

SECOND REGULAR SESSION

HOUSE BILL NO. 1515

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCANN BEATTY.

4869H.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 105.055, RSMo, and to enact in lieu thereof two new sections relating to freedom to disclose information about public employers.

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

Section A. Section 105.055, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 105.055 and 105.725, to read as follows:

105.055. 1. **As used in this section, the following terms mean:**

(1) **"Disciplinary action", any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal, or withholding of work, regardless of whether the withholding of work has affected or will affect the employee's compensation;**

(2) **"Public employee", any employee, volunteer, intern, or other individual performing work or services for a public employer;**

(3) **"Public employer", any state agency or office, the general assembly, any legislative or governing body of the state, any unit or political subdivision of the state, or any other instrumentality of the state.**

2. No supervisor or appointing authority of any ~~[state agency]~~ **public employer** shall prohibit any employee of the ~~[agency]~~ **public employer** from discussing the operations of the ~~[agency]~~ **public employer**, either specifically or generally, with any member of the legislature, state auditor, attorney general, **a prosecuting or circuit attorney, a law enforcement agency, news media, the public**, or any state official or body charged with investigating ~~[such]~~ **any** alleged misconduct **described in this section.**

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.

17 ~~[2-]~~ **3.** No supervisor or appointing authority of any ~~[state agency]~~ **public employer**
18 shall:

19 (1) Prohibit a ~~[state]~~ **public** employee from or take any disciplinary action whatsoever
20 against a ~~[state]~~ **public** employee for the disclosure of any alleged prohibited activity under
21 investigation or any related activity, or for the disclosure of information which the employee
22 reasonably believes evidences:

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

24 (b) Mismanagement, a gross waste of funds or abuse of authority, **violation of policy,**
25 **waste of public resources, alteration of technical findings or communication of scientific**
26 **opinion, breaches of professional ethical canons,** or a substantial and specific danger to public
27 health or safety, if the disclosure is not specifically prohibited by law; ~~[or]~~

28 (2) Require ~~[any such]~~ **a public** employee to give notice to the supervisor or appointing
29 authority prior to ~~[making any such report]~~ **disclosing any activity described in subdivision**
30 **(1) of this subsection; or**

31 (3) **Prevent a public employee from testifying before a court, administrative body,**
32 **or legislative body regarding the alleged prohibited activity or disclosure of information.**

33 ~~[3-]~~ **4.** This section shall not be construed as:

34 (1) Prohibiting a supervisor or appointing authority from requiring that ~~[an]~~ **a public**
35 employee inform the supervisor or appointing authority as to legislative requests for information
36 to the ~~[agency]~~ **public employer** or the substance of testimony made, or to be made, by the
37 **public** employee to legislators on behalf of the ~~[employee to legislators on behalf of the agency]~~
38 **public employer;**

39 (2) Permitting ~~[an]~~ **a public** employee to leave the employee's assigned work areas
40 during normal work hours without following applicable rules and regulations and policies
41 pertaining to leaves, unless the **public** employee is requested by a legislator or legislative
42 committee to appear before a legislative committee;

43 (3) Authorizing ~~[an]~~ **a public** employee to represent ~~[the employee's]~~ **his or her** personal
44 opinions as the opinions of a ~~[state agency]~~ **public employer;** or

45 (4) Restricting or precluding disciplinary action taken against a ~~[state]~~ **public** employee
46 if: the employee knew that the information was false; the information is closed or is confidential
47 under the provisions of the open meetings law or any other law; or the disclosure relates to the
48 employee's own violations, mismanagement, gross waste of funds, abuse of authority or
49 endangerment of the public health or safety.

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

53 **5. In addition to any other remedies provided by law**, any **state** employee may file
54 an administrative appeal whenever the employee alleges that disciplinary action was taken
55 against the employee in violation of this section. The appeal shall be filed with the
56 administrative hearing commission; provided that the appeal shall be filed with the appropriate
57 agency review board or body of nonmerit agency employers which have established appeal
58 procedures substantially similar to those provided for merit employees in subsection 5 of section
59 36.390. The appeal shall be filed within ~~[thirty days]~~ **one year** of the alleged disciplinary action.
60 Procedures governing the appeal shall be in accordance with chapter 536. If the commission or
61 appropriate review body finds that disciplinary action taken was unreasonable, the commission
62 or appropriate review body shall modify or reverse the agency's action and order such relief for
63 the employee as the commission considers appropriate. If the commission finds a violation of
64 this section, it may review and recommend to the appointing authority that the violator be
65 suspended on leave without pay for not more than thirty days or, in cases of willful or repeated
66 violations, may review and recommend to the appointing authority that the violator forfeit the
67 violator's position as a state officer or employee and disqualify the violator for appointment to
68 or employment as a state officer or employee for a period of not more than two years. The
69 decision of the commission or appropriate review body in such cases may be appealed by any
70 party pursuant to law.

71 **6. Each [state agency] public employer** shall prominently post a copy of this section in
72 locations where it can reasonably be expected to come to the attention of all employees of the
73 ~~[agency]~~ **public employer**.

74 **7. (1) In addition to the remedies in subsection [6] 5 of this section or any other**
75 **remedies provided by law**, a person who alleges a violation of this section may bring a civil
76 action **against the public employer** for damages within ~~[ninety days]~~ **one year** after the
77 occurrence of the alleged violation.

78 **(2) A civil action commenced pursuant to this subsection may be brought in the circuit**
79 **court for the county where the alleged violation occurred, the county where the complainant**
80 **resides, or the county where the person against whom the civil complaint is filed resides. A**
81 **person commencing such action may request a trial by jury.**

82 **(3) [A] A public employee [must] shall** show by clear and convincing evidence that
83 he or she or a person acting on his or her behalf has reported or was about to report, verbally or
84 in writing, a prohibited activity or a suspected prohibited activity. **Upon such a showing, the**
85 **burden shall be on the public employer to demonstrate that the disciplinary action was not**
86 **the result of such a report.**

87 **(4) A court, in rendering a judgment in an action brought pursuant to this section, shall**
88 **order, as the court considers appropriate, actual damages including, but not limited to, lost**

89 **wages and restoration of benefits, punitive damages of no more than five times the amount**
90 **of actual damages, reinstatement, and an injunction against further employment actions**
91 **related to the reporting of misconduct,** and may also award the complainant all or a portion
92 of the costs of litigation, including **court costs and** reasonable attorney fees.

93 **8. If the alleged misconduct is related to the receipt and expenditures of public**
94 **funds, a public employee alleging that disciplinary action was taken against the employee**
95 **in violation of this section may request the state auditor to investigate the alleged**
96 **misconduct and whether the disciplinary action was taken in violation of this section. If**
97 **the state auditor uses his or her discretion to make such an investigation, the time to appeal**
98 **such disciplinary action under subsections 5 and 7 of this section shall be the later of one**
99 **year from the date of the alleged disciplinary action or ninety days following the release**
100 **of the state auditor's report.**

101 **9. The provisions of this section shall apply to public employees, notwithstanding**
102 **any provisions of section 213.070 and section 285.575 to the contrary.**

105.725. Any person who obtains a claim or final judgment for a payment to be
2 **made out of the state legal expense fund shall not be offered or required to sign any**
3 **confidentiality agreement stating that he or she will not discuss his or her claim or final**
4 **judgment or stating that if he or she does discuss such claim or final judgment, he or she**
5 **will waive any right to moneys from the state legal expense fund. If a confidentiality**
6 **agreement is offered to a person in violation of this section and such agreement is signed,**
7 **such signed agreement shall be unenforceable.**

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