



COMMITTEE REPORT

COMPENDIUM OF STATE STATUTES
PROTECTING WHISTLEBLOWERS

**Prepared by the Newsgathering Committee
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Media Law Resource Center**

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COMPENDIUM OF STATE STATUTES PROTECTING WHISTLEBLOWERS

MLRC Newsgathering Committee

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In *Garcetti v. Cellabos*, 547 U.S. ___, 126 S. Ct. 1951 (2006), the United States Supreme Court held (5-4) that a governmental whistleblower, whose job responsibilities required him to report the information he revealed, did not have a claim, as a “citizen,” for retaliation based upon his exercise of his free speech rights under the First Amendment. The majority opinion suggested that protection for such speech was nevertheless provided by “the powerful network of legislative enactments –such as whistleblower protection laws and labor codes – available to those who seek expose wrongdoing.” In dissent, Justice Souter provided a skeptical view that the “patchwork” of statutes referred to by the majority provides meaningful protection to whistleblowers.

The Newsgathering Committee of the Media Law Resource Center undertook to survey the state statutes on the books that arguably might apply to a governmental whistleblower who turns to the press to blow the whistle. Attached are two documents: (1) a compendium of the statutes of all states that afford protection, in some form, to whistleblowing, and (2) a table listing the ten states’ statutes that appear to provide some protection to whistleblowers who speak out outside the “chain of command”, to “third parties” that may (or may not) include the press.

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Alabama

Section 36-26A-3

Discharge for reporting violation of law prohibited.

A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a state employee regarding the state employee's compensation, terms, conditions, or privileges of employment if the state employee, reports, under oath or in the form of an affidavit, a violation of a law, a regulation, or a rule, promulgated pursuant to the laws of this state, or a political subdivision of this state, to a public body.

Section 36-25-24

Supervisor prohibited from discharging or discriminating against employee where employee reports violation.

(a) A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a public employee regarding such employee's compensation, terms, conditions, or privileges of employment based on the employee's reporting a violation, or what he or she believes in good faith to be a violation, of this chapter or giving truthful statements or truthful testimony concerning an alleged ethics violation.

(b) Nothing in this chapter shall be construed in any manner to prevent or prohibit or otherwise limit a supervisor from disciplining, discharging, transferring, or otherwise affecting the terms and conditions of a public employee's employment so long as the disciplinary action does not result from or is in no other manner connected with the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying.

(c) No public employee shall file a complaint or otherwise initiate action against a public official or other public employee without a good faith basis for believing the complaint to be true and accurate.

(d) A supervisor who is alleged to have violated this section shall be subject to civil action in the circuit courts of this state pursuant to the Alabama Rules of Civil Procedure as promulgated by the Alabama Supreme Court.

(e) A public employee who without a good faith belief in the truthfulness and accuracy of a complaint filed against a supervisor, shall be subject to a civil action in the circuit courts in the State of Alabama pursuant to the Alabama Rules of Civil Procedure as promulgated by the Supreme Court. Additionally, a public employee who without a good faith belief in the truthfulness and accuracy of a complaint as filed against a supervisor shall be subject to appropriate and applicable personnel action.

(f) Nothing in this section shall be construed to allow a public employee to file a complaint to prevent, mitigate, lessen, or otherwise to extinguish existing or anticipated personnel action by a supervisor. A public employee who willfully files such a complaint against a supervisor shall, upon conviction, be guilty of the crime of false reporting.

Alaska

Sec. 39.90.100. Persons protected.

(a) A public employer may not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because

(1) the employee, or a person acting on behalf of the employee, reports to a public body or is about to report to a public body a matter of public concern; or

(2) the employee participates in a court action, an investigation, a hearing, or an inquiry held by a public body on a matter of public concern.

(b) A public employer may not disqualify a public employee or other person who reports a matter of public concern or participates in a proceeding connected with a matter of public concern before a public body or court, because of the report or participation, from eligibility to

(1) bid on contracts with the public employer;

(2) receive land under a law of the state or an ordinance of the municipality; or

(3) receive another right, privilege, or benefit.

(c) The provisions of AS 39.90.100 - 39.90.150 do not

(1) require an employer to compensate an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;

(2) prohibit an employer from compensating an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;

(3) authorize the disclosure of information that is legally required to be kept confidential; or

(4) diminish or impair the rights of an employee under a collective bargaining agreement.

(d) An employer shall post notices and use other appropriate means to inform employees of their protections and obligations under AS 39.90.100 - 39.90.150.

Sec. 39.90.110. Limitation to protections.

(a) A person is not entitled to the protections under AS 39.90.100 - 39.90.150 unless the person

(1) reasonably believes that the information reported is or is about to become a matter of public concern; and

(2) reports the information in good faith.

(b) A person is entitled to the protections under AS 39.90.100 - 39.90.150 only if the matter of public concern

(1) is not the result of conduct by the person seeking protection; or

(2) is the result of conduct by the person that was required by the person's employer.

(c) As part of its written personnel policy, a public employer may require that, before an employee initiates a report on a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the employee is not required to submit a report if the employee

(1) reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

- (2) believes with reasonable certainty that the activity, policy, or practice is already known to one or more supervisors;
- (3) reasonably believes that an emergency is involved; or
- (4) reasonably fears reprisal or discrimination as a result of disclosure.

Sec. 39.90.120. Relief and penalties.

(a) A person who alleges a violation of AS 39.90.100 may bring a civil action and the court may grant appropriate relief, including punitive damages.

(b) A person who violates or attempts to violate AS 39.90.100 is also liable for a civil fine of not more than \$10,000. The attorney general may enforce this subsection.

(c) A person who attempts to prevent another person from making a report or participating in a matter under AS 39.90.100 (a) with intent to impede or prevent a public inquiry on the matter is liable for a civil fine of not more than \$10,000.

Sec. 39.90.130. Exemption for municipalities.

A municipality is not required to comply with the provisions of AS 39.90.100 - 39.90.150 if the municipality has adopted an ordinance that provides protections for its employees and other persons that are substantially similar to the protections under AS 39.90.100 - 39.90.150. Notwithstanding AS 29.25.070, the ordinance may provide for a civil penalty for violation of the ordinance not to exceed \$10,000.

Sec. 39.90.140. Definitions.

In AS 39.90.100 - 39.90.150

- (1) "employee" or "public employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for a public employer;
- (2) "employer" or "public employer" includes the state, a public or quasi-public corporation or authority established by state law, the University of Alaska, and a political subdivision of the state including a municipality, school district, and regional educational attendance area;
- (3) "matter of public concern" means
 - (A) a violation of a state, federal, or municipal law, regulation, or ordinance;
 - (B) a danger to public health or safety;
 - (C) gross mismanagement, a substantial waste of funds, or a clear abuse of authority;
 - (D) a matter accepted for investigation by the office of the ombudsman under AS 24.55.100 or 24.55.320; or
 - (E) interference or any failure to cooperate with an audit or other matter within the authority of Legislative Budget and Audit Committee;
- (4) "public body" includes an officer or agency of
 - (A) the federal government;
 - (B) the state;
 - (C) a political subdivision of the state including
 - (i) a municipality;
 - (ii) a school district; and
 - (iii) a regional educational attendance area;

- (D) a public or quasi-public corporation or authority established by state law including the Alaska Railroad Corporation; and
- (E) the University of Alaska.

Sec. 39.90.150. Short title.

AS 39.90.100 - 39.90.150 may be cited as the Alaska Whistleblower Act.

AS 24.60.035. Protection of Whistle Blowers.

A legislator or legislative employee may not, directly or indirectly, subject a person who reports to the committee or another government entity conduct the person reasonably believes is a violation of this chapter or another state law, to reprisal, harassment, or discrimination. A legislative employee who is discharged, disciplined, involuntarily transferred, or otherwise penalized by a legislator or another legislative employee in violation of this subsection may

- (1) bring a complaint before the committee; and
- (2) bring a separate civil action in the courts seeking damages, payment of back wages, reinstatement, or other relief.

AS 08.68.279. Whistleblower Protection For Nurses Concerning Delegated Duties.

An employer may not discharge, threaten, or otherwise discriminate against a nurse employed by the employer regarding the nurse's compensation, terms, conditions, location, or privileges of employment for the nurse's refusal to perform a task involving nursing care delegated to the nurse by the nurse's superior if

- (1) the nurse alleges that the task was improperly delegated;
- (2) the nurse reports the attempted improper delegation to the Board of Nursing within 24 hours after the attempted delegation was made; and
- (3) the Board of Nursing finds that the task was improperly delegated.

Arizona

38-532. Prohibited personnel practice; violation; reinstatement; exceptions; civil penalty

A. It is a prohibited personnel practice for an employee who has control over personnel actions to take reprisal against an employee for a disclosure of information of a matter of public concern by the employee to a public body which the employee reasonably believes evidences:

1. A violation of any law.
2. Mismanagement, a gross waste of monies or an abuse of authority.

B. The disclosure by an employee to a public body alleging a violation of law, mismanagement, gross waste of monies or abuse of authority shall be in writing and shall contain the following information:

1. The date of the disclosure.
2. The name of the employee making the disclosure.
3. The nature of the alleged violation of law, mismanagement, gross waste of monies or abuse of authority.
4. If possible, the date or range of dates on which the alleged violation of law, mismanagement, gross waste of monies or abuse of authority occurred.

C. An employee who knowingly commits a prohibited personnel practice shall be ordered by the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to section 38-534 to pay a civil penalty of up to five thousand dollars to the state general fund, a county general fund, a community college district unrestricted general fund or a school district maintenance and operation fund, whichever is appropriate. The employee who committed the prohibited personnel practice, not the governmental entity, shall pay the civil penalty. Upon a finding that an employee committed a prohibited personnel practice, the employer shall take appropriate disciplinary action including dismissal.

D. An employee or former employee against whom a prohibited personnel practice is committed may recover attorney fees, costs, back pay, general and special damages and full reinstatement for any reprisal resulting from the prohibited personnel practice as determined by the court.

E. An employee does not commit a prohibited personnel practice if he takes reprisal against an employee if that employee discloses information in a manner prohibited by law or the materials or information are prescribed as confidential by law.

F. This section may not be used as a defense in a disciplinary action where the employee is being disciplined for cause pursuant to section 41-770, except in a hearing on a complaint brought pursuant to this section by an employee or former employee who believes he has been the subject of a prohibited personnel practice as prescribed in this section as the result of a disclosure of information.

G. On request or at any time an employee alleges reprisal, an employer shall provide an employee who is subject to disciplinary or corrective action, suspension, demotion or dismissal with a copy of this section.

H. If an employee or former employee believes that a personnel action taken against him is the result of his disclosure of information under this section, he may make a

complaint to an appropriate independent personnel board, if one is established or authorized pursuant to section 38-534 or to a community college district governing board or school district governing board. If an independent personnel board has not been established or authorized, or if a school district governing board or a community college district governing board does not hear and decide personnel matters brought pursuant to this section, the employee or former employee may make a complaint to the state personnel board. A complaint made pursuant to this subsection shall be made within ten days of the effective date of the action taken against him. The state personnel board, a school district governing board, a community college governing board or other appropriate independent personnel board, shall, pursuant to the rules governing appeals under section 41-785, make a determination concerning:

1. The validity of the complaint.
2. Whether a prohibited personnel practice was committed against the employee or former employee as a result of disclosure of information by the employee or former employee.

I. If the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to section 38-534 determines that a prohibited personnel practice was committed as a result of disclosure of information by the employee or former employee, it shall rescind the personnel action and order that all lost pay and benefits be returned to the employee or former employee. The employee, former employee, employee alleged to have committed a prohibited personnel practice pursuant to subsection A of this section or employer may appeal the decision of the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to section 38-534 to the superior court as provided in title 12, chapter 7, article 6. Notwithstanding section 12-910, an appeal to the superior court under this subsection shall be tried de novo.

J. For purposes of a hearing by the state personnel board, a school district governing board, a community college district governing board or other appropriate independent personnel board conducted under this section, the employee, former employee, employee alleged to have committed the prohibited personnel practice pursuant to subsection A of this section and employer may be represented by counsel. In addition, representation by counsel in such hearings shall meet any other requirements stipulated by the state personnel board, a school district governing board, a community college district governing board or other appropriate independent personnel board or as required by law.

K. An employee or former employee may also seek injunctive relief as is otherwise available in civil actions.

L. This section shall not be construed to limit or extend the civil or criminal liability of an employee or former employee for any disclosure of information or to limit an employee's right to a separate pretermination hearing with the employee's employer, as provided by law.

M. An employee who knowingly makes a false accusation that a public officer or employee who has control over personnel actions has engaged in a violation of any law, mismanagement, a gross waste of monies or an abuse of authority is personally subject

to a civil penalty of up to twenty-five thousand dollars and dismissal from employment by the employer.

23-1501. Severability of employment relationships; protection from retaliatory discharges; exclusivity of statutory remedies in employment

The public policy of this state is that:

1. The employment relationship is contractual in nature.
2. The employment relationship is severable at the pleasure of either the employee or the employer unless both the employee and the employer have signed a written contract to the contrary setting forth that the employment relationship shall remain in effect for a specified duration of time or otherwise expressly restricting the right of either party to terminate the employment relationship. Both the employee and the employer must sign this written contract, or this written contract must be set forth in the employment handbook or manual or any similar document distributed to the employee, if that document expresses the intent that it is a contract of employment, or this written contract must be set forth in a writing signed by the party to be charged. Partial performance of employment shall not be deemed sufficient to eliminate the requirements set forth in this paragraph. Nothing in this paragraph shall be construed to affect the rights of public employees under the Constitution of Arizona and state and local laws of this state or the rights of employees and employers as defined by a collective bargaining agreement.
3. An employee has a claim against an employer for termination of employment only if one or more of the following circumstances have occurred:
 - (a) The employer has terminated the employment relationship of an employee in breach of an employment contract, as set forth in paragraph 2 of this section, in which case the remedies for the breach are limited to the remedies for a breach of contract.
 - (b) The employer has terminated the employment relationship of an employee in violation of a statute of this state. If the statute provides a remedy to an employee for a violation of the statute, the remedies provided to an employee for a violation of the statute are the exclusive remedies for the violation of the statute or the public policy set forth in or arising out of the statute, including the following:
 - (i) The civil rights act prescribed in title 41, chapter 9.
 - (ii) The occupational safety and health act prescribed in chapter 2, article 10 of this title.
 - (iii) The statutes governing the hours of employment prescribed in chapter 2 of this title.
 - (iv) The agricultural employment relations act prescribed in chapter 8, article 5 of this title.

All definitions and restrictions contained in the statute also apply to any civil action based on a violation of the public policy arising out of the statute. If the statute does not provide a remedy to an employee for the violation of the statute, the employee shall have the right to bring a tort claim for wrongful termination in violation of the public policy set forth in the statute.

- (c) The employer has terminated the employment relationship of an employee in retaliation for any of the following:
- (i) The refusal by the employee to commit an act or omission that would violate the Constitution of Arizona or the statutes of this state.
 - (ii) The disclosure by the employee in a reasonable manner that the employee has information or a reasonable belief that the employer, or an employee of the employer, has violated, is violating or will violate the Constitution of Arizona or the statutes of this state to either the employer or a representative of the employer who the employee reasonably believes is in a managerial or supervisory position and has the authority to investigate the information provided by the employee and to take action to prevent further violations of the Constitution of Arizona or statutes of this state or an employee of a public body or political subdivision of this state or any agency of a public body or political subdivision.
 - (iii) The exercise of rights under the workers' compensation statutes prescribed in chapter 6 of this title.
 - (iv) Service on a jury as protected by section 21-236.
 - (v) The exercise of voting rights as protected by section 16-1012.
 - (vi) The exercise of free choice with respect to nonmembership in a labor organization as protected by section 23-1302.
 - (vii) Service in the national guard or armed forces as protected by sections 26-167 and 26-168.
 - (viii) The exercise of the right to be free from the extortion of fees or gratuities as a condition of employment as protected by section 23-202.
 - (ix) The exercise of the right to be free from coercion to purchase goods or supplies from any particular person as a condition of employment as protected by section 23-203.
 - (x) The exercise of a victim's leaves right as provided in sections 8-420 and 13-4439.
- (d) In the case of a public employee, if the employee has a right to continued employment under the United States Constitution, the Arizona Constitution, Arizona Revised Statutes, any applicable regulation, policy, practice, or contract of the state, any subdivision of the state or other public entity, or any ordinance of any political subdivision of the state.

41-1492.10. Prohibition against retaliation and coercion

A. No person may discriminate against any individual because the individual has opposed any act or practice made unlawful by this article or because the individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this article.

B. It is unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, for having exercised or enjoyed or on account of his having

aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by this article.

36-2282. Duty to inform; reports of denial or deprivation; disciplinary action prohibited; report to department of economic security

A. Any health care institution with a perinatal, obstetrical or pediatric unit shall inform its administrators and other employees associated with the perinatal, obstetrical or pediatric unit of:

1. Their duty pursuant to section 13-3620 to report any denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of the infant.
2. Their right to make a report free from any disciplinary action by the health care institution.
3. A full description of the manner in which a report is to be made.

