

SECOND REGULAR SESSION

SENATE BILL NO. 490

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS LAGER AND KEHOE.

Pre-filed December 1, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

4602S.01I

AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to unlawful employment practices.

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

Section A. Chapter 285, RSMo, is amended by adding thereto one new
2 section, 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
2 "Whistleblower's Protection Act".**

3 2. As used in this section, the following terms shall mean:

**4 (1) "Because" or "because of", as it relates to a decision or action,
5 the person's status as a protected person was the motivating factor;**

**6 (2) "Employer", an entity that has six or more employees for each
7 working day in each of twenty or more calendar weeks in the current
8 or preceding calendar year. "Employer" shall not include the state of
9 Missouri or its political subdivisions, a corporation wholly owned by
10 the state of Missouri, an individual employed by an employer, or
11 corporations and associations owned and operated by religious or
12 sectarian groups;**

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

**16 (4) "Protected person", a person who has reported to the proper
17 authorities an unlawful act of the employer or its agent; a person who
18 has reported to an employer serious misconduct of the employer or its
19 agent that violates a clear mandate of public policy as articulated in a
20 constitutional provision, statute, or regulation promulgated under
21 statute; a person who has refused to carry out a directive issued by an**

22 employer or its agent that if completed would be a serious violation of
23 the law; or a person who has engaged in conduct otherwise protected
24 by statute or regulation, where the statute or regulation does not
25 provide for a private right of action. A person is not a "protected
26 person" where:

27 (a) The person is exempt from overtime compensation under the
28 Fair Labor Standards Act or is a supervisory, managerial, or executive
29 employee or an officer of the employer; and

30 (b) The unlawful act or serious misconduct reported concerns
31 matters upon which the person is employed to report or provide
32 professional opinion.

33 3. This section is intended to codify the existing common law
34 exceptions to the at-will employment doctrine, and to limit their future
35 expansion by the courts. This section shall provide the exclusive
36 remedy for any and all unlawful employment practices articulated
37 herein and hereby abrogates any common law causes of action to the
38 contrary.

39 4. It shall be an unlawful employment practice for an employer
40 to discharge or retaliate against an individual defined as a protected
41 person in this section, because of that person's status as a protected
42 person.

43 5. A protected person aggrieved by a violation of this section
44 shall have a private right of action for actual damages for violations of
45 this section, but not for punitive damages. However, if a private right
46 of action for damages exists under another statutory or regulatory
47 scheme, whether under state or federal law, no private right of action
48 shall exist under this statute.

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

51 7. A protected person aggrieved by a violation of this section
52 shall have a private right of action which may be filed in a court of
53 competent jurisdiction. The only remedies available in such an action
54 shall be:

55 (1) Backpay;

56 (2) Reimbursement of medical bills incurred in treatment of
57 mental anguish; and

58 (3) If a protected person proves, by clear and convincing

59 evidence, that the conduct of the employer was outrageous because of
60 the employer's evil motive or reckless indifference to the rights of
61 others, then in addition to the amounts referenced in subdivisions (1)
62 and (2) of this subsection, an additional double amount as liquidated
63 damages may be awarded. In applying this subdivision, the provisions
64 of section 510.263 shall be applied as though liquidated damages were
65 punitive damages and as though the amounts referenced in
66 subdivisions (1) and (2) of this subsection were compensatory damages.

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