

Substitute for HOUSE BILL No. 2249

By Committee on Government Efficiency and Fiscal Oversight

3-19

9 AN ACT concerning state agencies; relating to the whistleblowers act;
10 employee award program; amending K.S.A. 2009 Supp. 75-2973 and
11 75-37,105 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 Supp. 75-2973 is hereby amended to read as
15 follows: 75-2973. (a) This section shall be known and may be cited as the
16 Kansas whistleblower act.

17 (b) As used in this section:

18 (1) "Auditing agency" means the (A) legislative post auditor, (B) any
19 employee of the division of post audit, (C) any firm performing audit
20 services pursuant to a contract with the post auditor, (D) any state agency
21 or federal agency or authority performing auditing or other oversight
22 activities under authority of any provision of law authorizing such activi-
23 ties, or (E) the inspector general created under K.S.A. ~~2008~~ 2009 Supp.
24 75-7427 and amendments thereto.

25 (2) "Disciplinary action" means any dismissal, demotion, transfer,
26 reassignment, suspension, reprimand, *withholding of work* or warning of
27 possible dismissal, *demotion, transfer, reassignment, suspension, reprimand*
28 *or withholding of work* other punishment.

29 (3) "State agency" and "firm" have the meanings provided by K.S.A.
30 46-1112 and amendments thereto.

31 (4) "*Public contractor*" means any person, partnership, association,
32 corporation or other private business entity that has entered into a con-
33 tract with a state agency for the provision of any supplies, materials,
34 equipment or other goods for the performance of any services, including
35 subcontractors thereof.

36 (c) (1) No supervisor or appointing authority of any state agency shall
37 prohibit any employee of the state agency from discussing the operations
38 of the state agency or other matters of public concern, including matters
39 relating to the public health, safety and welfare either specifically or gen-
40 erally, with any member of the legislature, *the attorney general* or any
41 auditing agency.

42 (2) *No supervisor or appointing authority of any state agency shall*
43 *take any disciplinary action against any employee of the state agency in*

1 *retaliation for such employee's discussing the operations of the state*
2 *agency or other matters of public concern, including matters relating to*
3 *the public health, safety and welfare either specifically or generally, with*
4 *any member of the legislature, the attorney general or any auditing*
5 *agency.*

6 (d) No supervisor or appointing authority of any state agency shall:

7 (1) Prohibit any employee of the state agency from reporting any
8 violation of state or federal law or rules and regulations to any person,
9 agency or organization; or

10 (2) require any such employee to give notice to the supervisor or
11 appointing authority prior to making any such report.

12 (e) This section shall not be construed as:

13 (1) Prohibiting a supervisor or appointing authority from requiring
14 that an employee inform the supervisor or appointing authority as to leg-
15 islative or auditing agency requests for information to the state agency or
16 the substance of testimony made, or to be made, by the employee to
17 legislators or the auditing agency, as the case may be, on behalf of the
18 state agency;

19 (2) permitting an employee to leave the employee's assigned work
20 areas during normal work hours without following applicable rules and
21 regulations and policies pertaining to leaves, unless the employee is re-
22 quested by a legislator or legislative committee to appear before a legis-
23 lative committee or by an auditing agency to appear at a meeting with
24 officials of the auditing agency;

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

27 (4) prohibiting disciplinary action of an employee who discloses in-
28 formation which: (A) The employee knows to be false or which the em-
29 ployee discloses with reckless disregard for its truth or falsity, (B) the
30 employee knows to be exempt from required disclosure under the open
31 records act, or (C) is confidential or privileged under statute or court rule.

32 (f) Any officer or employee of a state agency who is in the classified
33 service and has permanent status under the Kansas civil service act may
34 appeal to the state civil service board whenever the officer or employee
35 alleges that disciplinary action was taken against the officer or employee
36 in violation of this act. The appeal shall be filed within 90 days after the
37 alleged disciplinary action. Procedures governing the appeal shall be in
38 accordance with subsections (f) and (g) of K.S.A. 75-2949 and amend-
39 ments thereto and K.S.A. 75-2929d through 75-2929g and amendments
40 thereto. If the board finds that disciplinary action taken was unreasonable,
41 the board shall modify or reverse the agency's action and order such relief
42 for the employee as the board considers appropriate, *including, but not*
43 *limited to, reinstatement to the employee's former position, back pay and*

1 *reestablishment of any employee benefits for which the employee would*
2 *otherwise have been eligible if such violation had not occurred.* If the
3 board finds a violation of this act, it may require as a penalty that the
4 violator be suspended on leave without pay for not more than 30 days or,
5 in cases of willful or repeated violations, may require that the violator
6 forfeit the violator's position as a state officer or employee and disqualify
7 the violator for appointment to or employment as a state officer or em-
8 ployee for a period of not more than two years. The board may award
9 the prevailing party all or a portion of the costs of the proceedings before
10 the board, including reasonable attorney fees and witness fees. The de-
11 cision of the board pursuant to this subsection may be appealed by any
12 party pursuant to law. On appeal, the court may award the prevailing
13 party all or a portion of the costs of the appeal, including reasonable
14 attorney fees and witness fees.

