

SECOND REGULAR SESSION

SENATE BILL NO. 786

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 7, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4451S.02I

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Section A. Section 105.055, RSMo, is repealed and two new sections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

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

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

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

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

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

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

19 [2.] 3. No supervisor or appointing authority of any [state agency]
20 **public employer** shall:

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

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

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

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

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

37 [3.] 4. This section shall not be construed as:

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

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

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

52 (4) Restricting or precluding disciplinary action taken against a [state]
53 **public** employee if: the employee knew that the information was false; the
54 information is closed or is confidential under the provisions of the open meetings

55 law or any other law; or the disclosure relates to the employee's own violations,
56 mismanagement, gross waste of funds, abuse of authority or endangerment of the
57 public health or safety.

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

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

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

86 7. (1) In addition to the remedies in subsection [6] **5** of this section **or**
87 **any other remedies provided by law**, a person who alleges a violation of this
88 section may bring a civil action **against the public employer** for damages
89 within [ninety days] **one year** after the occurrence of the alleged violation.

90 (2) A civil action commenced pursuant to this subsection may be brought

91 in the circuit court for the county where the alleged violation occurred, the county
92 where the complainant resides, or the county where the person against whom the
93 civil complaint is filed resides. **A person commencing such action may**
94 **request a trial by jury.**

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

101 (4) A court, in rendering a judgment in an action brought pursuant to this
102 section, shall order, as the court considers appropriate, actual damages
103 **including, but not limited to, lost wages and restoration of benefits,**
104 **punitive damages of no more than five times the amount of actual**
105 **damages, reinstatement, and an injunction against further employment**
106 **actions related to the reporting of misconduct,** and may also award the
107 complainant all or a portion of the costs of litigation, including **court costs and**
108 reasonable attorney fees.

109 8. **If the alleged misconduct is related to the receipt and**
110 **expenditures of public funds, a public employee alleging that**
111 **disciplinary action was taken against the employee in violation of this**
112 **section may request the state auditor to investigate the alleged**
113 **misconduct and whether the disciplinary action was taken in violation**
114 **of this section. If the state auditor uses his or her discretion to make**
115 **such an investigation, the time to appeal such disciplinary action under**
116 **subsections 5 and 7 of this section shall be the later of one year from**
117 **the date of the alleged disciplinary action or ninety days following the**
118 **release of the state auditor's report.**

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

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

7 confidentiality agreement is offered to a person in violation of this
8 section and such agreement is signed, such signed agreement shall be
9 unenforceable.

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