

Accountability Report Card Summary 2009
South Dakota

South Dakota has a very poor state whistleblower law:

- Scoring 23 out of a possible 100;
- Ranking 48th out of 51 (50 states and the District of Columbia).

South Dakota has poor coverage (7 of 33 possible points) with a very low degree of usability (8 out of 33) and weak remedies (8 out of 33).

South Dakota's full Whistleblower Report Card
Narrative summary of South Dakota law

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South Dakota Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale

Public Officers and Employees- S.D. Codified Laws § 3-6A-52 (2006)

Freedom of Speech of State Officers and Employees- S.D. Codified Laws § 3-6-26 and § 3-6-27

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 ¹
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
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 points 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>

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

Do the laws protect disclosures made to –

¹ South Dakota does not have a complete whistleblower law. A state employee has a right to file a grievance for retaliation in certain instances. An employee may file a grievance with the career service commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee’s department or to the attorney general’s office or because the employee has filed a suggestion pursuant to this section.

² State law prohibits restricting or prohibiting speech rights.

Factor	Maximum Points	Awarded Points
1. Any person or organization, including public media	24 points	0 points ³

Or does the statute protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4 points	4 points ⁴
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	1 point- South Dakota Attorney General's office
5. Any federal or non-state governmental entity	3 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	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)	0 points ⁵
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>8 points</u>

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

Does the statute provide for –

³ State law says that state laws will not be denied their free speech rights by virtue of their status as state employees.

⁴ Employee reports a violation of state law through the chain of command of the employee's department.

⁵ The South Dakota statute does not contain a statute of limitations for the filing of grievances for retaliation. We were unable to find any other provision in South Dakota law or regulation that established the time period in which a grievance must be filed.

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 ⁶
3. Opportunities for court challenge	4 points	0 points
4. Trial by jury	3 points	0 points
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	0 points
7. Actual and/or compensatory 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	2 points	0 points
10. Punitive damages or other fines and penalties	3 points	0 points
11. Personnel actions against managers found to have retaliated	3 points	0 points
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 8 points

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

Factor	Maximum Score	Awarded Score
Posting	1 point	0 points

Totals

100 points

22 points

⁶ An employee may file a grievance with the career service commission if the employee believes that there has been retaliation.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- South Dakota

Statute- Public Officers and Employees- Career Service Personnel Management- S.D. Codified Laws § 3-6A-52 (2006) and Freedom of Speech of State Officers and Employees- § 3-6-26 and 3-6-27

Provisions-

South Dakota does not have a complete whistleblower law. However, under the first statute, a state employee has a right to file a grievance for retaliation in certain instances. An employee may file a grievance with the career service commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department or to the attorney general's office or because the employee has filed a suggestion pursuant to this section.

The second statute declares that it is South Dakota's policy that citizens of the state shall not be deprived of their freedom of speech guaranteed to them by the Constitution by reason of the fact that they are state officers and employees. It states that no agency may pass a rule restricting or prohibiting the constitutionally guaranteed right of its employees and officers to express their opinions (§ 3-6-27).