15 (g) Each state agency shall prominently post a copy of this act in
16 locations where it can reasonably be expected to come to the attention
17 of all employees of the state agency.

18 (h) Any officer or employee who is in the unclassified service under
19 the Kansas civil service act who alleges that disciplinary action has been
20 taken against such officer or employee in violation of this section may
21 bring an action pursuant to the act for judicial review and civil enforce-
22 ment of agency actions within 90 days after the occurrence of the alleged
23 violation. The court may award the prevailing party in the action all or a
24 portion of the costs of the action, including reasonable attorney fees and
25 witness fees.

26 (i) Nothing in this section shall be construed to authorize disclosure
27 of any information or communication that is confidential or privileged
28 under statute or court rule.

29 (j) *No public contractor or officer or employee of such public con-*
30 *tractor shall prohibit any other officer or employee of such public con-*
31 *tractor from discussing the operations of the state agency or other matters*
32 *of public concern, including matters relating to the public health, safety*
33 *and welfare either specifically or generally, with any member of the leg-*
34 *islature, the attorney general or any auditing agency. Any officer or em-*
35 *ployee of a public contractor who alleges that disciplinary action has been*
36 *taken against such officer or employee in violation of this subsection may*
37 *bring a civil action for appropriate injunctive relief within 90 days after*
38 *the occurrence of the alleged violation. A court, in rendering a judgment*
39 *in an action brought pursuant to this subsection, shall order, as the court*
40 *considers appropriate, reinstatement of the officer or employee, the pay-*
41 *ment of back wages, full reinstatement of fringe benefits or seniority*
42 *rights, or any combination thereof. The court may award the prevailing*
43 *party in the action all or a portion of the costs of the action, including*

1 *reasonable attorney fees and witness fees. Nothing in this subsection shall*
2 *create a cause of action against the state or any state agency.*

3 Sec. 2. K.S.A. 2009 Supp. 75-37,105 is hereby amended to read as
4 follows: 75-37,105. (a) (1) There is established an employee award and
5 recognition program for state employees. Under this program monetary
6 or non-monetary awards may be made to state employees. An appointing
7 authority may implement a program of award and recognition for classifi-
8 ed and unclassified employees or teams of employees for distinguished
9 accomplishment, meritorious service, innovations, Kansas quality man-
10 agement, volunteerism or length of service.

11 (2) All awards and recognition provided under this section shall meet
12 the conditions for a discretionary bonus set out in 29 C.F.R. 778.211.

13 (b) The total gross value of awards to any employee of the state during
14 a single fiscal year shall not exceed \$3,500 except as provided in ~~subsec-~~
15 ~~tions subsection (f) and (g).~~ No award paid pursuant to this section during
16 the fiscal year shall be compensation, within the meaning of K.S.A. 74-
17 4901 et seq., and amendments thereto, for any purpose under the Kansas
18 public employees retirement system and shall not be subject to deduc-
19 tions for employee contributions thereunder *and the award shall not be*
20 *subject to the income tax imposed under the provisions of the Kansas*
21 *income tax act.* Each taxable award paid under this section shall be a
22 discretionary bonus, as defined by 29 C.F.R. 778, and shall be in addition
23 to the regular earnings to which that employee may be entitled or for
24 which the employee may become eligible. Monetary awards are subject
25 to taxes in accordance with federal internal revenue code regulations. The
26 value of non-monetary awards shall be reported by state agencies in ac-
27 cordance with sections 74 and 132 of the federal internal revenue code
28 and procedures prescribed by the director of accounts and reports.

29 (c) The award and recognition program shall be paid from moneys
30 appropriated and available for operating expenditures of the state agency
31 or from other funding sources as appropriated. In the case of employee
32 suggestions, the award or recognition for each employee shall be paid or
33 provided by the state agency that benefited from and implemented the
34 suggestion.

35 (d) The regulations of the employee award board adopted pursuant
36 to K.S.A. 75-37,108 are hereby revoked.

37 (e) The secretary of administration shall adopt rules and regulations
38 that provide oversight and administrative review of agency award and
39 recognition programs. The secretary of administration shall adopt rules
40 and regulations to provide safeguards to preclude opportunities for abuse
41 within the employee award and recognition program in each state agency
42 and to ensure objective decision-making procedures in award and rec-
43 ognition determinations for all participating employees.