B. A health care institution shall not take or threaten to take any disciplinary action against any employee in retaliation for the employee making a report pursuant to section 13-3620.

C. A health care institution as specified in subsection A of this section shall report all suspected incidents of denial or deprivation of medically necessary treatment, surgical care or nourishment with the intent to cause or allow the death of the infant to the child protective services program of the department of economic security as each incident occurs.

36-2282. Duty to inform; reports of denial or deprivation; disciplinary action prohibited; report to department of economic security

A. Any health care institution with a perinatal, obstetrical or pediatric unit shall inform its administrators and other employees associated with the perinatal, obstetrical or pediatric unit of:

1. Their duty pursuant to section 13-3620 to report any denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of the infant.
2. Their right to make a report free from any disciplinary action by the health care institution.
3. A full description of the manner in which a report is to be made.

B. A health care institution shall not take or threaten to take any disciplinary action against any employee in retaliation for the employee making a report pursuant to section 13-3620.

C. A health care institution as specified in subsection A of this section shall report all suspected incidents of denial or deprivation of medically necessary treatment, surgical care or nourishment with the intent to cause or allow the death of the infant to the child protective services program of the department of economic security as each incident occurs.

Arkansas

Arkansas Whistle-Blower Act

21-1-601. Title.

This subchapter shall be known and may be cited as the "Arkansas Whistle blower Act".

21-1-602. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Adverse action" means to discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee's employment, including compensation, job location, rights, immunities, promotions, or privileges;
- (2) (A) "Appropriate authority" means:
 - (i) A state, county, or municipal government department, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or
 - (ii) A member, officer, agent, investigator, auditor, representative or supervisory employee of the body, agency, or organization.(B) The term includes, but is not limited to, the office of the Attorney General, the office of the Auditor of State, the Arkansas Ethics Commission, the Legislative Joint Auditing Committee and the Division of Legislative Audit, and the offices of the various prosecuting attorneys having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste;
- (3) "Communicate" means to give a verbal or written report to an appropriate authority;
- (4) "Public employee" means a person who performs a full or part-time service for wages, salary, or other remuneration for a public employer;
- (5) "Public employer" means any of the following:
 - (A) An agency, department, board, commission, division, office, bureau, council, authority, or other instrumentality of the State of Arkansas, including the offices of the various Arkansas elected constitutional officers and the General Assembly and its agencies, bureaus, and divisions;
 - (B) A state-supported college, university, technical college, community college or other institution of higher education, or department, division, or agency of a state institution of higher education;
 - (C) The Arkansas Supreme Court, Court of Appeals, the Administrative Office of the Courts, the circuit and chancery courts, and prosecuting attorneys' offices;
 - (D) An office, department, commission, council, agency, board, bureau, committee, corporation, or other instrumentality of a county government or a municipality, or a municipal court, a county subordinate service district, a municipally owned utility, or a regional or joint governing body of one (1) or more counties or municipalities; or
 - (E) A county board of education or a public school district, school, or an office or department of a public school district in Arkansas;
- (6) "Violation" means an infraction or a breach which is not of a merely technical or minimal nature of a state statute or regulation, of a political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer;

(7) "Waste" means a public employer's conduct or omissions which result in substantial abuse, misuse, destruction, or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision's resources; and

(8) "Whistle-blower" means a person who witnesses or has evidence of a waste or violation while employed with a public employer and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee's superiors, to an agent of the public employer, or to an appropriate authority, provided that the communication is made prior to any adverse action by the employer.

21-1-603. Public employer conduct prohibited - Good faith communication.

(a) A public employer shall not take adverse action against a public employee because the public employee or a person authorized to act on behalf of the employee communicates in good faith the existence of waste of public funds, property, or manpower, excluding federal funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the law of this state or a political subdivision of the state to an appropriate authority. The communication shall be made at a time and in a manner which gives the public employer reasonable notice of need to correct the waste or violation.

(b) For purposes of subsection (a) of this section, a public employee communicates in good faith if there is a reasonable basis in fact for the communication of the existence of waste or of a violation. Good faith is lacking when the public employee does not have personal knowledge of a factual basis for the communication or when the public employee knew or reasonably should have known that the communication of the waste or of the violation was malicious, false, or frivolous.

(c) A public employer shall not take an adverse action against a public employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review.

(d) A public employer shall not take an adverse action against a public employee because an employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of laws of the state or a political subdivision of the state.

21-1-604. Civil liability.

(a) A public employee who alleges a violation of this subchapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) calendar days after the occurrence of the alleged violation of this subchapter.

(b) An action commenced under this section may be brought in the chancery court for the county where the alleged violation occurred, for the county where the complainant resides, or in the chancery court of Pulaski County, Arkansas if the complaint is filed against an agency, department, or institution of Arkansas state government.

(c) To prevail in an action brought under the authority of this section, the public employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee or a person acting on his behalf engaged or intended to engage in an activity protected under this subchapter.

(d) As used in this section, "damages" means damages for a job-related injury or loss caused by each violation of this subchapter, including, but not limited to, fringe benefits,

retirement service credit, compensation for lost wages, benefits, and any other remuneration, and reasonable court costs and attorneys' fees.

(e) A public employer shall have an affirmative defense to a civil action brought by a public employee under this act if the adverse action taken against a public employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a communication made pursuant to § 21-1-603. The public employer must prove the existence of the public employee's misconduct unrelated to the communication by a preponderance of the evidence.

(f) In the event the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration implements an employee grievance mediation program, a public employee or public employer may voluntarily participate in mediation under the department's mediation program if either one wishes to resolve a dispute between them that involves an adverse action taken against the public employee. Voluntary mediation shall occur before a civil action has been initiated in court in which the public employee and public employer are parties. The Director of the Department of Finance and Administration shall adopt voluntary mediation application and request forms.

21-1-605. Remedies.

A court in rendering judgment under this subchapter may order any or all of the following remedies:

- (1) An injunction to restrain continued violation of the provisions of this subchapter;
- (2) The reinstatement of the public employee to the same position held before the adverse action or to an equivalent position;
- (3) The reinstatement of full fringe benefits and retirement service credit;
- (4) The compensation for lost wages, benefits, and any other remuneration;
- (5) The payment by the public employer of reasonable court costs and attorney's fees.

21-1-606. Attorney's fees.

A court may also order that reasonable attorneys' fees and court costs be awarded to an employer if the court determines that an action brought by a public employee under this subchapter is without basis in law or fact. Provided, a public employee shall not be assessed attorneys' fees under this section if, after exercising reasonable and diligent efforts after filing the suit, the public employee files a voluntary nonsuit concerning the employer within sixty (60) calendar days after determining that the employer would not be liable for damages.

21-1-607. Protection of confidentiality.

This subchapter shall not be construed to permit a disclosure which would diminish or impair the rights of any person or any public official to the continued protection of confidentiality of records or working papers where a statute or the common law provides for protection.

21-1-608. Notification of rights.

A public employer shall use appropriate means to notify its public employees of their protection and obligations under this subchapter.

21-1-609. Severability of subchapter.

In the event any provision of this subchapter regarding the remedies or damages for public employees in §§ 24-1-604, 24-1-605, or 24-1-606 is held to be invalid, the invalidity shall not affect the other provisions of this subchapter which offer protection to public employees from adverse actions by public employers, and to this end the provisions of this subchapter are declared to be severable.

California

LABOR CODE

SECTION 1101-1106

1101. No employer shall make, adopt, or enforce any rule, regulation, or policy:

- (a) Forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office.
- (b) Controlling or directing, or tending to control or direct the political activities or affiliations of employees.

1102. No employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity.

1102.5. (a) An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(c) An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(d) An employer may not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.

(e) A report made by an employee of a government agency to his or her employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b).

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

(g) This section does not apply to rules, regulations, or policies which implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950), the physician-patient privilege of Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

1102.6. In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to

demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.

1102.7. (a) The office of the Attorney General shall maintain a whistleblower hotline to receive calls from persons who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees.

(b) The Attorney General shall refer calls received on the whistleblower hotline to the appropriate government authority for review and possible investigation.

(c) During the initial review of a call received pursuant to subdivision (a), the Attorney General or appropriate government agency shall hold in confidence information disclosed through the whistleblower hotline, including the identity of the caller disclosing the information and the employer identified by the caller.

(d) A call made to the whistleblower hotline pursuant to subdivision (a) or its referral to an appropriate agency under subdivision (b) may not be the sole basis for a time period under a statute of limitation to commence. This section does not change existing law relating to statutes of limitation.

1102.8. (a) An employer shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline described in Section 1102.7.

(b) Any state agency required to post a notice pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code shall be deemed in compliance with the posting requirement set forth in subdivision (a) if the notice posted pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code also contains the whistleblower hotline number described in Section 1102.7.

1103. Any employer who violates this chapter is guilty of a misdemeanor punishable, in the case of an individual, by imprisonment in the county jail not to exceed one year or a fine of not to exceed \$1,000 or both and, in the case of a corporation, by a fine of not to exceed \$5,000.

1104. In all prosecutions under this chapter, the employer is responsible for the acts of his managers, officers, agents, and employees.

1105. Nothing in this chapter shall prevent the injured employee from recovering damages from his employer for injury suffered through a violation of this chapter.

1106. For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8, 1104, and 1105, "employee" includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California.

SECTION 6300-6332

6310. a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

(1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative.

(2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her.

(3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

6311. No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.

6312. Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of Section 6310 or 6311 may file a complaint with the Labor Commissioner pursuant to Section 98.7.

EDUCATION CODE

SECTION 44110-44114

44110. This article shall be known and may be referred to as the Reporting by School Employees of Improper Governmental Activities Act.

44111. It is the intent of the Legislature that school employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

44112. For the purposes of this article, the following terms have the following meanings:

- (a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code.
- (b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.
- (c) "Improper governmental activity" means an activity by a public school agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:
 - (1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.
 - (2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.
- (d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.
- (e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:
 - (1) An improper governmental activity.
 - (2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.
- (f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code.

44113. (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a school administrator, member of the governing board of a school district or county board of education, county superintendent of schools, or the Superintendent of Public Instruction.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

44114. (a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113 occurred, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for

damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

GOVERNMENT CODE SECTION 8547-8547.12

8547. This article shall be known and may be cited as the "California Whistleblower Protection Act."

8547.1. The Legislature finds and declares that state employees should be free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution. The Legislature further finds and declares that public servants best serve the citizenry when they can be candid and honest without reservation in conducting the people's business.

8547.2. For the purposes of this article:

(a) "Employee" means any individual appointed by the Governor or employed or holding office in a state agency as defined by Section 11000, including, for purposes of Sections 8547.3 to 8547.7, inclusive, any employee of the California State University.

(b) "Improper governmental activity" means any activity by a state agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. For purposes of Sections 8547.4, 8547.5, 8547.10, and 8547.11, "improper governmental activity" includes any activity by the University of California or by an employee, including an officer or faculty member, who otherwise meets the criteria of this subdivision.

(c) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(d) "Protected disclosure" means any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(e) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(f) "State agency" is defined by Section 11000. "State agency" includes the University of California for purposes of Sections 8547.5 to 8547.7, inclusive, and the California State University for purposes of Sections 8547.3 to 8547.7, inclusive.

8547.3. (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the rights conferred pursuant to this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(d) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

8547.4. The State Auditor shall administer the provisions of this article and shall investigate and report on improper governmental activities. If, after investigating, the State Auditor finds that an employee may have engaged or participated in improper governmental activities, the State Auditor shall send a copy of the investigative report to the employee's appointing power. Within 60 days after receiving a copy of the State Auditor's investigative report, the appointing power shall either serve a notice of adverse

action upon the employee who is the subject of the investigative report or set forth in writing its reasons for not taking adverse action. The appointing power shall file a copy of the notice of adverse action with the State Personnel Board in accordance with Section 19574, and shall submit a copy to the State Auditor. If the appointing power does not take adverse action, it shall submit its written reasons for not doing so to the State Auditor and the State Personnel Board, and adverse action may be taken as provided in Section 19583.5. Any employee who is served with a notice of adverse action may appeal to the State Personnel Board in accordance with Section 19575.

8547.5. Upon receiving specific information that any employee or state agency has engaged in an improper governmental activity, the State Auditor may conduct an investigative audit of the matter. The identity of the person providing the information that initiated the investigative audit shall not be disclosed without the written permission of the person providing the information unless the disclosure is to a law enforcement agency that is conducting a criminal investigation.

8547.6. The State Auditor may request the assistance of any state department, agency, or employee in conducting any investigative audit required by this article. If an investigative audit conducted by the State Auditor involves access to confidential academic peer review records of University of California academic personnel, these records shall be provided in a form consistent with university policy effective on August 1, 1992. No information obtained from the State Auditor by any department, agency, or employee as a result of the State Auditor's request for assistance, nor any information obtained thereafter as a result of further investigation, shall be divulged or made known to any person without the prior approval of the State Auditor.

8547.7. (a) If the State Auditor determines that there is reasonable cause to believe that an employee or state agency has engaged in any improper governmental activity, he or she shall report the nature and details of the activity to the head of the employing agency, or the appropriate appointing authority. If appropriate, the State Auditor shall report this information to the Attorney General, the policy committees of the Senate and Assembly having jurisdiction over the subject involved, and to any other authority that the State Auditor determines appropriate.

(b) The State Auditor shall not have any enforcement power. In any case in which the State Auditor submits a report of alleged improper activity to the head of the employing agency or appropriate appointing authority, that individual shall report to the State Auditor with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than 30 days after the date of the State Auditor's report and monthly thereafter until final action has been taken.

(c) Every investigative audit shall be kept confidential, except that the State Auditor may issue any report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals involved, or release any findings resulting from an investigation conducted pursuant to this article that is deemed necessary to serve the interests of the state.

(d) This section shall not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

8547.8. (a) A state employee or applicant for state employment who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 8547.3, may also file a copy of the written complaint with the State Personnel Board, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the board, shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure, is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Pursuant to Section 19683, any state civil service employee who intentionally engages in that conduct shall be disciplined by adverse action as provided by Section 19572.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the State Personnel Board pursuant to subdivision (a), and the board has issued, or failed to issue, findings pursuant to Section 19683.

(d) This section is not intended to prevent an appointing power, manager, or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any state employee or applicant for state employment if the appointing power, manager, or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (b) of Section 8547.2.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or state law or under any employment contract or collective bargaining agreement.

8547.9. Notwithstanding Section 19572, if the State Personnel Board determines that there is a reasonable basis for an alleged violation, or finds an actual violation of Section 8547.3 or 19683, it shall transmit a copy of the investigative report to the State Auditor. All working papers pertaining to the investigative report shall be made available under subpoena in a civil action brought under Section 19683.

8547.10. (a) A University of California employee, including an officer or faculty member, or applicant for employment may file a written complaint with his or her supervisor or manager, or with any other university officer designated for that purpose by the regents, alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having made a protected disclosure, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a University of California employee, including an officer or faculty member, or applicant for employment for having made a protected disclosure, is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for up to a period of one year. Any university employee, including an officer or faculty member, who intentionally engages in that conduct shall also be subject to discipline by the university.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a university employee, including an officer or faculty member, or applicant for employment for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the regents.

(d) This section is not intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any university employee, including an officer or faculty member, or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity protected by this article was a

contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or state law or under any employment contract or collective bargaining agreement.

8547.11. (a) A University of California employee, including an officer or faculty member, may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to a University of California official, designated for that purpose by the regents, or the State Auditor matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(d) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

8547.12. (a) A California State University employee, including an officer or faculty member, or applicant for employment may file a written complaint with his or her supervisor or manager, or with any other university officer designated for that purpose by the trustees, alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having made a protected disclosure, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a California State University employee, including an officer or faculty member, or applicant for employment for having made a protected disclosure, is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for up to a period of one year. Any university employee, including an officer or faculty member, who intentionally engages in that conduct shall also be subject to discipline by the university.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a university employee, including an officer or faculty member, or applicant for employment for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the trustees. Nothing in this section is intended to prohibit the injured party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months.

(d) This section is not intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action, or from taking or failing to take a personnel action with respect to any university employee, including an officer or faculty member, or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or state law or under any employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the revisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action.

Colorado

24-114-101. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.
- (2) "Disclosure of information" means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure regarding a private enterprise under contract with a state agency which, if not disclosed, could result in the waste of public funds, could endanger the public health, safety, or welfare, or could otherwise adversely affect the interests of the state.
- (3) "Employee" means any person employed by a private enterprise under contract with a state agency.
- (4) "Private enterprise under contract with a state agency" means any individual, firm, limited liability company, partnership, joint venture, corporation, association, or other legal entity which is a party to any type of state agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction for any department, office, commission, institution, board, or other agency of state government.
- (5) "Supervisor" means any person who supervises or is responsible for the work of one or more employees.

24-114-102. Retaliation prohibited.

(1) Except as provided in subsection (2) of this section, no appointing authority or supervisor of a private enterprise under contract with a state agency shall initiate or administer any disciplinary action against any employee on account of the employee's disclosure of information concerning said private enterprise. This section shall not apply to:

- (a) An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;
- (b) An employee who discloses information which is confidential under any other provision of law.

