 610.028, to read as follows:

105.055. 1. No supervisor or appointing authority of any state agency shall prohibit any
2 employee of the agency from discussing the operations of the agency, either specifically or
3 generally, with any member of the legislature [or the], state auditor, **attorney general, or any**
4 **state official or body charged with investigating such alleged misconduct.**

5 2. No supervisor or appointing authority of any state agency shall:

6 (1) Prohibit a state employee from or take any disciplinary action whatsoever against a
7 state employee for the disclosure of any alleged prohibited activity under investigation or any
8 related activity, or for the disclosure of information which the employee reasonably believes
9 evidences:

10 (a) A violation of any law, rule or regulation; or

11 (b) Mismanagement, a gross waste of funds or abuse of authority, or a substantial and
12 specific danger to public health or safety, if the disclosure is not specifically prohibited by law;
13 or

14 (2) Require any such employee to give notice to the supervisor or appointing authority
15 prior to making any such report.

16 3. This section shall not be construed as:

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

17 (1) Prohibiting a supervisor or appointing authority from requiring that an employee
18 inform the supervisor or appointing authority as to legislative requests for information to the
19 agency or the substance of testimony made, or to be made, by the employee to legislators on
20 behalf of the employee to legislators on behalf of the agency;

21 (2) Permitting an employee to leave the employee's assigned work areas during normal
22 work hours without following applicable rules and regulations and policies pertaining to leaves,
23 unless the employee is requested by a legislator or legislative committee to appear before a
24 legislative committee;

25 (3) Authorizing an employee to represent the employee's personal opinions as the
26 opinions of a state agency; or

27 (4) Restricting or precluding disciplinary action taken against a state employee if: the
28 employee knew that the information was false; the information is closed or is confidential under
29 the provisions of the open meetings law or any other law; or the disclosure relates to the
30 employee's own violations, mismanagement, gross waste of funds, abuse of authority or
31 endangerment of the public health or safety.

32 4. As used in this section, "disciplinary action" means any dismissal, demotion, transfer,
33 reassignment, suspension, reprimand, warning of possible dismissal or withholding of work,
34 whether or not the withholding of work has affected or will affect the employee's compensation.

35 5. Any employee may file an administrative appeal whenever the employee alleges that
36 disciplinary action was taken against the employee in violation of this section. The appeal shall
37 be filed with the state personnel advisory board; provided that the appeal shall be filed with the
38 appropriate agency review board or body of nonmerit agency employers which have established
39 appeal procedures substantially similar to those provided for merit employees in subsection 5 of
40 section 36.390, RSMo. The appeal shall be filed within thirty days of the alleged disciplinary
41 action. Procedures governing the appeal shall be in accordance with chapter 36, RSMo. If the
42 board or appropriate review body finds that disciplinary action taken was unreasonable, the board
43 or appropriate review body shall modify or reverse the agency's action and order such relief for
44 the employee as the board considers appropriate. If the board finds a violation of this section,
45 it may review and recommend to the appointing authority that the violator be suspended on leave
46 without pay for not more than thirty days or, in cases of willful or repeated violations, may
47 review and recommend to the appointing authority that the violator forfeit the violator's position
48 as a state officer or employee and disqualify the violator for appointment to or employment as
49 a state officer or employee for a period of not more than two years. The decision of the board
50 or appropriate review body in such cases may be appealed by any party pursuant to law.

51 6. Each state agency shall prominently post a copy of this section in locations where it
52 can reasonably be expected to come to the attention of all employees of the agency.

53 **7. (1) In addition to the remedies in subsection 6 of this section, a person who**
54 **alleges a violation of this section may bring a civil action for damages within ninety days**
55 **after the occurrence of the alleged violation.**

56 **(2) A civil action commenced pursuant to this subsection may be brought in the**
57 **circuit court for the county where the alleged violation occurred, the county where the**
58 **complainant resides, or the county where the person against whom the civil complaint is**
59 **filed resides.**

60 **(3) An employee must show by clear and convincing evidence that he or she or a**
61 **person acting on his or her behalf has reported or was about to report, verbally or in**
62 **writing, a prohibited activity or a suspected prohibited activity.**

63 **(4) A court, in rendering a judgment in an action brought pursuant to this section,**
64 **shall order, as the court considers appropriate, actual damages, and may also award the**
65 **complainant all or a portion of the costs of litigation, including reasonable attorney fees.**

610.028. 1. Any public governmental body may provide for the legal defense of any
2 member charged with a violation of sections 610.010 to 610.030.

3 2. Each public governmental body shall provide a reasonable written policy in
4 compliance with sections 610.010 to 610.030, open to public inspection, regarding the release
5 of information on any meeting, record or vote and any member or employee of the public
6 governmental body who complies with the written policy is not guilty of a violation of the
7 provisions of sections 610.010 to 610.030 or subject to civil liability for any act arising out of
8 his adherence to the written policy of the agency.

9 3. No person who in good faith reports a violation of the provisions of sections 610.010
10 to 610.030 is civilly liable for making such report, nor, if such person is an officer or employee
11 of a public governmental body, may such person be demoted, fired, **harassed**, suspended, or
12 otherwise disciplined for making such report.