

Accountability Report Card Summary 2009
Kansas

Kansas has a fair state whistleblower law:

- Scoring only 48 out of a possible 100 points; and
- Ranking 32nd out of 51 (50 states and the District of Columbia).

Kansas has poor coverage (7 out of 33 possible points) with a very good degree of usability (25 out of 33) and fair remedies (15 out of 33), with one bonus point for employee notice of whistleblower rights.

Kansas' full Whistleblower Report Card
Narrative summary of Kansas' law

page 2
page 5

Kansas Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
 Kansas Whistleblower Act- K.S.A. § 75-2973 (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 | 0 points |
| 3. Abuse of authority (including violations of agency policy) | 3 points | 0 points |
| 4. Waste of public funds or resources | 3 points | 0 points |
| 5. Danger to health and/or public safety and/or environment | 5 points | 0 points ¹ |
| 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 | 1 point ² |
| 10. Whistleblower protection does not preclude collective bargaining or other rights | 1 point | 0 points |
| | <u>Maximum Score</u> <u>33 points</u> | <u>Awarded Score</u> <u>7 points</u> |

¹ No points were awarded for disclosures because a statutory provision prohibited state agency employees from discussing any matters of public concern, including matters concerning the public health, safety and welfare. **This provision of the statute was not aimed at barring disclosures of statutory violations and other matters referred to in Factors 2-7. Rather, it was aimed at precluding a supervisor or appointing authority from barring discussions between a state agency employee and a member of the legislature or any auditing agency.**

² No state agency supervisor or appointing authority may prohibit an employee of the state agency from reporting any violation of federal or state laws or rules and regulations to any person, agency or organization.

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 | 24 points ³ |

Or does the statute protect disclosures made to –

| | | |
|---|----------|----------|
| 2. Any state executive or legislative body or person employed by such entities | 6 points | 0 points |
| 3. Testimony in any official proceeding | 5 points | 0 points |
| 4. Any state or federal law enforcement or investigative body or entity or its employees | 5 points | 0 points |
| 5. Any federal or non-state governmental entity | 4 points | 0 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 | 0 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) | 1 point ⁴ |
| 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) | 0 points |
| | <u>Maximum Score</u> <u>33 points</u> | <u>Awarded Score</u> <u>25 points</u> |

³ No state agency supervisor or appointing authority may prohibit an employee of the state agency from reporting any violation of federal or state laws or rules and regulations to any person, agency or organization.

⁴ A Kansas state classified employee may appeal to the state civil service board a disciplinary action within 90 days after the alleged disciplinary action. A Kansas state employee in the unclassified service may bring a court action within 90 days of the alleged violation of the whistleblower act.

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 | 2 points ⁵ |
| 4. Trial by jury | 3 points | 0 points ⁶ |
| 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 |
| 7. Actual/constructive damages | 3 points | 0 points |
| 8. Interim relief, injunction or stay of personnel actions | 3 points | 0 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 | 2 points ⁸ |
| 11. Personnel actions against managers found to have retaliated | 3 points | |
| | <u>Maximum Score</u> <u>33 points</u> | <u>Awarded Score</u> <u>15 points</u> |

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

| Factor | Maximum Score | Awarded Score |
|---------------|----------------------|----------------------|
| Posting | 1 point | 1 point |

Totals **100 points** **48 points**

⁵ For cases involving state employees in the classified service, the only court action is the review of the state civil service board's administrative decision. For cases involving state employees in the unclassified service, court actions are authorized. **We have awarded 2 out of 4 possible points because court actions are authorized for state employees not in the classified service.**

⁶ The whistleblower law did not mention a right to jury trial in the court actions brought by state unclassified employees. We did not review whether a right to a jury trial is provided elsewhere under Kansas statutes or it's Constitution.

⁷ State personnel board may order certain make whole remedies in rejecting the disciplinary action.

⁸ If the state personnel board finds a violation of the act, it may require that the violator be suspended on leave without pay for not more than 30 days. In case of repeated or willful violations, the board may require that the violator forfeit his/her position as a state officer or employee for a period of not more than 2 years.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Kansas

Statute- Kansas Whistleblower Act- K.S.A. § 75-2973 (2005)

Provisions- No supervisor or appointing authority of any state agency shall (1) prohibit an employee of the state agency from discussing the operations of the state agency or other matters of public concern, including matters relating to the public health, safety, and welfare, either specifically or generally with any member of the Kansas legislature or any auditing agency; (2) prohibit any employee of a state agency from reporting any violation of state or federal rules and regulations to any person, agency, or organization; or (3) require any employee to give notice to the supervisor or appointing authority prior to making any such report.

Any officer or employee of a state agency who is in the classified service and has permanent status under the Kansas civil service act may appeal to the state civil service board whenever the officer or employees alleges that disciplinary action was taken against the officer or employee in violation of this act. "Disciplinary action" means an action concerning the officer's or employee's employment with the state agency, including dismissal, demotion, transfer, reprimand, or other similar actions. The appeal should be filed within 90 days after the alleged disciplinary action. If the board finds that the disciplinary action was unreasonable, the board shall modify or reverse the agency's action and shall order such relief as the board finds appropriate. If the board finds a violation of the act, it may require that the violator be suspended on leave without pay for not more than 30 days. In case of repeated or willful violations, the board may require that the violator forfeit his/her position as a state officer or employee for a period of not more than 2 years. The board may award the winning party all, or a portion, of the costs of the proceedings, including reasonable attorneys' fees and witness fees.

An officer or employee who is in the unclassified service under the Kansas civil service act who alleges that disciplinary action has been taken in violation of this section may bring an action pursuant to the act for judicial review within 90 days after the occurrence of the alleged violation. The court may award the prevailing party all or a portion of the costs of the action, including reasonable attorneys' fees and witness fees.