(2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good faith effort to provide to his supervisor or appointing authority or to a member of the general assembly the information to be disclosed prior to the time of its disclosure.

24-114-103. Civil actions resulting from disciplinary actions or from disclosure of information.

Any employee may bring a civil action in the district court alleging a violation of section 24-114-102. If the employee prevails, the employee may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

24-50.5-101. Legislative declaration.

The general assembly hereby declares that the people of Colorado are entitled to information about the workings of state government in order to reduce the waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. The general assembly further declares that employees of the state of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs. To help achieve these objectives, the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

24-50.5-102. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.
- (2) "Disclosure of information" means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency.
- (3) "Employee" means any person employed by a state agency.
- (4) "State agency" means any board, commission, department, division, section, or other agency of the executive, legislative, or judicial branch of state government.
- (5) "Supervisor" means any board, commission, department head, division head, or other person who supervises or is responsible for the work of one or more employees.

24-50.5-103. Retaliation prohibited.

- (1) Except as provided in subsection (2) of this section, no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This section shall not apply to:
 - (a) An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;
 - (b) An employee who discloses information from public records which are closed to public inspection pursuant to section 24-72-204;
 - (c) An employee who discloses information which is confidential under any other provision of law.
- (2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good faith effort to provide to his supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure.

24-50.5-104. Complaints by state personnel system employees - limitation period.

(1) Any employee in the state personnel system may file a written complaint with the state personnel board within thirty days after the employee knew or should have known of a disciplinary action alleging a violation of section 24-50.5-103 if the employee demonstrates that reasonable communication to the employee's supervisor, appointing authority, or member of the general assembly has occurred in regard to the alleged violation. Within ten days after receiving the complaint, the state personnel board shall send a copy of the complaint to the affected state agency and shall provide the employee with written notice that the complaint has been received and docketed, that the investigation of the charges has commenced, and that sets forth the process for reviewing such complaint. The affected state agency shall submit a written response to the complaint within forty-five days after the date the complaint was filed with the state personnel board. Within fifty days after the date the complaint was filed with the state personnel board, the board shall cause an investigation of the charges to be made by the state personnel director. The state personnel director shall complete the investigation within forty-five days after the commencement thereof. Within five days after receiving the investigator's report, the state personnel board shall mail a copy of the investigator's written report to the employee and to the affected state agency. If the investigation establishes that there is a reasonable basis for the charges, the appointing authority or supervisor shall be given written notice thereof. Within ten days after receiving such notice, the appointing authority or supervisor may petition the board for a hearing on the matter, and the board shall grant such hearing. The board shall set the matter for hearing to commence not later than forty-five days after the receipt of the petition for hearing filed by the appointing authority or supervisor or the completion of any ongoing investigation related to other allegations of the employee, whichever is later. The hearing date may be continued once only for good cause shown for no longer than forty-five days with the approval of the state personnel board. Any hearing conducted pursuant to this section shall take precedence over any other matter pending before the state personnel board.

(2) If the state personnel board after hearing determines that a violation of section 24-50.5-103 has occurred, or if the investigation establishes a reasonable basis for the charges and no hearing is requested, the board shall order, within thirty days after such hearing or investigation, the appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, and expungement of the records of the employee who disclosed information, and, in addition, the state personnel board shall order that the employee filing the complaint be reimbursed for any costs, including any court costs and attorney fees, if any, incurred in the proceeding. Such reimbursement shall be made out of moneys appropriated to the agency which employs such employee. Judicial review of any determination by the state personnel board under this subsection (2) may be had in accordance with section 24-4-106.

(3) It shall be a defense in any grievance or appeal before the state personnel board that the disciplinary action against an employee was initiated in violation of section 24-50.5-103, and the issue of the violation of section 24-50.5-103 shall be determined by the state personnel board as a part of the related grievance or appeal. The failure to raise any such defense shall bar any subsequent cause of action for a violation of section 24-50.5-103 arising out of the same set of facts at issue in the related grievance or appeal.

(4) Whenever the state personnel board determines that an appointing authority or supervisor has violated section 24-50.5-103, the appointing authority or supervisor shall receive a disciplinary action which shall remain a permanent part of the appointing authority's or supervisor's personnel file, and a copy of the disciplinary action shall be provided to the employee. The disciplinary action shall be appropriate to the circumstances, from a mandatory minimum of one week suspension or equivalent up to and including termination. In considering the appropriate disciplinary action pursuant to this subsection (4), the appointing authority or supervisor of the appointing authority or supervisor who has committed such violation shall consider the nature and severity of the retaliatory conduct involved.

(5) The state personnel board shall promulgate rules consistent with the provisions of this article that establish the procedures for filing complaints with the state personnel board under this section and that identify the rights and obligations of employees under this article.

24-50.5-105. Civil action.

Any employee not in the state personnel system, or any employee in the state personnel system who has filed a complaint under section 24-50.5-104 (1) but no reasonable basis was found for the charges, may bring a civil action in the district court alleging a violation of section 24-50.5-103. If the employee prevails, the employee may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

24-50.5-106. Notice to state auditor.

Whenever the state personnel board finds that a violation of section 24-50.5-103 involving the disclosure of information concerning waste of public funds or mismanagement of a state agency has occurred, it shall transmit a copy of the investigation report to the state auditor, who shall proceed in accordance with section 2-3-101 (3) (e), C.R.S

24-50.5-107. Reports to the governor.

The state personnel board shall report annually to the governor concerning the complaints filed, hearings held, and actions taken pursuant to this article.

Connecticut

Sec. 31-51m. **Protection of employee who discloses employer's illegal activities or unethical practices. Civil action.**

(a) As used in this section and section 31-278:

(1) "Person" means one or more individuals, partnerships, associations, corporations, limited liability companies, business trusts, legal representatives or any organized group of persons;

(2) "Employer" means a person engaged in business who has employees, including the state and any political subdivision of the state;

(3) "Employee" means any person engaged in service to an employer in a business of his employer;

(4) "Public body" means (A) any public agency, as defined in subdivision (1) of section 1-200, or any employee, member or officer thereof, or (B) any federal agency or any employee, member or officer thereof.

(b) No employer shall discharge, discipline or otherwise penalize any employee because the employee, or a person acting on behalf of the employee, reports, verbally or in writing, a violation or a suspected violation of any state or federal law or regulation or any municipal ordinance or regulation to a public body, or because an employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action. No municipal employer shall discharge, discipline or otherwise penalize any employee because the employee, or a person acting on behalf of the employee, reports, verbally or in writing, to a public body concerning the unethical practices, mismanagement or abuse of authority by such employer. The provisions of this subsection shall not be applicable when the employee knows that such report is false.

(c) Any employee who is discharged, disciplined or otherwise penalized by his employer in violation of the provisions of subsection (b) may, after exhausting all available administrative remedies, bring a civil action, within ninety days of the date of the final administrative determination or within ninety days of such violation, whichever is later, in the superior court for the judicial district where the violation is alleged to have occurred or where the employer has its principal office, for the reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he would have otherwise been entitled if such violation had not occurred. An employee's recovery from any such action shall be limited to such items, provided the court may allow to the prevailing party his costs, together with reasonable attorney's fees to be taxed by the court. Any employee found to have knowingly made a false report shall be subject to disciplinary action by his employer up to and including dismissal.

(d) This section shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

Delaware

TITLE 19

Labor

General Provisions

CHAPTER 17. WHISTLEBLOWERS' PROTECTION

§ 1701. Short title.

This chapter may be cited as the "Delaware Whistleblowers' Protection Act."

§ 1702. Definitions.

As used in this chapter:

- (1) "Employee" means a person employed full or part-time by any employer, and shall include, but not be limited to, at-will employees, contract employees, independent contractors, and volunteer firefighters as defined in § 6651(c) of Title 16.
- (2) "Employer" means any person, partnership, association, sole proprietorship, corporation or other business entity, including any department, agency, commission, committee, board, council, bureau, or authority or any subdivision of them in state, county or municipal government. One shall employ another if services are performed for wages or under any contract of hire, written or oral, express or implied.
- (3) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.
- (4) "Public body" means all of the following:
 - a. A state-wide elected official, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government or employee of them;
 - b. A legislator or employee of the legislative branch of state government;
 - c. An elected official of a county, city, or school district or employee of them;
 - d. A law enforcement agency or employee of that law enforcement agency; and
 - e. A federal agency or employee of that federal agency.
- (5) "Supervisor" means any individual to whom an employer has given the authority to direct and control the work performance of the affected employee or any individual who has the authority to take corrective action regarding the violation of a law, rule or regulation about which the employee complains.
- (6) "Violation" means an act or omission by an employer, or an agent thereof, that is:
 - a. Materially inconsistent with, and a serious deviation from, standards implemented pursuant to a law, rule, or regulation promulgated under the laws of this State, a political subdivision of this State, or the United States, to protect employees or other persons from health, safety, or environmental hazards while on the employer's premises or elsewhere; or
 - b. Materially inconsistent with, and a serious deviation from, financial management or accounting standards implemented pursuant to a rule or regulation promulgated by the employer or a law, rule, or regulation promulgated under the laws of this State, a political subdivision of this State, or the United States, to protect any person from fraud, deceit, or misappropriation of public or private funds or assets under the control of the employer.

§ 1703. Protection.

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment:

- (1) Because the employee, or a person acting on behalf of the employee, reports or is about to report to a public body, verbally or in writing, a violation which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false; or
- (2) Because an employee participates or is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action, in connection with a violation as defined in this chapter; or
- (3) Because an employee refuses to commit or assist in the commission of a violation, as defined in this chapter; or
- (4) Because the employee reports verbally or in writing to the employer or to the employee's supervisor a violation, which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false. Provided, however that if the report is verbally made, the employee must establish by clear and convincing evidence that such report was made.

§ 1704. Relief and damages.

(a) A person who alleges a violation of this chapter may bring a civil action for appropriate declaratory relief, or actual damages, or both within 3 years after the occurrence of the alleged violation of this chapter.

(b) An action commenced pursuant to subsection (a) of this section may be brought in Superior Court in the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.

(c) As used in subsection (a) of this section, "damages" means damages for injury or loss caused by each violation of this chapter.

(d) A court, in rendering a judgment in an action brought under this chapter, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, expungement of records relating to the disciplinary action or discharge, actual damages, or any combination of these remedies. A court may also award, as part of a judgment in an action brought under this chapter, all or a portion of the costs of litigation, including attorneys fees, if the court determines that such an award is appropriate.

§ 1705. Collective bargaining.

This chapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

§ 1706. Exemption.

This chapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with § 1703 of this title.

§ 1707. Notices requirement.

An employer shall post notices and use other appropriate means to keep the employer's employees informed of their protections and obligations under this chapter.

§ 1708. Burden of proof.

The burden of proof in any action brought under this chapter shall be upon the employee to show that the primary basis for the discharge, threats, or discrimination alleged to be in violation of this chapter was that the employee undertook an act protected pursuant to § 1703 of this title.

Delaware

TITLE 29

State Government

Public Officers and Employees

CHAPTER 51. GENERAL PROVISIONS

§ 5115. Protection of public employees reporting suspected violation of law.

(a) For purposes of this section, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Public employee" shall mean any full-time or part-time employee of the State, its school districts, or a county or municipal government.

(2) "Elected official" shall mean the Auditor of Accounts, a state, school district, county or municipal official elected by popular vote of same and employees of said offices.

(b) No public employee shall be discharged, threatened or otherwise discriminated against with respect to the terms or conditions of employment because that public employee reported, in a written or oral communication to an elected official, a violation or suspected violation of a law or regulation promulgated under the law of the United States, this State, its school districts, or a county or municipality of this State unless the employee knows that the report is false.

(c) An employee who alleges a violation of this section may bring a civil action for appropriate injunctive relief, actual damages, or both, within 90 days after the occurrence of the alleged violation of this section. (64 Del. Laws, c. 97, § 1; 69 Del. Laws, c. 230, § 1; 70 Del. Laws, c. 186, § 1.)

District of Columbia

DC ST § 1-615.51

§ 1-615.51. Findings and declaration of purpose.

The Council finds and declares that the public interest is served when employees of the District government are free to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety without fear of retaliation or reprisal. Accordingly, the Council declares as its policy to:

- (1) Enhance the rights of District employees to challenge the actions or failures of their agencies and to express their views without fear of retaliation through appropriate channels within the agency, complete and frank responses to Council inquiries, free access to law enforcement officials, oversight agencies of both the executive and legislative branches of government, and appropriate communication with the public;
- (2) Ensure that acts of the Council enacted to protect individual citizens are properly enforced;
- (3) Provide new rights and remedies to guarantee and ensure that public offices are truly public trusts;
- (4) Hold public employees personally accountable for failure to enforce the laws and for negligence in the performance of their public duties;
- (5) Ensure that rights of employees to expose corruption, dishonesty, incompetence, or administrative failure are protected;
- (6) Guarantee the rights of employees to contact and communicate with the Council and be protected in that exercise;
- (7) Protect employees from reprisal or retaliation for the performance of their duties; and
- (8) Motivate employees to do their duties justly and efficiently.

§ 2-223.01. Definitions.

For purposes of this subchapter, the term:

- (1) "Contract" means any contract for goods or services between the District government and another entity but excludes any collective bargaining agreement.
- (2) "Contributing factor" means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.
- (3) "Employee" means:
 - (A) Any person who is a former or current employee of or an applicant for employment by an instrumentality of the District government not covered by Chapter 6 of Title 1; or
 - (B) Any person who is a former or current employee of any entity that has a contract with the District government to supply goods or services and who is engaged in performing such contract.
- (4) "Illegal order" means a directive to violate or to assist in violating a federal, state, or local law, rule, or regulation.
- (5) "Instrumentality" means a quasi-governmental entity that operates in part with District funds, including, but not limited to, the District of Columbia Water and Sewer

Authority, established by § 34-2202.02(a); the Health and Hospitals Public Benefits Corporation, established by Chapter 11 of Title 44; the Public Service Commission, established by § 34-801; the Washington Convention Center Authority established by § 10-1202.04; the Committee to Promote the District of Columbia; the National Capital Revitalization Corporation, established by § 2-1219.02; and the Washington Metropolitan Area Transit Authority, established by subchapter IV of Chapter 11 of Title 9.

(6) "Prohibited personnel action" includes but is not limited to: recommended, threatened, or actual termination, demotion, suspension, or reprimand; involuntary transfer, reassignment or detail; referral for psychiatric or psychological counseling; failure to hire or promote or take other favorable personnel action; or in any other manner retaliating against an employee because that employee has made a protected disclosure or refuses to comply with an illegal order, as those terms are defined in this section.

(7) "Protected disclosure" means any disclosure of information, not specifically prohibited by statute, by an employee to a supervisor or to a public body that the employee reasonably believes evidences:

- (A) Gross mismanagement in connection with the administration of a public program or the execution of a public contract;
- (B) Gross misuse or waste of public resources or funds;
- (C) Abuse of authority in connection with the administration of a public program or the execution of a public contract;
- (D) A violation of a federal, state, or local law, rule, or regulation, or of a term of a contract between the District government and a District government contractor which is not of a merely technical or minimal nature; or
- (E) A substantial and specific danger to the public health and safety.

(8) "Public body" means:

- (A) The United States Congress, the Council, any state legislature, the District of Columbia Office of the Inspector General, the Office of the District of Columbia Auditor, the District of Columbia Financial Responsibility and Management Assistance Authority, or any member or employee of one of these bodies;
- (B) The federal, the District of Columbia, or any state or local judiciary, any member or employee of these judicial branches, or any grand or petit jury;
- (C) Any federal, District of Columbia, state, or local regulatory, administrative, or public agency or authority or instrumentality of one of these agencies or authorities;
- (D) Any federal, District of Columbia, state, or local law enforcement agency, prosecutorial office, or police or peace officer;
- (E) Any federal, District of Columbia, state, or local department of an executive branch of government; or
- (F) Any division, board, bureau, office, committee, commission or independent agency of any of the public bodies described in subparagraphs (A) through (E) of this paragraph.

(9) "Supervisor" means any individual employed by a District instrumentality or by a District government contractor who has authority to do the following:

(A) To hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

or
(B) To effectively recommend or to take remedial or corrective action for the violation of a law, rule, regulation or contract term that an employee may allege or report pursuant to this subchapter.

(10) "Whistleblower" means an employee who makes or is perceived to have made a protected disclosure as that term is defined in this section.

§ 2-223.02. Prohibitions.

A supervisor shall not threaten to take or take a prohibited personnel action or otherwise retaliate against an employee because of the employee's protected disclosure or because of an employee's refusal to comply with an illegal order.

§ 2-223.03. Enforcement.

(a) An employee aggrieved by a violation of § 2-223.02 may bring a civil action before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including but not limited to injunction, reinstatement to the same position held before the prohibited personnel action or to an equivalent position, and reinstatement of the employee's seniority rights, restoration of lost benefits, back pay and interest on back pay, compensatory damages, reasonable costs, and attorney fees. A civil action shall be filed within 1 year after a violation occurs or within 1 year after the employee first becomes aware of the violation.

