

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 834, Page 12, Section 217.947, Line 9, by inserting after said section and line the following:

"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; except that, "employer" shall include the department of corrections;

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

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

~~(b) The proper authority or person to whom the employee makes his or her report is the~~

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1 ~~person whom the employee claims to have committed the unlawful act or violation of a clear~~  
2 ~~mandate of public policy];~~

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

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

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

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

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

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

19 (1) Back pay;

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

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

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

32  
33 Further amend said bill by amending the title, enacting clause, and intersectional references  
34 accordingly.