

**Accountability Report Card Summary 2009**  
**Tennessee**

Tennessee has one of the strongest state whistleblower law:

- Scoring 74 out of a possible 100;
- Ranking 3<sup>rd</sup> out of 51 (50 states and the District of Columbia).

Tennessee has good coverage (22 of 33 possible points) with an excellent degree of usability (32 out of 33) and strong remedies (20 out of 33).

*Tennessee's full Whistleblower Report Card*  
*Narrative summary of Tennessee law*

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**Tennessee Accountability Index Report card**

Coverage, Usability & Strength — Rating on a 100 Point Scale  
 Employment Practices- Tenn. Code Ann. § 50-1-304 (2005).  
 State Government- Tenn. Code Ann. § 8-50-116

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

Does the statute cover disclosures of –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
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
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 <sup>1</sup>
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	1 point
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	1 point
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 points <sup>2</sup>
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>22 points</u></b>

<sup>1</sup> A third statute covers Occupational Health and Safety violations by employers. It applies only to **local and municipal government employees**. The statute states that no employee shall be discharged or discriminated against because the employee filed a complaint, instituted a proceeding, or testified about a right afforded by the statute. Any employee who believes he has been retaliated against may within 30 days after the violation occurs, file a complaint with the Commissioner of Labor and Workforce Development, who will act promptly to determine whether to seek imposition of sanctions provided for in § 50-3-409. For cause shown, § 50-3-409 provides for all appropriate relief, including rehiring and reinstatement with back pay. Tenn Code Ann. § 50-3-106 and 409.

<sup>2</sup> There is no provision in either whistleblower statute saying other rights are not precluded.

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

Do the laws protect disclosures made to –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Any person or organization, including public media	24 points	24 points <sup>3</sup>

**Or** does the statute protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4 points	0 points
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	0 points
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	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)	3 points <sup>4</sup>
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 <sup>5</sup>
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>32 points</u></b>

<sup>3</sup> The second statute does not specify to whom a disclosure of illegal activities would be made.

<sup>4</sup> Whistleblower law does not include a statute of limitations. We understand that no Tennessee cases have not specifically addressed and exhaustively analyzed the applicable limitations period for state whistleblower claims. However, it is highly likely that a one year limitation period would apply as does apply to personal injury actions.

<sup>5</sup> Tennessee has a False Claims Act, Tenn. Code Ann. § 4-18-101 *et. seq.* (2005) and a Medicaid False Claims Act (2005)

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

Does the statute provide for –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment	4 points	4 point
2. Opportunity for administrative challenge	4 points	0 points
3. Opportunities for court challenge	4 points	4 point
4. Trial by jury	3 points	0 points <sup>6</sup>
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 <sup>7</sup>
7. Actual/compensatory damages	3 points	3 points
8. Interim relief, injunction or stay of personnel actions	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	2 points <sup>8</sup>
11. Personnel actions against managers found to have retaliated	3 points	1 points <sup>9</sup>
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>20 points</u></b>

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

<b>Factor</b>	<b>Maximum Score</b>	<b>Awarded Score</b>
Posting	1 point	0 points

**Total Points**

**100 Points**

**74 points**

<sup>6</sup> Whistleblower statute does not provide for trial by jury. We did not determine whether jury trial would be available under other Tennessee statutes or the state's Constitution. The lawsuit authorized is for a tort, retaliatory discharge, and if successful, will probably involve compensatory and other damages, which are issues usually decided by a jury.

<sup>7</sup> Whistleblower if successful can recover reasonable attorneys' fees and costs under both statutes.

<sup>8</sup> Willful or malicious violations may bring criminal sanctions and or triple damages under the first statute.

<sup>9</sup> See FN 8.

**April 16, 2009**

**State Legislation Protecting State Employee Whistleblowers**

**State-** Tennessee

**Statute-** State Government- Tenn. Code Ann. § 8-50-116 and Employer and Employee, Employment Relationship and Practices- Working Conditions Generally- Tenn. Code Ann. § 50-1-304 (2005)

**Provisions-** Tennessee has two statutes which protect public whistleblowers.

**The first statute expresses the intent of the general assembly that state employees are encouraged to report violations of state or federal law or regulations, fraud in government programs, misappropriation of government resources, health and safety dangers, mismanagement, and abuses of authority. The statute also expresses the general assembly's intent that state employees be able to freely report to public bodies, including testifying before legislative panels, on issues of public concern.**

The statute protects whistleblowers for retaliation for reporting: violations of state and federal laws and regulations, fraud, misappropriation of resources, health and safety dangers, gross mismanagement, gross waste of government funds, or gross abuse of authority.

Supervisors may take appropriate action against the whistleblower if they believe in good faith that the employee has been fraudulent, dishonest, or had a willful disregard for the truth in his or her disclosure.

Employees may not be retaliated against for refusing to carry out orders if the order violates state or federal law, regulations, written policy or procedure, or orders that pose an unreasonable health and safety risk.

Employees must file an action in circuit or chancery court within one year of the alleged violation. Employees may seek actual damages, injunctive relief, reinstatement, payment of back wages, reinstatement of benefits, costs, and reasonable attorney's fees. For acts involving a willful or malicious violation of this statute, a criminal violation, or a violation in attempt to obtain personal gain, the court may award up to 3 times the actual damages.

Employers, including state supervisors, agencies, departments, or institutions, are not found liable if action under good faith pursuant to lawful orders or authority.

**The second statute is a whistleblower-related statute with limited application. It applies to both public and private sector employees. The statute provides no employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities "Illegal activities" means**

**activities that are in violation of the federal and Tennessee civil or criminal code or any regulation intended to protect the public health, safety or welfare. As used in the statute “employee” includes an employee of the state or any state department, board, commission, agency, instrumentality, or other entity. “Employer” includes the state or any state department, board, commission, agency, instrumentality, or other entity. Any employee terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities shall have a cause of action against the employer for retaliatory discharge and any other damages to which the employee may be entitled. Any employee who prevails in such cause of action shall be entitled to recover attorney fees and costs.**

No employee shall be discharged or terminated solely for participating or engaging in the use of agricultural product, not regulated by the alcoholic beverage commission, that is not otherwise prohibited by law, (i) if such employee participates or engages in such use in a manner that complies with all applicable employer policies regarding such use during times when the employee is working; or (ii) participates or engages in such activity during such times when such employee is not working.

This statute should not be used for frivolous lawsuits. If an employee files a case for retaliatory discharge for any improper purpose, such as to harass or to cause needless increase in costs to the employer, the court, upon motion or its own initiative, shall impose upon the employee, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred, including reasonable attorney’s fees. The provisions of this statute shall apply to all employees who receive compensation from the federal government for services performed for the federal government, notwithstanding that such persons are not full-time employees of the federal government.