(b) In a civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by § 2-223.02 was a contributing factor in the alleged prohibited personnel action against an employee, the burden of proof shall be on the employing District instrumentality or contractor to prove by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by this section.

(c) Notwithstanding any other provision of law, a violation of § 2-223.02 constitutes a complete affirmative defense for a whistleblower to a prohibited personnel action in an administrative review, challenge, or adjudication of that action.

(d) An employee who prevails in a civil action at the trial level shall be granted the equitable relief provided in the decision effective upon the date of the decision, absent a stay.

§ 2-223.04. Disciplinary action; fine.

(a) As part of the relief ordered in an administrative, arbitral or judicial proceeding, any supervisor who is found to have violated § 2-223.02 shall be subject to appropriate disciplinary action, up to and including dismissal.

(b) As part of the relief ordered in a judicial proceeding, any supervisor who is found to have violated § 2-223.02 shall be subject to a civil fine not to exceed \$1000.

§ 2-223.05. Election of remedies.

(a) The institution of a civil action pursuant to § 2-223.03(a) shall preclude an employee from pursuing any administrative remedy for the same cause of action from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

(b) No civil action shall be brought, pursuant to § 2-223.03(a) if the aggrieved employee has had a final determination on the same cause of action from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

§ 2-223.06. Posting of notice.

District instrumentalities shall conspicuously display notices of employee protections and obligations under this subchapter in each personnel office and in other public places, and shall use all other appropriate means to keep all employees informed, including but not limited to the inclusion of annual notices of employee protections and obligations under this subchapter with employee tax reporting documents. District government contractors shall inform all employees engaged in performing District government contracts of their rights under this subchapter.

§ 2-223.07. Applicability.

(a) This subchapter shall apply to actions taken after July 13, 1998.

(b) This subchapter shall apply to employees of the WMATA when the Commonwealth of Virginia and the State of Maryland enact similar provisions for WMATA whistleblowers.

Florida

112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.

(1) **SHORT TITLE.**--Sections 112.3187-112.31895 may be cited as the "Whistle-blower's Act."

(2) **LEGISLATIVE INTENT.**--It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person 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.

(3) **DEFINITIONS.**--As used in this act, unless otherwise specified, the following words or terms shall have the meanings indicated:

(a) "Agency" means any state, regional, county, local, or municipal government entity, whether executive, judicial, or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university.

(b) "Employee" means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.

(c) "Adverse personnel action" means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.

(d) "Independent contractor" means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.

(e) "Gross mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

(4) **ACTIONS PROHIBITED.**--

(a) An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.

(b) An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information under this section.

(c) The provisions of this subsection shall not be applicable when an employee or person discloses information known by the employee or person to be false.

(5) **NATURE OF INFORMATION DISCLOSED.**--The information disclosed under this section must include:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.

(b) 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 or independent contractor.

(6) TO WHOM INFORMATION DISCLOSED.--The information disclosed under this section must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under s. 112.3189(1) or inspectors general under s. 20.055, the Florida Commission on Human Relations, and the whistle-blower's hotline created under s. 112.3189. However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. 447.203(9) or other appropriate local official.

(7) EMPLOYEES AND PERSONS PROTECTED.--This section protects employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; who refuse to participate in any adverse action prohibited by this section; or who initiate a complaint through the whistle-blower's hotline or the hotline of the Medicaid Fraud Control Unit of the Department of Legal Affairs; or employees who file any written complaint to their supervisory officials or employees who submit a complaint to the Chief Inspector General in the Executive Office of the Governor, to the employee designated as agency inspector general under s. 112.3189(1), or to the Florida Commission on Human Relations. The provisions of this section may not be used by a person while he or she is under the care, custody, or control of the state correctional system or, after release from the care, custody, or control of the state correctional system, with respect to circumstances that occurred during any period of incarceration. No remedy or other protection under ss. 112.3187-112.31895 applies to any person who has committed or intentionally participated in committing the violation or suspected violation for which protection under ss. 112.3187-112.31895 is being sought.

(8) REMEDIES.--

(a) Any employee of or applicant for employment with any state agency, as the term "state agency" is defined in s. 216.011, who is discharged, disciplined, or subjected to other adverse personnel action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint, which complaint must be made in accordance with s. 112.31895. Upon receipt of notice from the Florida Commission on Human Relations of termination of the investigation, the complainant may elect to pursue the administrative remedy available under s. 112.31895 or bring a civil action within 180 days after receipt of the notice.

(b) Within 60 days after the action prohibited by this section, any local public employee protected by this section may file a complaint with the appropriate local governmental authority, if that authority has established by ordinance an administrative procedure for handling such complaints or has contracted with the Division of Administrative Hearings under s. 120.65 to conduct hearings under this section. The administrative procedure created by ordinance must provide for the complaint to be heard by a panel of impartial persons appointed by the appropriate local governmental authority. Upon hearing the complaint, the panel must make findings of fact and conclusions of law for a final decision by the local governmental authority. Within 180 days after entry of a final decision by the local governmental authority, the public employee who filed the complaint may bring a civil action in any court of competent jurisdiction. If the local governmental authority has not established an administrative procedure by ordinance or contract, a local public employee may, within 180 days after the action prohibited by this section, bring a civil action in a court of competent jurisdiction. For the purpose of this paragraph, the term "local governmental authority" includes any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing.

(c) Any other person protected by this section may, after exhausting all available contractual or administrative remedies, bring a civil action in any court of competent jurisdiction within 180 days after the action prohibited by this section.

(9) RELIEF.--In any action brought under this section, the relief must include the following:

(a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.

(b) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

(c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.

(d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.

(e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction.

(f) Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. 112.31895, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

(10) DEFENSES.--It shall be an affirmative defense to any action brought pursuant to this section that the adverse action was predicated upon grounds other than, and would

have been taken absent, the employee's or person's exercise of rights protected by this section.

(11) EXISTING RIGHTS.--Sections 112.3187-112.31895 do not diminish the rights, privileges, or remedies of an employee under any other law or rule or under any collective bargaining agreement or employment contract; however, the election of remedies in s. 447.401 also applies to whistle-blower actions.

112.3189 Investigative procedures upon receipt of whistle-blower information from certain state employees.--

(1) This section only applies to the disclosure of information as described in s. 112.3187(5) by an employee or former employee of, or an applicant for employment with, a state agency, as the term "state agency" is defined in s. 216.011, to the Office of the Chief Inspector General of the Executive Office of the Governor or to the agency inspector general. If an agency does not have an inspector general, the head of the state agency, as defined in s. 216.011, shall designate an employee to receive information described in s. 112.3187(5). For purposes of this section and s. 112.3188 only, the employee designated by the head of the state agency shall be deemed an agency inspector general.

(2) To facilitate the receipt of information described in subsection (1), the Chief Inspector General shall maintain an in-state toll-free whistle-blower's hotline and shall circulate among the various state agencies an advisory for all employees which indicates the existence of the toll-free number and its purpose and provides an address to which written whistle-blower information may be forwarded.

(3) When a person alleges information described in s. 112.3187(5), the Chief Inspector General or agency inspector general actually receiving such information shall within 20 days of receiving such information determine:

(a) Whether the information disclosed is the type of information described in s. 112.3187(5).

(b) Whether the source of the information is a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011.

(c) Whether the information actually disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

(4) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is not the type of information described in s. 112.3187(5), or that the source of the information is not a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, or that the information disclosed does not demonstrate reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of

public funds, or gross neglect of duty, the Chief Inspector General or agency inspector general shall notify the complainant of such fact and copy and return, upon request of the complainant, any documents and other materials that were provided by the complainant.

(5)(a) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is the type of information described in s. 112.3187(5), that the source of the information is from a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, and that the information disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty, the Chief Inspector General or agency inspector general making such determination shall then conduct an investigation, unless the Chief Inspector General or the agency inspector general determines, within 30 days after receiving the allegations from the complainant, that such investigation is unnecessary. For purposes of this subsection, the Chief Inspector General or the agency inspector general shall consider the following factors, but is not limited to only the following factors, when deciding whether the investigation is not necessary:

1. The gravity of the disclosed information compared to the time and expense of an investigation.
2. The potential for an investigation to yield recommendations that will make state government more efficient and effective.
3. The benefit to state government to have a final report on the disclosed information.
4. Whether the alleged whistle-blower information primarily concerns personnel practices that may be investigated under chapter 110.
5. Whether another agency may be conducting an investigation and whether any investigation under this section could be duplicative.
6. The time that has elapsed between the alleged event and the disclosure of the information.

(b) If the Chief Inspector General or agency inspector general determines under paragraph (a) that an investigation is not necessary, the Chief Inspector General or agency inspector general making such determination shall:

1. Copy and return, upon request of the complainant, any documents and other materials provided by the individual who made the disclosure.
2. Inform in writing the head of the state agency for the agency inspector general making the determination that the investigation is not necessary and the individual who made the disclosure of the specific reasons why an investigation is not necessary and why the disclosure will not be further acted on under this section.

(6) The agency inspector general may conduct an investigation pursuant to paragraph (5)(a) only if the person transmitting information to the agency inspector general is an employee or former employee of, or an applicant for employment with, the agency inspector general's agency. The agency inspector general shall:

- (a) Conduct an investigation with respect to the information and any related matters.
 - (b) Submit to the complainant and the Chief Inspector General, within 60 days after the date on which a determination to conduct an investigation is made under paragraph (5)(a), a final written report that sets forth the agency inspector general's findings, conclusions, and recommendations, except as provided under subsection (11). The complainant shall be advised in writing by the agency head that the complainant may submit to the Chief Inspector General and agency inspector general comments on the final report within 20 days of the date of the report and that such comments will be attached to the final report.
- (7) If the Chief Inspector General decides an investigation should be conducted pursuant to paragraph (5)(a), the Chief Inspector General shall either:
- (a) Promptly transmit to the appropriate head of the state agency the information with respect to which the determination to conduct an investigation was made, and such agency head shall conduct an investigation and submit to the Chief Inspector General a final written report that sets forth the agency head's findings, conclusions, and recommendations; or
 - (b)1. Conduct an investigation with respect to the information and any related matters; and
 - 2. Submit to the complainant within 60 days after the date on which a determination to conduct an investigation is made under paragraph (5)(a), a final written report that sets forth the Chief Inspector General's findings, conclusions, and recommendations, except as provided under subsection (11). The complainant shall be advised in writing by the Chief Inspector General that the complainant may submit to the Chief Inspector General comments on the final report within 20 days of the date of the report and that such comments will be attached to the final report.
 - (c) The Chief Inspector General may require an agency head to conduct an investigation under paragraph (a) only if the information was transmitted to the Chief Inspector General by:
 - 1. An employee or former employee of, or an applicant for employment with, the agency that the information concerns; or
 - 2. An employee who obtained the information in connection with the performance of the employee's duties and responsibilities.
- (8) Final reports required under this section must be reviewed and signed by the person responsible for conducting the investigation (agency inspector general, agency head, or Chief Inspector General) and must include:
- (a) A summary of the information with respect to which the investigation was initiated.
 - (b) A description of the conduct of the investigation.
 - (c) A summary of any evidence obtained from the investigation.
 - (d) A listing of any violation or apparent violation of any law, rule, or regulation.
 - (e) A description of any action taken or planned as a result of the investigation, such as:
 - 1. A change in an agency rule, regulation, or practice.
 - 2. The restoration of an aggrieved employee.

3. A disciplinary action against an employee.
4. The referral to the Department of Law Enforcement of any evidence of a criminal violation.

(9)(a) A report required of the agency head under paragraph (7)(a) shall be submitted to the Chief Inspector General and the complainant within 60 days after the agency head receives the complaint from the Chief Inspector General, except as provided under subsection (11). The complainant shall be advised in writing by the agency head that the complainant may submit to the Chief Inspector General comments on the report within 20 days of the date of the report and that such comments will be attached to the final report.

(b) Upon receiving a final report required under this section, the Chief Inspector General shall review the report and determine whether the report contains the information required by subsection (8). If the report does not contain the information required by subsection (8), the Chief Inspector General shall determine why and note the reasons on an addendum to the final report.

(c) The Chief Inspector General shall transmit any final report under this section, any comments provided by the complainant, and any appropriate comments or recommendations by the Chief Inspector General to the Governor, to the Joint Legislative Auditing Committee, to the investigating agency, and to the Chief Financial Officer.

(d) If the Chief Inspector General does not receive the report of the agency head within the time prescribed in paragraph (a), the Chief Inspector General may conduct the investigation in accordance with paragraph (7)(b) or request that another agency inspector general conduct the investigation in accordance with subsection (6) and shall report the complaint to the Governor, to the Joint Legislative Auditing Committee, and to the investigating agency, together with a statement noting the failure of the agency head to file the required report.

(10) For any time period set forth in subsections (3), (6), (7), and (9), such time period may be extended in writing by the Chief Inspector General for good cause shown.

(11) If an investigation under this section produces evidence of a criminal violation, the report shall not be transmitted to the complainant, and the agency head or agency inspector general shall notify the Chief Inspector General and the Department of Law Enforcement.

Chapter 448

GENERAL LABOR REGULATIONS

448.101 Definitions.--As used in ss. 448.101-448.105, the term:

- (1) "Appropriate governmental agency" means any agency of government charged with the enforcement of laws, rules, or regulations governing an activity, policy, or practice of an employer.
- (2) "Employee" means a person who performs services for and under the control and direction of an employer for wages or other remuneration. The term does not include an independent contractor.
- (3) "Employer" means any private individual, firm, partnership, institution, corporation, or association that employs ten or more persons.

(4) "Law, rule, or regulation" includes any statute or ordinance or any rule or regulation adopted pursuant to any federal, state, or local statute or ordinance applicable to the employer and pertaining to the business.

(5) "Retaliatory personnel action" means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment.

(6) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee or who has managerial authority to take corrective action regarding the violation of law, rule, or regulation of which the employee complains.

448.102 Prohibitions.-- An employer may not take any retaliatory personnel action against an employee because the employee has:

(1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice.

(2) Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer.

(3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.

448.103 Employee's remedy; relief.

(1) (a) An employee who has been the object of a retaliatory personnel action in violation of this act may institute a civil action in a court of competent jurisdiction for relief as set forth in subsection (2) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within 4 years after the personnel action was taken, whichever is earlier.

(b) Any civil action authorized under this section may be brought in the county in which the alleged retaliatory personnel action occurred, in which the complainant resides, or in which the employer has its principal place of business.

(c) An employee may not recover in any action brought pursuant to this subsection if he or she failed to notify the employer about the illegal activity, policy, or practice as required by s. 448.102(1) or if the retaliatory personnel action was predicated upon a ground other than the employee's exercise of a right protected by this act.

(2) In any action brought pursuant to subsection (1), the court may order relief as follows:

(a) An injunction restraining continued violation of this act.

(b) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position.

(c) Reinstatement of full fringe benefits and seniority rights.

(d) Compensation for lost wages, benefits, and other remuneration.

(e) Any other compensatory damages allowable at law.

448.104 Attorney's fees and costs.--A court may award reasonable attorney's fees, court costs, and expenses to the prevailing party.

448.105 Existing rights.--This act does not diminish the rights, privileges, or remedies of an employee or employer under any other law or rule or under any collective bargaining agreement or employment contract.

Georgia

45-1-4.

(a) As used in this Code section, the term:

- (1) 'Government agency' means any agency of federal, state, or local government charged with the enforcement of laws, rules, or regulations.
- (2) 'Law, rule, or regulation' includes any federal, state, or local statute or ordinance or any rule or regulation adopted according to any federal, state, or local statute or ordinance.
- (3) 'Public employee' means any person who is employed by the executive, judicial, or legislative branch of the state or by any other department, board, bureau, commission, authority, or other agency of the state.
- (4) 'Public employer' means the executive, judicial, or legislative branch of the state or any other department, board, bureau, commission, authority, or other agency of the state which employs or appoints a public employee or public employees.
- (5) 'Retaliate' or 'retaliation' refers to the discharge, suspension, or demotion by a public employer of a public employee or any other adverse employment action taken by a public employer against a public employee in the terms or conditions of employment for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or state agency.
- (6) 'Supervisor' means any individual:
 - (A) To whom a public employer has given authority to direct and control the work performance of the affected public employee;
 - (B) To whom a public employer has given authority to take corrective action regarding a violation of or noncompliance with a law, rule, or regulation of which the public employee complains; or
 - (C) Who has been designated by a public employer to receive complaints regarding a violation of or noncompliance with a law, rule, or regulation.

(b) A public employer may receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations under the jurisdiction of such public employer.

(c) Notwithstanding any other law to the contrary, such public employer shall not after receipt of a complaint or information from a public employee disclose the identity of the public employee without the written consent of such public employee, unless the public employer determines such disclosure is necessary and unavoidable during the course of the investigation. In such event, the public employee shall be notified in writing at least seven days prior to such disclosure.

(d)(1) No public employer shall make, adopt, or enforce any policy or practice preventing a public employee from disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency.

- (2) No public employer shall retaliate against a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency, unless the disclosure was made with knowledge that the disclosure was false or with reckless disregard for its truth or falsity.

(3) No public employer shall retaliate against a public employee for objecting to, or refusing to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation.