- 1 ~~(f) (1) (A) Each state agency shall establish a state employee sug-~~
2 ~~gestion program through which state employees may submit suggestions~~
3 ~~for cost reductions in that agency through increased efficiencies or other~~
4 ~~economies or savings in the operations of the state agency.~~
5 ~~(B) Each employee making a suggestion for cost reduction shall be~~
6 ~~paid a monetary employee award for innovation pursuant to subsection~~
7 ~~(a) of this section upon adoption of the suggestion by the agency. Such a~~
8 ~~monetary award for innovation shall be non-discretionary and shall be in~~
9 ~~the amount of 2.5% of the estimated cost reduction, as certified by the~~
10 ~~agency's chief fiscal officer and the agency appointing authority up to a~~
11 ~~maximum of \$3,500. Each employee making a suggestion for cost reduc-~~
12 ~~tion shall also be paid an employee suggestion bonus in the amount of~~
13 ~~the difference between the amount of the innovation award received by~~
14 ~~the employee and 10% of the documented cost reduction during the first~~
15 ~~12 months after implementation of the suggestion, as documented to the~~
16 ~~division of the budget, up to a maximum employee suggestion bonus of~~
17 ~~\$37,500. Such bonus shall not be subject to the income tax imposed under~~
18 ~~the provisions of the Kansas income tax act.~~
19 ~~(C) The agency shall retain 10% of the documented cost reduction.~~
20 ~~Savings achieved through this cost reduction shall be placed in the Kansas~~
21 ~~savings incentive account or fund for that agency. The remaining balance~~
22 ~~of the savings achieved through this cost reduction shall revert to the state~~
23 ~~general fund.~~
24 ~~(2) Each state agency shall submit each suggestion it receives, to-~~
25 ~~gether with the state agency's estimated cost reduction, if any, and dis-~~
26 ~~persation of the suggestion to the division of the budget. The director of~~
27 ~~the budget shall file copies with the director of the legislative research~~
28 ~~department, who shall report annually on the information to members of~~
29 ~~the legislative budget committee.~~
30 ~~(g) (1) Salary bonus payments under the Kansas savings incentive~~
31 ~~program shall be made only for the following conditions:~~
32 ~~(A) Monetary innovation awards made under subsection (f), or~~
33 ~~(B) for awards and recognition provided pursuant to subsection (a).~~
34 ~~(2) The director of personnel services shall establish guidelines and~~
35 ~~limitations for bonus payments under the Kansas savings incentive pro-~~
36 ~~gram.~~
37 *(f) (1) (A) Each state agency shall establish a state employee sugges-*
38 *tion program through which state employees may submit suggestions for*
39 *cost reductions in that agency through increased efficiencies or other*
40 *economies or savings in the operations of the state agency.*
41 *(B) Each employee making a suggestion for cost reduction shall be*
42 *paid a monetary employee award for innovation pursuant to subsection*
43 *(a) of this section upon adoption of the suggestion by the agency. Such a*

1 *monetary award for innovation shall be non-discretionary and shall be in*
2 *the amount of 2.5% of the estimated cost reduction, as certified by the*
3 *agency's chief fiscal officer and the agency appointing authority up to a*
4 *maximum of \$3,500. Each employee making a suggestion for cost reduc-*
5 *tion shall also be paid an employee suggestion bonus in the amount of the*
6 *difference between the amount of the innovation award received by the*
7 *employee and 10% of the documented cost reduction during the first 12*
8 *months after implementation of the suggestion, as documented to the di-*
9 *vision of the budget, up to a maximum employee suggestion bonus of*
10 *\$37,500. Such bonus shall not be subject to the income tax imposed under*
11 *the provisions of the Kansas income tax act.*

12 *(C) The agency shall retain 10% of the documented cost reduction.*
13 *Savings achieved through this cost reduction shall be placed in the Kansas*
14 *savings incentive account or fund for that agency. The remaining balance*
15 *of the savings achieved through this cost reduction shall revert to the state*
16 *general fund.*

17 *(2) Each state agency shall submit each suggestion it receives, to-*
18 *gether with the state agency's estimated cost reduction, if any, and dis-*
19 *persation of the suggestion to the division of the budget. The director of*
20 *the budget shall file copies with the director of the legislative research*
21 *department, who shall report annually on the information to members of*
22 *the legislative budget committee.*

23 ~~(h)~~ *(g) Awards and incentives and other recognition pursuant to this*
24 *section shall not be deemed in violation of K.S.A. 46-237a, and any*
25 *amendments thereto.*

26 ~~(i) The provisions of subsections (f) and (g) of this section shall expire~~
27 ~~on June 30, 2006.~~

28 *Sec. 3. K.S.A. 2009 Supp. 75-2973 and 75-37,105 are hereby*
29 *repealed.*

30 *Sec. 4. This act shall take effect and be in force from and after its*
31 *publication in the statute book.*