

Accountability Report Card Summary 2009
Florida

Florida has a relatively strong state whistleblower law:

- Scoring only 59 out of a possible 100 points; and
- Ranking 9th out of 51 (50 states and the District of Columbia).

Florida has a fairly broad statute (21 out of 33 possible points) with a significant degree of usability (20 out of 33) and middling remedies (18 out of 33). Florida also has a False Claims Act that allows whistleblowers to receive a percentage of any awards in such cases.

Florida's full Whistleblower Report Card *page 2*
Narrative summary of Florida's law *page 5*

Florida Accountability Index Report card
 Coverage, Usability & Strength — Rating on a 100 Point Scale
The Whistle-blower’s Act- Fla. Stat. § 112.3187- 112.31894 (2005)

A. Breadth of Coverage (33 points possible from 10 factors).

Does the statute cover disclosures of –

Factor	Maximum Points	Awarded Points
1. Violation of state or federal law, rules or regulations	6 points	6 Points
2. Gross mismanagement	3 points	3 Points
3. Abuse of authority (including violations of agency policy)	3 points	3 Points- Any act of malfeasance or misfeasance is covered.
4. Waste of public funds or resources	3 points	3 Points
5. Danger to health and/or public safety and/or environment	5 points	5 Points
6. Communication of scientific opinion or alteration of technical findings	5 points	0 Points
7. Breaches of professional ethical canons	5 points	0 Points

Does the statute provide –

8. Employee may refuse to carry out illegal or improper orders	1 point	0 Points
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	0 Points
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	1 point
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>21 Points</u>

B. Usability: Scope of Protection (33 points possible from 10 factors)

Do the laws protect disclosures made to –

Factor	Maximum Points	Awarded Points
1. Any person or organization, including public media	24 points	0 Points

Or does the statute protect disclosures made to –

2. Any state executive or legislative	4 points	4 Points
---------------------------------------	----------	----------

body or person employed by such entities		
3. Testimony in any official proceeding	4 points	0 Points
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 Points
5. Any federal or non-state governmental entity	3 points	3 Points
6. Co-workers or supervisors within the scope of duty	3 points	0 Points
7. Anyone as provided in paragraphs 2 thru 6 (above) without prior disclosure to another state official or supervisor	3 points	3 Points

Does the state law –

8. Require an investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	0 Points
9. Have a statute of limitations of one year or longer for filing complaints	3 points (2 points if 6 months or longer and 1 point if 60 days or longer)	2 Points ¹
10. Allow qui tam or false claim actions for recovery of “bounty” in cases of fraud against the state	5 points (2 points if a qui tam statute of limited scope)	5 Points- Florida False Claims Act, Fla. Stat. § 68.081 <i>et. seq.</i> (2006)
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>20 Points</u>

C. Strength: Remedies against retaliation (33 points possible from 11 factors)

Does the statute provide for –

Factor	Maximum Points	Awarded Points
1. Prohibition on retaliatory actions affecting a state employee’s terms and conditions of employment	4 points	4 Points
2. Opportunity for administrative challenge	4 points	4 Points
3. Opportunities for court challenge	4 points	4 Points

¹ Employee may bring court case within 180 days after receipt of Florida Commission on Human Rights termination of investigation or within 180 days after retaliatory action, after exhausting all contractual and administrative remedies. § 112.3187- (8)(a) and (c) (2005).

4. Trial by jury	3 points	0 Points ²
5. Burden shifting upon prima facie showing.	1 point	0 Points
6. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	3 points	3 Points
7. Actual/compensatory damages	3 points	0 points
8. Interim relief, injunction or stay of action	3 points	3 points
9. Transfer preference for prevailing whistleblower or ban on blackballing	3 points	0 Points
10. Punitive damages or other fines and penalties	2 points	0 Points
11. Personnel actions against managers found to have retaliated	3 points	0 Points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>18 Points</u>

Bonus Point (1 point): Posting or employee notice of whistleblower rights required.

Factor	Maximum Score	Awarded Score
Posting	1 point	0 Points

Total Points

100 Points

59 Points

² Whistleblower statute does not provide for trial by jury. We did not determine whether a jury trial would be available under other statutes or the Florida Constitution. But the issue whether it would be available in whistleblower cases probably depends on the subject matter of the civil action and the remedies sought.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Florida

Statute- Florida Whistle-blower's Act- Fla. Stat. § 112.3187- § 112.31895 (2005)

Provisions- The Florida legislature intends to prevent agencies from taking retaliatory action against a state employee (1) who reports to an appropriate agency violations of law on the part of a public employer that create a substantial and specific danger to the public's health, safety, or welfare; or (2) who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. The term "agency" includes any state executive, judicial, or legislative entity.

An agency shall not dismiss, discipline, or take any other adverse personnel action against a state employee for disclosing information that includes (1) any violation or suspected violation of any federal or state law, rule, or regulation committed by an employee or agent of an agency, which creates and presents a substantial and specific danger to the public's health, safety, or welfare; or, (2) any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency. The information may be disclosed to any state agency or federal government entity with the authority to investigate, police, manage, or remedy the violation or act, including the Office of the Florida Chief Inspector General, a state of Florida's agency inspector general, or the employee designated as an agency inspector general, the Florida Commission on Human Relations, **and the whistle-blower's hotline.** **These provisions are designed to protect employees and persons who disclose information on their own initiative in a written or signed complaint, and who are requested to participate in an investigation, hearing or other inquiry conducted by any state agency or federal government entity.**

An employee who is subject to an adverse personnel action because he or she engaged in a protected activity may file a written complaint with the Florida Commission on Human Relations or the Office of the Chief Inspector General in the Executive Office of the Governor. Not more than 60 days after a receipt from the Commission of a notice of termination of the investigation, the employee may file, with the Florida Public Employees Relations Commission a complaint against the employer-agency regarding the alleged prohibited personnel action. Judicial review of any final order of the commission shall be provided. In the alternative, the employee may bring a civil action within 180 days of receipt of a notice of termination of the investigation by the Commission on Human Rights. Relief in any such action must include, reinstatement of the employee with full benefits, compensation for lost wages, benefits or other lost remuneration, payment of reasonable costs, issuance of an injunction, and temporary

reinstatement to the employee's former position or an equivalent position. **The Whistleblowers Act also provides a procedure for the Chief Inspector General, an agency's inspector general, or an agency employee designated by the agency head, if there is no inspector general, to investigate the information in the complaint.**