(4) Paragraphs (1), (2), and (3) of this subsection shall not apply to policies or practices which implement, or to actions by public employers against public employees who violate, privilege or confidentiality obligations recognized by constitutional, statutory, or common law.

(e)(1) A public employee who has been the object of retaliation in violation of this Code section may institute a civil action in superior court for relief as set forth in paragraph (2) of this subsection within one year after discovering the retaliation or within three years after the retaliation, whichever is earlier.

(2) In any action brought pursuant to this subsection, the court may order any or all of the following relief:

(A) An injunction restraining continued violation of this Code section;

(B) Reinstatement of the employee to the same position held before the retaliation or to an equivalent position;

(C) Reinstatement of full fringe benefits and seniority rights;

(D) Compensation for lost wages, benefits, and other remuneration; and

(E) Any other compensatory damages allowable at law.

(f) A court may award reasonable attorney's fees, court costs, and expenses to a prevailing public employee.

Hawaii

§378-61 Definitions. As used in this part:

"Employee" means a person who performs a service for wages or other remuneration under a contract for hire, written or oral, express or implied. Employee includes a person employed by the State or a political subdivision of the State.

"Employer" means a person who has one or more employees. Employer includes an agent of an employer or of the State or a political subdivision of the State.

"Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

"Public body" means:

(1) A state officer, employee, agency, department, division, bureau, board, commission, committee, council, authority, or other body in the executive branch of state government;

(2) An agency, board, commission, committee, council, member, or employee of the legislative branch of the state government;

(3) A county, city, intercounty, intercity, or regional governing body, a council, special district, or municipal corporation, or a board, department, commission, committee, council, agency, or any member or employee thereof;

(4) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body;

(5) A law enforcement agency or any member or employee of a law enforcement agency; or

(6) The judiciary and any member or employee of the judiciary. [L 1987, c 267, pt of §1]

§378-62 Discharge of, threats to, or discrimination against employee for reporting violations of law. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of:

(A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States; or

(B) A contract executed by the State, a political subdivision of the State, or the United States, unless the employee knows that the report is false; or

(2) An employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.]

§378-63 Civil actions for injunctive relief or damages. (a) A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, or actual damages, or both within two years after the occurrence of the alleged violation of this part.

(b) An action commenced pursuant to subsection (a) may be brought in the circuit court for the circuit where the alleged violation occurred, where the complainant resides, or where the person against whom the civil complaint is filed resides or has a principal place of business.

(c) As used in subsection (a), "damages" means damages for injury or loss caused by each violation of this part, including reasonable attorney fees.]

§378-64 Remedies ordered by court. A court, in rendering a judgment in an action brought pursuant to this part, shall order, as the court considers appropriate, reinstatement of the employee, payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney's fees and witness fees, if the court determines that the award is appropriate.

§378-65 Penalties for violations. (a) A person who violates this part shall be fined not less than \$500 nor more than \$5,000 for each violation.

(b) A civil fine which is ordered pursuant to this part shall be deposited with the director of finance to the credit of the general fund of the State.

§378-66 Collective bargaining and confidentiality rights, takes precedence. (a)

This part shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement, nor to permit disclosures which would diminish or impair the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection.

(b) Where a collective bargaining agreement provides an employee rights and remedies superior to the rights and remedies provided herein, contractual rights shall supersede and take precedence over the rights, remedies, and procedures provided in this part. Where a collective bargaining agreement provides inferior rights and remedies to those provided in this part, the provisions of this part shall supersede and take precedence over the rights, remedies, and procedures provided in collective bargaining agreements.

§378-67 Compensation for employee participation in investigation, hearing, or inquiry. This part shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by a public body in accordance with section 378-62 of this part.

§378-68 Notices of employee protections and obligations. An employer shall post notices and use other appropriate means to keep the employer's employees informed of their protections and obligations under this part.

§378-69 Conflict with common law, precedence. The rights created herein shall not be construed to limit the development of the common law nor to preempt the common law rights and remedies on the subject matter of discharges which are contrary to public policy. In the event of a conflict between the terms and provisions of this part and any other law on the subject the more beneficial provisions favoring the employee shall prevail.

Idaho

TITLE 6 – ACTIONS IN PARTICULAR CASES

CHAPTER 21

PROTECTION OF PUBLIC EMPLOYEES

6-2101. LEGISLATIVE INTENT. The legislature hereby finds, determines and declares that government constitutes a large proportion of the Idaho work force and that it is beneficial to the citizens of this state to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation.

6-2102. SHORT TITLE. This act is known as the "Idaho Protection of Public Employees Act."

6-2103. DEFINITIONS. As used in this chapter:

- (1) "Adverse action" means to discharge, threaten or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions or privileges.
- (2) "Communicate" means a verbal or written report.
- (3) "Employee" means a person who performs a service for wages or other remuneration.
- (4) (a) "Employer" means the state of Idaho, or any political subdivision or governmental entity eligible to participate in the public employees retirement system, chapter 13, title 59, Idaho Code;
(b) "Employer" includes an agent of an employer.
- (5) "Public body" means any of the following:
 - (a) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, educational institution or any other body in the executive branch of state government;
 - (b) An agency, board, commission, council, institution member or employee of the legislative branch of state government;
 - (c) A county, city, town, regional governing body, council, school district, special district, municipal corporation, other political subdivision, board, department, commission, council, agency or any member or employee of them;
 - (d) Any other body that is created by state or local authority, or any member or employee of that body;
 - (e) A law enforcement agency or any member or employee of a law enforcement agency; and
 - (f) The judiciary and any member or employee of the judiciary.

6-2104. REPORTING OF GOVERNMENTAL WASTE OR VIOLATION OF LAW – EMPLOYER ACTION.

(1) (a) An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation adopted under the law of this state, a political subdivision of this state or the United States. Such communication shall

be made at a time and in a manner which gives the employer reasonable opportunity to correct the waste or violation.

(b) For purposes of subsection (1)(a) of this section, an employee communicates in good faith if there is a reasonable basis in fact for the communication. Good faith is lacking where the employee knew or reasonably ought to have known that the report is malicious, false or frivolous.

(2) An employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review.

(3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of the laws of this state, political subdivision of this state or the United States.

(4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property or manpower, or a violation, or suspected violation of any laws, rules or regulations.

6-2105. REMEDIES FOR EMPLOYEE BRINGING ACTION -- PROOF REQUIRED.

(1) As used in this section, "damages" means damages for injury or loss caused by each violation of this chapter, and includes court costs and reasonable attorneys' fees.

(2) An employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) days after the occurrence of the alleged violation of this chapter.

(3) An action begun under this section may be brought in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(4) To prevail in an action brought under the authority of this section, the employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on his behalf engaged or intended to engage in an activity protected under section 6-2104, Idaho Code.

6-2106. COURT ORDERS FOR VIOLATION OF CHAPTER. A court, in rendering a judgment brought under this chapter, may order any or all of the following:

(1) An injunction to restrain continued violation of the provisions of this act;

(2) The reinstatement of the employee to the same position held before the adverse action, or to an equivalent position;

(3) The reinstatement of full fringe benefits and seniority rights;

(4) The compensation for lost wages, benefits and other remuneration;

(5) The payment by the employer of reasonable costs and attorneys' fees;

(6) An assessment of a civil fine of not more than five hundred dollars (\$500), which shall be submitted to the state treasurer for deposit in the general fund.

6-2107. AWARD OF ATTORNEYS' FEES AND COSTS TO EMPLOYER -- ACTION WITHOUT BASIS IN LAW OR FACT. A court may also order that reasonable attorneys'

fees and court costs be awarded to an employer if the court determines that an action brought by an employee under this chapter is without basis in law or in fact. However, an employee shall not be assessed attorneys' fees under this section if, after exercising reasonable and diligent efforts after filing a suit, the employee files a voluntary dismissal concerning the employer, within a reasonable time after determining that the employer would not be liable for damages.

6-2108. NO IMPAIRMENT OF EMPLOYEE RIGHTS UNDER COLLECTIVE BARGAINING AGREEMENT -- CONFIDENTIALITY PROTECTED. This chapter shall not be construed to diminish or impair the rights of an employee under any collective bargaining agreement, nor to permit disclosures which would diminish or impair the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection.

6-2109. NOTICE OF EMPLOYEE PROTECTION. An employer shall use appropriate means to notify its employees of their protection and obligation under this chapter.

Illinois

740 ILCS 174/1: Short Title- The Whistleblower Act

Sec. 5: Definitions. As used in this Act:

“Employer” means: an individual, sole proprietorship, partnership, firm, corporation, association, and any other entity that has one or more employees in this State, except that “employer” does not include any governmental entity.

“Employee” means any individual who is employed on a full-time, part-time, or contractual basis by an employer.

Sec. 10: Certain policies prohibited. An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

Sec. 15: Retaliation for certain disclosures prohibited. An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

Sec. 20: Retaliation for certain refusals prohibited. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation.

Sec. 25: Civil penalty. Violation of this Act is a Class A misdemeanor.

Sec. 30: Damages. If an employer takes any action against an employee in violation of Section 15 or 20, the employee may bring a civil action against the employer for all relief necessary to make the employee whole, including but not limited to the following, as appropriate:

- (1) Reinstatement with the same seniority status that the employee would have had, but for the violation;
- (2) Back pay, with interest; and
- (3) Compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney’s fees.

Sec. 35: Exception. This Act does not apply to disclosures that would constitute a violation of the attorney-client privilege.

20 ILCS 415/19c.1 (from Ch. 127, par. 63b119c.1)

Sec. 19c.1. (1) In any case involving any disclosure of information by an employee which the employee reasonably believes evidences-

- (i) a violation of any law, rule, or regulation; or
- (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety if the disclosure is not specifically prohibited by law, the identity of the employee may not be disclosed without the consent of the employee during any investigation of the information and any related matters.

(2) No disciplinary action shall be taken against any employee for the disclosure of any alleged prohibited activity under investigation or for any related activity. For the purposes of this Section, disciplinary action means any retaliatory action taken against an employee, including but not limited to reprimand, suspension, discharge, demotion or denial of promotion or transfer.

Indiana

IC 22-5-3-3

Protection of employees reporting violations of federal, state, or local laws; disciplinary actions; procedures

Sec. 3. (a) An employee of a private employer that is under public contract may report in writing the existence of:

- (1) a violation of a federal law or regulation;
- (2) a violation of a state law or rule;
- (3) a violation of an ordinance of a political subdivision (as defined in IC 36-1-2-13); or
- (4) the misuse of public resources; concerning the execution of public contract first to the private employer, unless the private employer is the person whom the employee believes is committing the violation or misuse of public resources. In that case, the employee may report the violation or misuse of public resources in writing to either the private employer or to any official or agency entitled to receive a report from the state ethics commission under IC 4-2-6-4(b)(2)(G) or IC 4-2-6-4(b)(2)(H). If a good faith effort is not made to correct the problem within a reasonable time, the employee may submit a written report of the incident to any person, agency, or organization.

(b) For having made a report under subsection (a), an employee may not:

- (1) be dismissed from employment;
- (2) have salary increases or employment related benefits withheld;
- (3) be transferred or reassigned;
- (4) be denied a promotion that the employee otherwise would have received; or
- (5) be demoted.

(c) Notwithstanding subsections (a) through (b), an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employer. However, any employee disciplined under this subsection is entitled to process an appeal of the disciplinary action as a civil action in a court of general jurisdiction.

(d) An employer who violates this section commits a Class A infraction.

Iowa

70A.29 Reprisals prohibited--political subdivisions--penalty--civil remedies.

1. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in employment by a political subdivision of this state as a reprisal for a disclosure of any information by that employee to a member or employee of the general assembly, or an official of that political subdivision or a state official or for a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. This section does not apply if the disclosure of the information is prohibited by statute.
2. A person who violates subsection 1 commits a simple misdemeanor.
3. Subsection 1 may be enforced through a civil action.
 - a. A person who violates subsection 1 is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.
 - b. When a person commits, is committing, or proposes to commit an act in violation of subsection 1, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or the county attorney.

Kansas

Chapter 75. STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 29.--CIVIL SERVICE

75-2973. Kansas whistleblower act; state employee communications with legislators, legislative committees, auditing agencies and others; prohibited acts; relief and appeals, costs.

(a) This section shall be known and may be cited as the Kansas whistleblower act.

(b) As used in this section:

(1) "Auditing agency" means the (A) legislative post auditor, (B) any employee of the division of post audit, (C) any firm performing audit services pursuant to a contract with the post auditor, or (D) any state agency or federal agency or authority performing auditing or other oversight activities under authority of any provision of law authorizing such activities.

(2) "Disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work.

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

(c) No supervisor or appointing authority of any state agency shall prohibit any 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 legislature or any auditing agency.

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

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

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

(e) This section shall not be construed as:

(1) Prohibiting a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to legislative or auditing agency requests for information to the state agency or the substance of testimony made, or to be made, by the employee to legislators or the auditing agency, as the case may be, on behalf of the state agency;

(2) permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative committee or by an auditing agency to appear at a meeting with officials of the auditing agency;

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

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

(f) 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 employee alleges that disciplinary action was taken against the officer or employee in violation of this act. The appeal shall be filed within 90 days after the alleged disciplinary action. Procedures governing the appeal shall be in accordance with subsections (f) and (g) of K.S.A. 75-2949 and amendments thereto and K.S.A. 75-2929d through 75-2929g and amendments thereto. If the board finds that disciplinary action taken was unreasonable, the board shall modify or reverse the agency's action and order such relief for the employee as the board considers appropriate. If the board finds a violation of this act, it may require as a penalty that the violator be suspended on leave without pay for not more than 30 days or, in cases of willful or repeated violations, may require that the violator forfeit the violator's position as a state officer or employee and disqualify the violator for appointment to or employment as a state officer or employee for a period of not more than two years. The board may award the prevailing party all or a portion of the costs of the proceedings before the board, including reasonable attorney fees and witness fees. The decision of the board pursuant to this subsection may be appealed by any party pursuant to law. On appeal, the court may award the prevailing party all or a portion of the costs of the appeal, including reasonable attorney fees and witness fees.

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

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

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

Kentucky

61.101 Definitions.

As used in KRS 61.102 and 61.103, unless the context requires otherwise:

- (1) "Employee" means a person in the service of the Commonwealth of Kentucky, or any of its political subdivisions, who is under contract of hire, express or implied, oral or written, where the Commonwealth, or any of its political subdivisions, has the power or right to control and direct the material details of work performance;
- (2) "Employer" means the Commonwealth of Kentucky or any of its political subdivisions. Employer also includes any person authorized to act on behalf of the Commonwealth, or any of its political subdivisions, with respect to formulation of policy or the supervision, in a managerial capacity, of subordinate employees; and
- (3) "Official request" means a request from members of the Kentucky General Assembly and its employees; members of the Legislative Research Commission and its committees and employees; the Auditor of Public Accounts and his employees; the Attorney General and his employees; the Governor and employees of the Governor's office; and members of the press.

61.102 Reprisal against public employee for disclosure of violations of law prohibited -- Construction of statute.

- (1) No employer shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence, in any manner whatsoever, which tends to discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce, or discriminate against any employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Kentucky Legislative Ethics Commission, the Attorney General, the Auditor of Public Accounts, the General Assembly of the Commonwealth of Kentucky or any of its members or employees, the Legislative Research Commission or any of its committees, members or employees, the judiciary or any member or employee of the judiciary, any law enforcement agency or its employees, or any other appropriate body or authority, any facts or information relative to an actual or suspected violation of any law, statute, executive order, administrative regulation, mandate, rule, or ordinance of the United States, the Commonwealth of Kentucky, or any of its political subdivisions, or any facts or information relative to actual or suspected mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health or safety. No employer shall require any employee to give notice prior to making such a report, disclosure, or divulgence.
- (2) No employer shall subject to reprisal or discriminate against, or use any official authority or influence to cause reprisal or discrimination by others against, any person who supports, aids, or substantiates any employee who makes public any wrongdoing set forth in subsection (1) of this section.
- (3) This section shall not be construed as:
 - (a) Prohibiting an employer from requiring that an employee inform him of an official request made to an agency for information, or the substance of testimony made, or to be made, by the employee to legislators on behalf of an agency;
 - (b) Permitting the employee to leave his assigned work area during normal work hours without following applicable law, administrative regulations, rules, or policies pertaining to leave, unless the employee is requested by the Kentucky

- Legislative Ethics Commission to appear before the commission, or by a legislator or a legislative committee to appear before a legislative committee;
- (c) Authorizing an employee to represent his personal opinions as the opinions of his employer; or
- (d) Prohibiting disciplinary or punitive action if an employee discloses information which he knows:
1. To be false or which he discloses with reckless disregard for its truth or falsity;
 2. To be exempt from required disclosure under the provisions of KRS 61.870 to 61.884; or
 3. Is confidential under any other provision of law.

61.103 Definitions of "disclosure" and "contributing factor" -- Civil action by employee authorized -- Evidence.

As used in this section, unless the context otherwise requires:

(1) (a) "Disclosure" means a person acting on his own behalf, or on behalf of another, who reported or is about to report, either verbally or in writing, any matter set forth in KRS 61.102.

(b) "Contributing factor" means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of a decision. It shall be presumed there existed a "contributing factor" if the official taking the action knew or had constructive knowledge of the disclosure and acted within a limited period of time so that a reasonable person would conclude the disclosure was a factor in the personnel action.

(2) Notwithstanding the administrative remedies granted by KRS Chapters 16, 18A, 78, 90, 95, 156, and other chapters of the Kentucky Revised Statutes, employees alleging a violation of KRS 61.102(1) or (2) may bring a civil action for appropriate injunctive relief or punitive damages, or both, within ninety (90) days after the occurrence of the alleged violation. The action may be filed in the Circuit Court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(3) Employees filing court actions under the provisions of subsection (2) of this section shall show by a preponderance of evidence that the disclosure was a contributing factor in the personnel action. Once a prima facie case of reprisal has been established and disclosure determined to be a contributing factor to the personnel action, the burden of proof shall be on the agency to prove by clear and convincing evidence that the disclosure was not a material fact in the personnel action.

(4) Any employee who testifies in an official proceeding shall be afforded the same protections and rights as the employee who makes a disclosure as set forth in KRS 61.102.

61.103 Definitions of "disclosure" and "contributing factor" -- Civil action by employee authorized -- Evidence.

As used in this section, unless the context otherwise requires:

(1) (a) "Disclosure" means a person acting on his own behalf, or on behalf of another, who reported or is about to report, either verbally or in writing, any matter set forth in KRS 61.102.

(b) "Contributing factor" means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of a decision. It shall be presumed there existed a "contributing factor" if the official taking the action knew or had constructive knowledge of the disclosure and acted within a limited period of time so that a reasonable person would conclude the disclosure was a factor in the personnel action.

(2) Notwithstanding the administrative remedies granted by KRS Chapters 16, 18A, 78, 90, 95, 156, and other chapters of the Kentucky Revised Statutes, employees alleging a violation of KRS 61.102(1) or (2) may bring a civil action for appropriate injunctive relief or punitive damages, or both, within ninety (90) days after the occurrence of the alleged violation. The action may be filed in the Circuit Court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(3) Employees filing court actions under the provisions of subsection (2) of this section shall show by a preponderance of evidence that the disclosure was a contributing factor in the personnel action. Once a prima facie case of reprisal has been established and disclosure determined to be a contributing factor to the personnel action, the burden of proof shall be on the agency to prove by clear and convincing evidence that the disclosure was not a material fact in the personnel action.

(4) Any employee who testifies in an official proceeding shall be afforded the same protections and rights as the employee who makes a disclosure as set forth in KRS 61.102.

61.990 Penalties.

(1) Any person who exercises any of the functions of a nonelective peace officer or deputy peace officer in violation of the provisions of KRS 61.300 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned in the county jail for not more than six (6) months, or both.

(2) Any person who violates any of the provisions of KRS 61.360 shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) or be imprisoned not less than ten (10) days nor more than sixty (60) days, or both.

(3) Any person who willfully violates the provisions of KRS 61.102(1) shall be guilty of a Class A misdemeanor.

(4) A court, in rendering a judgment in an action filed under KRS 61.102 and 61.103, shall order, as it considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, exemplary or punitive damages, or any combination thereof. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees.

Louisiana

§440.3. Whistleblower protection and cause of action

A. No employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought. Such an employee may seek any and all relief for his injury to which he is entitled under state or federal law.

B. No individual shall be threatened, harassed, or discriminated against in any manner by a health care provider or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought except that a health care provider may arrange for a recipient to receive goods, services, or supplies from another health care provider if the recipient agrees and the arrangement is approved by the secretary. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law.

C. (1) An employee of a private entity may bring his action for relief against his employer or the health care provider in the same court as the action or actions were brought pursuant to this Part or as part of an action brought pursuant to this Part.

(2) A person aggrieved of a violation of Subsection A or B of this Section shall be entitled to exemplary damages.

D. A qui tam plaintiff shall not be entitled to recovery pursuant to this Section if the court finds that the qui tam plaintiff instituted or proceeded with an action that was frivolous, vexatious, or harassing.

§967. Employee protection from reprisal; prohibited practices; remedies

A. An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law:

(1) Discloses or threatens to disclose a workplace act or practice that is in violation of state law.

(2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law.

(3) Objects to or refuses to participate in an employment act or practice that is in violation of law.

B. An employee may commence a civil action in a district court where the violation occurred against any employer who engages in a practice prohibited by Subsection A of this Section. If the court finds the provisions of Subsection A of this Section have been violated, the plaintiff may recover from the employer damages, reasonable attorney fees, and court costs.

C. For the purposes of this Section, the following terms shall have the definitions ascribed below:

(1) "Reprisal" includes firing, layoff, loss of benefits, or any discriminatory action the court finds was taken as a result of an action by the employee that is protected under Subsection A of this Section; however, nothing in this Section shall prohibit an employer from enforcing an established employment policy, procedure, or practice or exempt an employee from compliance with such.

(2) "Damages" include compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees, and court costs resulting from the reprisal.

D. If suit or complaint is brought in bad faith or if it should be determined by a court that the employer's act or practice was not in violation of the law, the employer may be entitled to reasonable attorney fees and court costs from the employee.

Maine

Title 27, Labor and Employment

§833. Discrimination against certain employees prohibited

1. Discrimination prohibited. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because: [2003, c. 688, Pt. A, §27 (amd).]

A. The employee, acting in good faith, or a person acting on behalf of the employee, reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States;

B. The employee, acting in good faith, or a person acting on behalf of the employee, reports to the employer or a public body, orally or in writing, what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual. The protection from discrimination provided in this section specifically includes school personnel who report safety concerns to school officials with regard to a violent or disruptive student;

C. The employee is requested to participate in an investigation, hearing or inquiry held by that public body, or in a court action;

D. The employee acting in good faith has refused to carry out a directive to engage in activity that would be a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer; or

E. The employee, acting in good faith and consistent with state and federal privacy laws, reports to the employer, to the patient involved or to the appropriate licensing, regulating or credentialing authority, orally or in writing, what the employee has reasonable cause to believe is an act or omission that constitutes a deviation from the applicable standard of care for a patient by an employer charged with the care of that patient. For purposes of this paragraph, "employer" means a health care provider, health care practitioner or health care entity as defined in Title 24, section 2502.

2. Initial report to employer required; exception. Subsection 1 does not apply to an employee who has reported or caused to be reported a violation, or unsafe condition or practice to a public body, unless the employee has first brought the alleged violation, condition or practice to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable opportunity to correct that violation, condition or practice.

Prior notice to an employer is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition or practice.

Reports of suspected abuse. An employee required to report suspected abuse, neglect or exploitation under Title 22, section 3477 or 4011-A, shall follow the

requirements of those sections under those circumstances. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee followed the requirements of those sections. [2001, c. 345, §7 (amd).]

Maryland

Article- State Contractor Employees' Whistleblower Protection

§ 11-301: Definitions:

- (a) In this subtitle the following words have the meanings indicated.
- (b) (1) "Employee" means any individual who performs services for, or under the control and direction of, an employer for wages or other remuneration.
(2) "Employee" does not include an employee as defined in § 1-501(c)(1) of the Health Occupations Article.
- (c)(1) "Employer" means a person engaged in a business, industry, profession, trade, or other enterprise that enters a procurement contract with a unit to provide supplies or services under this Division II.
(2) "Employer" includes agents, contractors, and subcontractors of an employer.
(3) "Employer" does not include a unit of State government subject to the provision of Title 5, Subtitle 3 of the State Personnel and Pensions Article or the Judicial Branch of State government.

§ 11-302: Notice:

An employer subject to this statute shall provide employees with written notice of the protections and remedies provided by this subtitle.

§ 11-303. Prohibited conduct:

An employer may not take or refuse to take any personnel action as a reprisal against an employee because the employee:

- (1) discloses information that the employee reasonably believes evidences:
 - (i) an abuse of authority, gross mismanagement, or gross waste of money;
 - (ii) a substantial and specific danger to public health or safety; or
 - (iii) a violation of law;
- (2) objects to or refuses to participate in any activity, policy, or practice in violation of law; or
- (4) following a disclosure under item (1) of this section, seeks a remedy provided under this subtitle.

§ 5-301. Maryland Whistleblower Law in the Executive Branch of State Government

This subtitle applies to all employees and State employees who are applicants for positions in the Executive Branch of State government, including a unit with an independent personnel system.

§ 5-305: Subject to the limitations of § 5-306 of this subtitle, a supervisor, appointing authority, or the head of a principal unit may not take or refuse to take any personnel action as a reprisal against an employee who:

- (1) discloses information that the employee reasonably believes evidences:

- (i) an abuse of authority, gross mismanagement, or gross waste of money;
 - (ii) a substantial and specific danger to public health or safety; or
 - (iii) a violation of law; or
- (2) following a disclosure under item (1) of this section seeks a remedy provided under this subtitle or any other law or policy governing the employee's unit.

§ 5-306: Section 305 of this subtitle applies to a disclosure that is specifically prohibited by law only if that disclosure is made exclusively to the Attorney General in the manner allowed in Section 5-313 of this subtitle.

Article - Health Occupations

§ 1-501.

- (a) In this subtitle the following words have the meanings indicated.
- (b) "Board" means any board established under this article.
- (c) (1) "Employee" means any individual licensed or certified by a board under this article who performs services for and under the control and direction of an employer for wages or other remuneration.
(2) "Employee" does not include a State employee.
- (d) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of an employee, or who has managerial authority to take corrective action regarding the violation of a law, rule, or regulation of which the employee complains.

§ 1-401.

- (a) (1) In this section the following words have the meanings indicated.
 - (2) (i) "Alternative health care system" means a system of health care delivery other than a hospital or related institution.
 - (ii) "Alternative health care system" includes:
 - 1. A health maintenance organization;
 - 2. A preferred provider organization;
 - 3. An independent practice association;
 - 4. A community health center that is a nonprofit, freestanding ambulatory health care provider governed by a voluntary board of directors and that provides primary health care services to the medically indigent;
 - 5. A freestanding ambulatory care facility as that term is defined in § 19-3B-01 of the Health - General Article; or
 - 6. Any other health care delivery system that utilizes a medical review committee.
- (3) "Medical review committee" means a committee or board that:
 - (i) Is within one of the categories described in subsection (b) of this section; and
 - (ii) Performs functions that include at least one of the functions listed in subsection (c) of this section.
- (4) (i) "Provider of health care" means any person who is licensed by law to provide health care to individuals.

(ii) "Provider of health care" does not include any nursing institution that is conducted by and for those who rely on treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.

(5) "The Maryland Institute for Emergency Medical Services Systems" means the State agency described in § 13-503 of the Education Article.

(b) For purposes of this section, a medical review committee is:

(1) A regulatory board or agency established by State or federal law to license, certify, or discipline any provider of health care;

(2) A committee of the Faculty or any of its component societies or a committee of any other professional society or association composed of providers of health care;

(3) A committee appointed by or established in a local health department for review purposes;

(4) A committee appointed by or established in the Maryland Institute for Emergency Medical Services Systems;

(5) A committee of the medical staff or other committee, including any risk management, credentialing, or utilization review committee established in accordance with § 19-319 of the Health - General Article, of a hospital, related institution, or alternative health care system, if the governing board of the hospital, related institution, or alternative health care system forms and approves the committee or approves the written bylaws under which the committee operates;

(6) A committee or individual designated by the holder of a pharmacy permit, as defined in § 12-101 of this article, that performs the functions listed in subsection (c) of this section, as part of a pharmacy's ongoing quality assurance program;

(7) Any person, including a professional standard review organization, who contracts with an agency of this State or of the federal government to perform any of the functions listed in subsection (c) of this section;

(8) Any person who contracts with a provider of health care to perform any of those functions listed in subsection (c) of this section that are limited to the review of services provided by the provider of health care;

(9) An organization, established by the Maryland Hospital Association, Inc. and the Faculty, that contracts with a hospital, related institution, or alternative delivery system to:

(i) Assist in performing the functions listed in subsection (c) of this section; or

(ii) Assist a hospital in meeting the requirements of § 19-319(e) of the Health - General Article;

(10) A committee appointed by or established in an accredited health occupations school;

(11) An organization described under § 14-501 of this article that contracts with a hospital, related institution, or health maintenance organization to:

(i) Assist in performing the functions listed in subsection (c) of this section; or

(ii) Assist a health maintenance organization in meeting the requirements

- of Title 19, Subtitle 7 of the Health - General Article, the National Committee for Quality Assurance (NCQA), or any other applicable credentialing law or regulation;
- (12) An accrediting organization as defined in § 14-501 of this article;
- (13) A Mortality Review Committee established under § 5-801 of the Health - General Article; or
- (14) A center designated by the Maryland Health Care Commission as the Maryland Patient Safety Center that performs the functions listed in subsection (c)(1) of this section.
- (c) For purposes of this section, a medical review committee:
- (1) Evaluates and seeks to improve the quality of health care provided by providers of health care;
- (2) Evaluates the need for and the level of performance of health care provided by providers of health care;
- (3) Evaluates the qualifications, competence, and performance of providers of health care; or
- (4) Evaluates and acts on matters that relate to the discipline of any provider of health care.
- (d) (1) Except as otherwise provided in this section, the proceedings, records, and files of a medical review committee are not discoverable and are not admissible in evidence in any civil action.
- (2) The proceedings, records, and files of a medical review committee are confidential and are not discoverable and are not admissible in evidence in any civil action arising out of matters that are being reviewed and evaluated by the medical review committee if requested by the following:
- (i) The Department of Health and Mental Hygiene to ensure compliance with the provisions of § 19-319 of the Health - General Article;
- (ii) A health maintenance organization to ensure compliance with the provisions of Title 19, Subtitle 7 of the Health - General Article and applicable regulations;
- (iii) A health maintenance organization to ensure compliance with the National Committee for Quality Assurance (NCQA) credentialing requirements; or
- (iv) An accrediting organization to ensure compliance with accreditation requirements or the procedures and policies of the accrediting organization.
- (3) If the proceedings, records, and files of a medical review committee are requested by any person from any of the entities in paragraph (2) of this subsection:
- (i) The person shall give the medical review committee notice by certified mail of the nature of the request and the medical review committee shall be granted a protective order preventing the release of its proceedings, records, and files; and
- (ii) The entities listed in paragraph (2) of this subsection may not release any of the proceedings, records, and files of the medical review committee.

- (e) Subsection (d)(1) of this section does not apply to:
 - (1) A civil action brought by a party to the proceedings of the medical review committee who claims to be aggrieved by the decision of the medical review committee; or
 - (2) Any record or document that is considered by the medical review committee and that otherwise would be subject to discovery and introduction into evidence in a civil trial.
- (f)
 - (1) A person shall have the immunity from liability described under § 5-637 of the Courts and Judicial Proceedings Article for any action as a member of the medical review committee or for giving information to, participating in, or contributing to the function of the medical review committee.
 - (2) A contribution to the function of a medical review committee includes any statement by any person, regardless of whether it is a direct communication with the medical review committee, that is made within the context of the person's employment or is made to a person with a professional interest in the functions of a medical review committee and is intended to lead to redress of a matter within the scope of a medical review committee's functions.
- (g) Notwithstanding this section, §§ 14-410 and 14-412 of this article apply to:
 - (1) The Board of Physicians; and
 - (2) Any other entity, to the extent that it is acting in an investigatory capacity for the Board of Physicians.

Article - State Personnel and Pensions

§ 2-305.

- (a) This section applies to all employees of all units in the Executive, Judicial, and Legislative branches of State government, including all units with independent personnel systems except for the Department of Transportation and the University System of Maryland.
- (b) During any stage of a State employee's complaint, grievance, or other administrative or legal action that concerns State employment, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint by or initiated on behalf of the employer solely as a result of that employee's pursuit of the grievance, complaint, or action.
- (c) A State employee may not intentionally take or assist in taking an act of coercion, discrimination, interference, reprisal, or restraint against another employee solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.
- (d) An employee who violates subsection (c) of this section is subject to disciplinary action, including the termination of State employment

Massachusetts

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XXI. LABOR AND INDUSTRIES

CHAPTER 149. LABOR AND INDUSTRIES

FAIR COMPETITION FOR BIDDERS ON CONSTRUCTION, ETC., OF PUBLIC WORKS

MISCELLANEOUS PROVISIONS

Chapter 149: Section 185. Retaliation against employees reporting violations of law or risks to public health, safety or environment; remedies

Section 185.

- (a) As used in this section, the following words shall have the following meanings:—
- (1) “Employee”, any individual who performs services for and under the control and direction of an employer for wages or other remuneration.
 - (2) “Employer”, the commonwealth, and its agencies or political subdivisions, including, but not limited to, cities, towns, counties and regional school districts, or any authority, commission, board or instrumentality thereof.
 - (3) “Public body”, (A) the United States Congress, any state legislature, including the general court, or any popularly elected local government body, or any member or employee thereof; (B) any federal, state or local judiciary, or any member or employee thereof, or any grand or petit jury; (C) any federal, state or local regulatory, administrative or public agency or authority, or instrumentality thereof; (D) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer; or (E) any division, board, bureau, office, committee or commission of any of the public bodies described in the above paragraphs of this subsection.
 - (4) “Supervisor”, any individual to whom an employer has given the authority to direct and control the work performance of the affected employee, who has authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains, or who has been designated by the employer on the notice required under subsection (g).
 - (5) “Retaliatory action”, the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.
- (b) An employer shall not take any retaliatory action against an employee because the employee does any of the following:
- (1) Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or of another employer with whom the employee’s employer has a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment;
 - (2) Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law, or activity, policy or practice which the employee reasonably believes poses a risk to public health, safety or the environment by

- the employer, or by another employer with whom the employee's employer has a business relationship; or
- (3) Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment.
- (c) (1) Except as provided in paragraph (2), the protection against retaliatory action provided by subsection (b) (1) shall not apply to an employee who makes a disclosure to a public body unless the employee has brought the activity, policy or practice in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment, to the attention of a supervisor of the employee by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy or practice.
- (2) An employee is not required to comply with paragraph (1) if he: (A) is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer and the situation is emergency in nature; (B) reasonably fears physical harm as a result of the disclosure provided; or (C) makes the disclosure to a public body as defined in clause (B) or (D) of the definition for "public body" in subsection (a) for the purpose of providing evidence of what the employee reasonably believes to be a crime.
- (d) Any employee or former employee aggrieved of a violation of this section may, within two years, institute a civil action in the superior court. Any party to said action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided herein. The court may: (1) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violation of this section; (2) reinstate the employee to the same position held before the retaliatory action, or to an equivalent position; (3) reinstate full fringe benefits and seniority rights to the employee; (4) compensate the employee for three times the lost wages, benefits and other remuneration, and interest thereon; and (5) order payment by the employer of reasonable costs, and attorneys' fees.
- (e) (1) Except as provided in paragraph (2), in any action brought by an employee under subsection (d), if the court finds said action was without basis in law or in fact, the court may award reasonable attorneys' fees and court costs to the employer.
- (2) An employee shall not be assessed attorneys' fees under paragraph (1) if, after exercising reasonable and diligent efforts after filing a suit, the employee moves to dismiss the action against the employer, or files a notice agreeing to a voluntary dismissal, within a reasonable time after determining that the employer would not be found liable for damages.
- (f) Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation, or under any collective bargaining agreement or employment contract; except that the institution of a private action in accordance with subsection (d) shall be deemed a waiver by the plaintiff of the rights and remedies available to him, for the actions of the employer,

under any other contract, collective bargaining agreement, state law, rule or regulation, or under the common law.

(g) An employer shall conspicuously display notices reasonably designed to inform its employees of their protection and obligations under this section, and use other appropriate means to keep its employees so informed. Each notice posted pursuant to this subsection shall include the name of the person or persons the employer has designated to receive written notifications pursuant to subsection (c).

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XXI. LABOR AND INDUSTRIES

CHAPTER 149. LABOR AND INDUSTRIES

FAIR COMPETITION FOR BIDDERS ON CONSTRUCTION, ETC., OF PUBLIC WORKS

MISCELLANEOUS PROVISIONS

Chapter 149: Section 187. Health care providers; protection from retaliatory action by health care facilities

Section 187. (a) As used in this section, the following words shall have the following meanings:

- “Health care facility”, an individual, partnership, association, corporation or trust or any person or group of persons that employs health care providers, including any hospital, clinic, convalescent or nursing home, charitable home for the aged, community health agency or other provider of health care services licensed, or subject to licensing by, or operated by, the department of public health; any facility as defined in section 3 of chapter 111B; any private, county or municipal facility, department or unit which is licensed or subject to licensing by the department of mental health pursuant to section 19 of chapter 19, or by the department of mental retardation pursuant to section 15 of chapter 19B; any facility as defined in section 1 of chapter 123; the Soldiers’ Home in Holyoke, the Soldiers’ Home in Massachusetts; or any facility as set forth in section 1 of chapter 19 or section 1 of chapter 19B.
- “Health care provider”, an individual who is a licensed health care provider under the provisions of chapter 112 including, but not limited to, registered nurses, licensed practical nurses, physicians, physician assistants, chiropractors, dentists, occupational therapists, physical therapists, optometrists, pharmacists, podiatrists, psychologists and social workers or any other health care provider who performs or has performed health care related services for and under the control of a health care facility for care-related services.
- “Manager”, an individual to whom a health care facility has given the authority to direct and control the work performance of the affected health care provider, who has authority to take corrective action regarding a violation of a law, rule, regulation, activity or policy or violation of professional standards of practice of which the health care provider complains or who has been designated by the health care facility on the notice required under subsection (h).

- “Public body”, the United States Congress, any state legislature, including the general court, or popularly elected local government body or member or health care provider thereof; any federal, state or local regulatory, administrative or public agency or authority or instrumentality thereof; any federal, state or local law enforcement agency, prosecutorial office or police or peace officer; or any division, board, bureau, office, committee or commission of any of the public bodies described herein.
- “Retaliatory action”, the discharge, suspension, demotion, harassment, denial of a promotion or layoff or other adverse action taken against a health care provider affecting the terms and conditions of employment.

(b) A health care facility shall not refuse to hire, terminate a contractual agreement with or take any retaliatory action against a health care provider because the health care provider does any of the following:

(1) discloses or threatens to disclose to a manager or to a public body an activity, policy or practice of the health care facility or of another health care facility with whom the health care provider’s health care facility has a business relationship, that the health care provider reasonably believes is in violation of a law or rule or regulation promulgated pursuant to law or violation of professional standards of practice which the health care provider reasonably believes poses a risk to public health;

(2) provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of a law, or rule or regulation promulgated pursuant to law or activity, policy or professional standards of practice of a health care provider, by the health care facility or by another health care facility with whom the health care provider’s health care facility has a business relationship, which the health care provider reasonably believes poses a risk to public health;

(3) objects to or refuses to participate in any activity, policy or practice of the health care facility or of another health care facility with whom the health care provider’s health care facility has a business relationship which the health care provider reasonably believes is in violation of a law or rule or regulation promulgated pursuant to law or violation of professional standards of practice which the health care provider reasonably believes poses a risk to public health;

or

(4) participates in any committee or peer review process, files a report or a complaint, or an incident report discussing allegations of unsafe, dangerous or potentially dangerous care.

(c) (1) Except as provided in clause (2) of subsection (b), the protection against retaliatory action provided by clause (1) of said subsection (b) shall not apply to a health care provider who makes a disclosure to a public body unless the health care provider has brought the activity, policy or practice in violation of a law or rule or regulation promulgated pursuant to law or violation of professional standards of practice which the health care provider reasonably believes poses a risk to public health, to the attention of a manager of the health care provider by written notice and has afforded the health care facility a reasonable opportunity to correct the activity, policy or practice.

- (2) A health care provider shall not be required to comply with paragraph (1) if he: (i) is reasonably certain that the activity, policy or practice is known to one or more managers of the health care facility and the situation is emergent in nature; (ii) reasonably fears physical harm as a result of the disclosure; or (iii) makes the disclosure to a public body for the purpose of providing evidence of what the health care provider reasonably believes to be a crime.
- (d) Any health care provider or former health care provider aggrieved by a violation of this section may, within two years, institute a civil action in the superior court. Any party to such action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs. The remedies shall be in addition to any legal or equitable relief provided herein. The court may:
- (1) issue a temporary restraining order or preliminary or permanent injunction to restrain continued violation of this section;
 - (2) reinstate the health care provider to the same position held before the retaliatory action, or to an equivalent position;
 - (3) reinstate full fringe benefits and seniority rights to the health care provider;
 - (4) compensate the health care provider for lost wages, benefits and other remuneration, and interest thereon; and
 - (5) order payment by the health care facility of reasonable litigation costs, reasonable expert witness fees and reasonable attorneys' fees. A health care provider may bring an action in the appropriate superior court or the superior court of the county of Suffolk for the relief provided in this subsection. The health care provider or former health care provider shall deliver a copy of the complaint to the attorney general. The attorney general shall establish and maintain a register of all complaints made by health care personnel under this section.
- (e) (1) Except as provided in paragraph (2), in any action brought by a health care provider under subsection (d), if the court finds the action was without basis in law or in fact, the court may award reasonable attorneys' fees and court costs to the health care facility.
- (2) A health care provider shall not be assessed attorneys' fees under paragraph (1) if, upon exercising reasonable and diligent efforts after filing the action, the health care provider moves to dismiss the action against the health care facility, or files a notice agreeing to a voluntary dismissal, within a reasonable time after determining that the health care facility would not be found liable for damages.
- (f) Whenever he believes it to be in the public interest, the attorney general may bring an action in the name of the commonwealth against any health care facility violating the provisions of subsection (b) or subsection (h). Such an action may be brought in the superior court and any party thereto may claim trial by jury. In any action under this section, in addition to the remedies the court may provide in accordance with subsection (d), the court may require the health care facility to pay to the commonwealth a civil penalty of not more than \$10,000 for each violation, as well as the cost of reasonable attorneys' fees and reasonable expert witness fees.
- (g) Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any health care provider under any other federal or state law or regulation or under any collective bargaining agreement or employment contract.

(h) A health care facility shall conspicuously display notices reasonably designed to inform its health care providers of their protection and obligations under this section and use other appropriate means to keep its health care providers so informed. Each notice posted pursuant to this subsection shall include the name of the persons the health care facility has designated to receive written notifications pursuant to subsection (c). Any health care facility which violates the provisions of this subsection shall be punished by a fine of not less than \$250 nor more than \$2,500. The provisions of this subsection shall be enforced by the attorney general.

(i) The attorney general may promulgate rules and regulations necessary and appropriate to enforce the provisions of this section.

Michigan

THE WHISTLEBLOWERS' PROTECTION ACT

Act 469 of 1980

15.361 Definitions.

Sec. 1.

As used in this act:

- (a) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied. Employee includes a person employed by the state or a political subdivision of the state except state classified civil service.
- (b) "Employer" means a person who has 1 or more employees. Employer includes an agent of an employer and the state or a political subdivision of the state.
- (c) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.
- (d) "Public body" means all of the following:
 - (i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
 - (ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.
 - (iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof.
 - (iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.
 - (v) A law enforcement agency or any member or employee of a law enforcement agency.
 - (vi) The judiciary and any member or employee of the judiciary.

15.362 Discharging, threatening, or otherwise discriminating against employee reporting violation of law, regulation, or rule prohibited; exceptions.

Sec. 2.

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

15.363 Civil action in circuit court for injunctive relief or actual damages; "damages" defined; clear and convincing evidence required.

Sec. 3.

(1) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his or her principal place of business.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorney fees.

(4) An employee shall show by clear and convincing evidence that he or she or a person acting on his or her behalf was about to report, verbally or in writing, a violation or a suspected violation of a law of this state, a political subdivision of this state, or the United States to a public body.

15.364 Court judgment; order; remedies; awarding costs of litigation.

Sec. 4.

A court, in rendering a judgment in an action brought pursuant to this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

15.365 Violation; civil fine.

Sec. 5.

(1) A person who violates this act shall be liable for a civil fine of not more than \$500.00.

(2) A civil fine which is ordered pursuant to this act shall be submitted to the state treasurer for deposit in the general fund.

15.366 Diminishment or impairment of rights; collective bargaining agreement; protection of confidentiality of communications; disclosures.

Sec. 6.

This act shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement, nor to permit disclosures which would diminish or impair the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection.

15.367 Employer not required to compensate employee for participation in investigation, hearing, or inquiry.

Sec. 7.

This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 2 of this act.

15.368 Posting notices of protections and obligations required.

Sec. 8.

An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act.

15.369 Short title.

Sec. 9.

This act shall be known and may be cited as “the whistleblowers’ protection act”.

Minnesota

181.931 Definitions.

Subdivision 1. **Generally.** For the purpose of sections 181.931 to 181.935 the terms defined in this section have the meanings given them.

Subd. 2. **Employee.** "Employee" means a person who performs services for hire in Minnesota for an employer. Employee does not include an independent contractor.

Subd. 3. **Employer.** "Employer" means any person having one or more employees in Minnesota and includes the state and any political subdivision of the state.

932 Disclosure of information by employees.

Subdivision 1. **Prohibited action.** An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(a) the employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official;

(b) the employee is requested by a public body or office to participate in an investigation, hearing, inquiry;

(c) the employee refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason; or

(d) the employee, in good faith, reports a situation in which the quality of health care services provided by a health care facility, organization, or health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm.

Subd. 2. **Disclosure of identity.** The identity of any employee making a report to a governmental body or law enforcement official under subdivision 1, clause (a) or (d), is private data on individuals as defined in section 13.02. The identity of an employee providing information under subdivision 1, clause (b), is private data on individuals if:

(1) the employee would not have provided the information without an assurance that the employee's identity would remain private, because of a concern that the employer would commit an action prohibited under subdivision 1 or that the employee would be subject to some other form of retaliation; or

(2) the state agency, statewide system, or political subdivision reasonably believes that the employee would not have provided the data because of that concern.

If the disclosure is necessary for prosecution, the identity of the employee may be disclosed but the employee shall be informed prior to the disclosure.

Subd. 3. **False disclosures.** This section does not permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth.

Subd. 4. **Collective bargaining rights.** This section does not diminish or impair the rights of a person under any collective bargaining agreement.

Subd. 5. **Confidential information.** This section does not permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law

181.933 Notice of termination.

Subdivision 1. **Notice required.** An employee who has been involuntarily terminated may, within 15 working days following such termination, request in writing that the employer inform the employee of the reason for the termination. Within ten working days following receipt of such request, an employer shall inform the terminated employee in writing of the truthful reason for the termination.

Subd. 2. **Defamation action prohibited.** No communication of the statement furnished by the employer to the employee under subdivision 1 may be made the subject of any action for libel, slander, or defamation by the employee against the employer.

181.934 Employee notice.

The Department of Labor and Industry shall promulgate rules for notification of employees by employers of an employee's rights under sections 181.931 to 181.935.

181.935 Individual remedies; penalty.

(a) In addition to any remedies otherwise provided by law, an employee injured by a violation of section 181.932 may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief as determined by the court.

(b) An employer who failed to notify, as required under section 181.933 or 181.934, an employee injured by a violation of section 181.932 is subject to a civil penalty of \$25 per day per injured employee not to exceed \$750 per injured employee

181.937 Reprisals for failure to contribute; civil action.

No employer shall engage in any reprisal against an employee for declining to participate in contributions or donations to charities or community organizations, including contributions to the employer itself. "Employer" means any person having one or more employees in Minnesota and includes the state, the University of Minnesota, and any political subdivisions of the state. An employee injured by a violation of this section may bring an action for compensatory damages, injunctive or other equitable relief, attorney's fees and costs. For purposes of this section "reprisal" means any discipline; any form of intimidation, harassment, or threat; or any penalty regarding the employee's compensation, terms, conditions, location, or privileges of employment.

Mississippi

§ 25-9-171. Definitions.

For purposes of Sections 25-9-171 through 25-9-177, the following terms shall have the meanings ascribed to them herein:

(a) "Abuse" means acting in an arbitrary and capricious manner that adversely affects the accomplishment of a function of any governmental entity.

(b) "Governmental entity" means a board, commission, department, office or other agency of the state or a political subdivision of the state.

(c) "Employee" means any individual employed or holding office in any department or agency of state or local government.

(d) "Improper governmental action" means any action by an employee which is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of the employee's employment:

(i) Which is in violation of any federal or state law or regulation, is an abuse of authority, results in substantial abuse, misuse, destruction, waste, or loss of public funds or public resources; or

(ii) Which is of substantial and specific danger to the public health or safety; or

(iii) Which is discrimination based on race or gender.

"Improper governmental action" does not include personnel actions for which other remedies exist, including, but not limited to, employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state personnel system or local personnel policies, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any personnel action which may be taken under federal or state law.

(e) "Misuse" means an illegal or unauthorized use.

(f) "Personnel action" means an action that affects an employee's promotion, demotion, transfer, work assignment or performance evaluation.

(g) "State investigative body" shall mean the Attorney General of the State of Mississippi, the State Auditor, the Mississippi Ethics Commission, the Joint Legislative Committee on Performance Evaluation and Expenditure Review or any other standing committee of the Legislature, or any district attorney of the State of Mississippi.

(h) "Use of official authority or influence" includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation or other disciplinary action.

(i) "Waste" means an unnecessary or unreasonable expenditure or use.

(j) "Whistleblower" means an employee who in good faith reports an alleged improper governmental action to a state investigative body, initiating an investigation. For purposes of the provisions of this act, the term "whistleblower" also means an employee who in good faith provides information to a state investigative body, or an employee who is believed to have reported alleged improper governmental action to a state

investigative body or to have provided information to a state investigative body but who, in fact, has not reported such action or provided such information.

§ 25-9-172. Record of complaint; authority to investigate complaint; standard form for complaint; confidentiality.

(1) Upon receipt of a signed written complaint of alleged improper governmental action, a state investigative body shall keep a record of the complaint and shall have the authority to investigate the complaint in accordance with its powers and duties provided by the laws of the State of Mississippi.

(2) Each state investigative body shall develop and maintain a standard form for use by the whistleblower when reporting alleged improper governmental action. Such form shall require as a minimum the name, address and telephone number of the whistleblower, and a description of the alleged improper governmental action.

(3) If any state investigative body receives a complaint that contains allegations outside its expertise, then the state investigative body may refer the complaint to another state investigative body unless contrary to the laws of the State of Mississippi.

(4) In any case to which this section applies, the identity of the whistleblower shall be kept confidential unless the state investigative body determines that the information has been provided other than in good faith, or unless the confidentiality requirement conflicts with Article 1, Chapter 4 of Title 25, Mississippi Code of 1972.

§ 25-9-173. Prohibition against dismissing or adversely affecting compensation or employment status of public employee for providing information to investigative body; reprisals and retaliatory actions; conditions for recovery of damages and other remedies.

(1) No agency shall dismiss or otherwise adversely affect the compensation or employment status of any public employee because the public employee testified or provided information to a state investigative body whether or not the testimony or information is provided under oath.

(2) Any person who is a whistleblower, as defined in Section 25-9-171, and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, is entitled to the remedies provided under Section 25-9-175. For the purpose of this section, "reprisal or retaliatory action" means, but is not limited to:

- (a) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- (b) Demotion;
- (c) Reduction in pay;
- (d) Denial of promotion;
- (e) Suspension;
- (f) Dismissal; and
- (g) Denial of employment.

(3) An employee who has filed a valid whistleblower complaint may not recover the damages and other remedies provided under Section 25-9-175 unless the dismissal or adverse action taken against him was the direct result of providing information to a state investigative body.

(4) Nothing in this section prohibits a governmental entity from making any decision exercising its authority to terminate, suspend or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. (5) A governmental entity is not precluded from taking any action in accordance with established personnel policies against an employee who knowingly and intentionally provides false information to a state investigative body.

§ 25-9-175. Liability of agency for violating provisions.

Any agency which violates the provisions of Section 25-9-173 shall be liable to the public employee for back pay and reinstatement. In addition, an employee whose employment is suspended or terminated or who is subjected to adverse personnel action in violation of Section 25-9-173 is entitled to sue for injunctive relief, compensatory damages, court costs and reasonable attorney's fees; provided, however, that an employee may not recover an amount that exceeds the limitations provided in Section 11-46-15. Additionally, each member of any agency's governing board or authority may be found individually liable for a civil fine of up to Ten Thousand Dollars (\$10,000.00) for each violation of Section 25-9-173. In any instance where the agency in violation of Section 25-9-173 has no governing board or authority, the agency's executive director may be found individually liable for a civil fine not to exceed Ten Thousand Dollars (\$10,000.00). If the court determines that any action filed under this section by an employee is frivolous and unwarrantable, the court may award to the employer court costs and reasonable expenses, including attorney's fees, incurred in defense of actions brought by the employee under this section.

§ 25-9-177. Actions to recover civil fines and other penalties.

Actions to recover civil fines and other remedies provided for under Section 25-9-175 may be instituted in the Circuit Court for the First Judicial District of Hinds County or in the circuit court of the public employees' residence. In such actions, the public employee shall prove by a preponderance of the evidence that, but for his providing information or testimony to a state investigative body prior to occurrence of the dismissal or any adverse action, his dismissal or any adverse action taken against him would not have occurred. Remedies provided for herein shall be supplemental to any other remedies, judicial or administrative, provided for under law. Any administrative remedies provided for state-service employees under Sections 25-9-127 through 25-9-131, Mississippi Code of 1972, or any remedies under a grievance or appeal process of the employing governmental entity relating to suspension or termination of employment or adverse personnel action, shall not be exhausted or diminished as a result of any action taken by the employee under Sections 25-9-175 and 25-9-177, and the employee shall be required to exhaust such remedies prior to instituting an action authorized under Sections 25-9-175 and 25-9-177.

§ 25-65-17. Audit reports confidential; production of reports; access to records.

(1) Audit reports shall be confidential but shall be provided on a quarterly basis to the governing board or commission of the university, the community/junior college or the state agency. State agencies without a governing board or commission shall have the quarterly report provided to the Governor and the State Auditor.

(2) When the university, community/junior college or agency internal audit director or a member of his or her staff receives from an individual a complaint or information protected by whistleblower or other legislation, the name or identity of the individual shall not be disclosed without the written consent of the individual, or unless required by law or judicial processes.

(3) The director and the internal audit staff shall have access to all personnel and any records, data and other information of the university, community/junior college or state agency deemed necessary to carry out assigned duties. The university, community/junior college or agency internal audit director shall maintain the confidentiality of any public records that are made confidential by law, and shall be subject to the same penalties as the custodian of those public records for violating confidentiality statutes.

Missouri

Chapter 105

Public Officers and Employees--Miscellaneous Provisions

Section 105.055

State employee reporting mismanagement or violations of agencies, discipline of employee prohibited--appeal by employee from disciplinary actions, procedure--disciplinary action defined --violation, penalties--civil action, when.

105.055.

1. No supervisor or appointing authority of any state agency shall prohibit any employee of the agency from discussing the operations of the agency, either specifically or generally, with any member of the legislature, state auditor, attorney general, or any state official or body charged with investigating such alleged misconduct.
2. No supervisor or appointing authority of any state agency shall:
 - (1) Prohibit a state employee from or take any disciplinary action whatsoever against a state employee for the disclosure of any alleged prohibited activity under investigation or any related activity, or for the disclosure of information which the employee reasonably believes evidences:
 - (a) A violation of any law, rule or regulation; or
 - (b) Mismanagement, a gross waste of funds or abuse of authority, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law; or
 - (2) Require any such employee to give notice to the supervisor or appointing authority prior to making any such report.
3. This section shall not be construed as:
 - (1) Prohibiting a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the employee to legislators on behalf of the agency;
 - (2) Permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative committee;
 - (3) Authorizing an employee to represent the employee's personal opinions as the opinions of a state agency; or
 - (4) Restricting or precluding disciplinary action taken against a state employee if: the employee knew that the information was false; the information is closed or is confidential under the provisions of the open meetings law or any other law; or the disclosure relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety.
4. As used in this section, "disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of

possible dismissal or withholding of work, whether or not the withholding of work has affected or will affect the employee's compensation.

5. Any employee may file an administrative appeal whenever the employee alleges that disciplinary action was taken against the employee in violation of this section. The appeal shall be filed with the state personnel advisory board; provided that the appeal shall be filed with the appropriate agency review board or body of nonmerit agency employers which have established appeal procedures substantially similar to those provided for merit employees in subsection 5 of section 36.390, RSMo. The appeal shall be filed within thirty days of the alleged disciplinary action. Procedures governing the appeal shall be in accordance with chapter 36, RSMo. If the board or appropriate review body finds that disciplinary action taken was unreasonable, the board or appropriate review body shall modify or reverse the agency's action and order such relief for the employee as the board considers appropriate. If the board finds a violation of this section, it may review and recommend to the appointing authority that the violator be suspended on leave without pay for not more than thirty days or, in cases of willful or repeated violations, may review and recommend to the appointing authority that the violator forfeit the violator's position as a state officer or employee and disqualify the violator for appointment to or employment as a state officer or employee for a period of not more than two years. The decision of the board or appropriate review body in such cases may be appealed by any party pursuant to law.

6. Each state agency shall prominently post a copy of this section in locations where it can reasonably be expected to come to the attention of all employees of the agency.

7. (1) In addition to the remedies in subsection 6 of this section, a person who alleges a violation of this section may bring a civil action for damages within ninety days after the occurrence of the alleged violation.
- (2) A civil action commenced pursuant to this subsection may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides.
- (3) An employee must show by clear and convincing evidence that he or she or a person acting on his or her behalf has reported or was about to report, verbally or in writing, a prohibited activity or a suspected prohibited activity.
- (4) A court, in rendering a judgment in an action brought pursuant to this section, shall order, as the court considers appropriate, actual damages, and may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees.

Montana

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

Nebraska

Section 48-1114. **Opposition to unlawful practice; participation in investigation; discrimination prohibited.**

It shall be unlawful employment practice for an employer to discriminate against any of his or her employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he or she (1) has opposed any practice made an unlawful employment practice by the Nebraska Fair Employment Practice Act, (2) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the act, or (3) has opposed any practice or refused to carry out any action unlawful under the laws of the United States or this state

NRS 613.340 **Unlawful employment practices: Discrimination for opposing unlawful practice or assisting investigation; printing or publication of material indicating prohibited discrimination.**

1. It is an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any person, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by NRS 613.310 to 613.435, inclusive, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under NRS 613.310 to 613.435, inclusive.
2. It is an unlawful employment practice for an employer, labor organization or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification or discrimination, based on race, color, religion, sex, sexual orientation, age, disability or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, sexual orientation, age, physical, mental or visual condition or national origin when religion, sex, sexual orientation, age, physical, mental or visual condition or national origin is a bona fide occupational qualification for employment.

Nevada

NRS 618.445 Employee protected from discharge or discrimination; procedure for reinstatement.

1. A person shall not discharge or in any manner discriminate against any employee because the employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any right afforded by this chapter.
2. Any employee aggrieved by a violation of subsection 1 may file a complaint for the relief afforded under subsection 3, after first notifying his employer and the Division of his intention to file the complaint. Any complaint must be filed with the Division within 30 days after the violation has occurred and must set forth in writing the facts constituting the violation.
3. Upon receipt of the complaint by the Division, the Administrator shall cause such investigation to be made as he deems appropriate. If upon investigation, the Administrator determines that the provisions of subsection 1 have been violated, he shall bring an action in the name of the Administrator in any appropriate district court against the person who has committed the violation.
4. If the court finds that the employee was discharged or discriminated against in violation of subsection 1, the employee is entitled to reinstatement and reimbursement for lost wages and work benefits.
5. Any decision reached by the Administrator relating to the filing of an action pursuant to this section must be made available to the complaining employee within 90 days after the Division's receipt of the complaint.

NRS 357.240 Employer prohibited from forbidding employee from making certain disclosures or acting in furtherance of action relating to false claim and from taking any retaliatory action against employee for such disclosures or actions.

1. An employer shall not adopt or enforce any rule or policy forbidding an employee to disclose information to the State, a political subdivision or a law enforcement agency or to act in furtherance of an action pursuant to this chapter, including investigation for, bringing or testifying in such an action.
2. An employer shall not discharge, demote, suspend, threaten, harass, deny promotion to or otherwise discriminate against an employee in the terms or conditions of his employment because of lawful acts done by him on his own behalf or on behalf of others in disclosing information to the State, a political subdivision or a law enforcement agency in furtherance of an action pursuant to this chapter, including investigation for, bringing or testifying in such an action.

New Hampshire

TITLE XXIII

LABOR

CHAPTER 275-E

WHISTLEBLOWERS' PROTECTION ACT

Section 275-E:1

275-E:1 Definitions. – In this chapter:

I. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who meets all of the following criteria:

- (a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.
- (b) The person has control and discretion over the means and manner of performance of the work in achieving the result of the work.
- (c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this criterion does not prohibit the employer from reaching agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.
- (d) The person holds himself or herself out to be in business for himself or herself.
- (e) The person is not required to work exclusively for the employer.

II. "Employer" means an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, governmental entity, and any common carrier who employs any person. Employer shall include any person acting in the interest of an employer directly or indirectly.

III. "Governmental entity" means any branch, department, commission, bureau, agency, or agent of the government of this state or a political subdivision of this state.

275-E:2 Protection of Employees Reporting Violations. –

I. No employer shall discharge, threaten, or otherwise discriminate against any employee regarding such employee's compensation, terms, conditions, location, or privileges of employment because:

- (a) The employee, in good faith, reports or causes to be reported, verbally or in writing, what the employee has reasonable cause to believe is a violation of any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States; or
- (b) The employee, in good faith, participates, verbally or in writing, in an investigation, hearing, or inquiry conducted by any governmental entity, including a court action, which concerns allegations that the employer has violated any law

or rule adopted under the laws of this state, a political subdivision of this state, or the United States.

II. Paragraph I of this section shall not apply to any employee unless the employee first brought the alleged violation to the attention of a person having supervisory authority with the employer, and then allowed the employer a reasonable opportunity to correct that violation, unless the employee had specific reason to believe that reporting such a violation to his employer would not result in promptly remedying the violation.

275-E:3 Protection of Employees Who Refuse to Execute Illegal Directives. – No employer shall discharge, threaten or otherwise discriminate against any employee regarding such employee's compensation, terms, conditions, location, or privileges of employment because the employee has refused to execute a directive which in fact violates any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States.

275-E:4 Rights and Remedies. –

I. Any employee who alleges a violation of rights under RSA 275-E:2 or 3, and who has first made a reasonable effort to maintain or restore such employee's rights through any grievance procedure or similar process available at such employee's place of employment, may obtain a hearing with the commissioner of labor or a designee appointed by the commissioner. Following such hearing, the labor commissioner or the designee appointed by such commissioner shall render a judgment on such matter, and shall order, as the commissioner or his designee considers appropriate, reinstatement of the employee, the payment of back pay, fringe benefits and seniority rights, any appropriate injunctive relief, or any combination of these remedies.

II. Decisions rendered by the commissioner of labor under paragraph I may be appealed pursuant to RSA 541.

275-E:5 No Effect on Bargaining or Common Law Rights. – This chapter shall not be construed to diminish or impair either the rights of a person under any collective bargaining agreement or any common law rights.

275-E:6 Compensation of Employee. – This chapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a governmental entity.

275-E:7 Posting of Notices; Violation. – Every employer shall post such notices as are prescribed by the commissioner of labor as a means of keeping such employer's employees informed of their protections and obligations under this chapter. The commissioner of labor shall adopt rules, under RSA 541-A, relative to the form, content, and placement of such notices. Failure to comply with the provisions of this section or rules adopted by the commissioner of labor shall be a violation for each day of noncompliance.

New Jersey

34:19-3 Retaliatory action prohibited.

3. An employer shall not take any retaliatory action against an employee because the employee does any of the following:
- a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believes:
 - (1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or
 - (2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;
 - b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into the quality of patient care; or
 - c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:
 - (1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
 - (2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity; or
 - (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

34:19-4. Written notice required

The protection against retaliatory action provided by this act pertaining to disclosure to a

public body shall not apply to an employee who makes a disclosure to a public body unless the employee has brought the activity, policy or practice in violation of a law, or a rule or regulation promulgated pursuant to law to the attention of a supervisor of the employee by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy or practice. Disclosure shall not be required where the employee is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer or where the employee reasonably fears physical harm as a result of the disclosure provided, however, that the situation is emergency in nature.

34:19-5 Civil action, jury trial; remedies.

5. Upon a violation of any of the provisions of this act, an aggrieved employee or former employee may, within one year, institute a civil action in a court of competent jurisdiction. Upon the application of any party, a jury trial shall be directed to try the validity of any claim under this act specified in the suit. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided by this act or any other statute. The court shall also order, where appropriate and to the fullest extent possible:

- a. An injunction to restrain any violation of this act which is continuing at the time that the court issues its order;
- b. The reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position;
- c. The reinstatement of full fringe benefits and seniority rights;
- d. The compensation for all lost wages, benefits and other remuneration; and
- e. The payment by the employer of reasonable costs, and attorney's fees.

In addition, the court or jury may order: the assessment of a civil fine of not more than \$10,000 for the first violation of the act and not more than \$20,000 for each subsequent violation, which shall be paid to the State Treasurer for deposit in the General Fund; punitive damages; or both a civil fine and punitive damages. In determining the amount of punitive damages, the court or jury shall consider not only the amount of compensatory damages awarded to the employee, but also the amount of all damages caused to shareholders, investors, clients, patients, customers, employees, former employees, retirees or pensioners of the employer, or to the public or any governmental entity, by the activities, policies or practices of the employer which the employee disclosed, threatened to disclose, provided testimony regarding, objected to, or refused to participate in.

New Mexico

Chapter 23. Wrongful Discharge

UJI 13-2304. RETALIATORY DISCHARGE

In this case you must [also] determine whether _____ (*employee*) was discharged in violation of public policy. It is the public policy of the State of New Mexico to [permit] [encourage] [prohibit] _____ (*insert public policy relied on by plaintiff*). If _____ (*employee*) was discharged because [he] [she] _____ (*insert conduct alleged to be cause of retaliatory discharge*) [and if _____ (*employee's*) conduct which triggered the discharge was taken in furtherance primarily of a public interest rather than primarily a private interest], then the discharge was in violation of public policy and was wrongful.

In determining whether _____ (*employee*) was discharged because [he] [she] _____ (*insert conduct alleged to be cause of retaliatory discharge*), you must determine whether that conduct was a motivating factor in the decision to discharge [him] [her]. A motivating factor is a factor that plays a role in the decision to discharge and without which the discharge would not have occurred. It need not be the only reason, nor the last nor latest reason, for the discharge.

DIRECTIONS FOR USE

This instruction should be given in all wrongful discharge cases involving a claim of discharge in violation of public policy. If the case involves issues of employment at will, this instruction should immediately follow UJI 13- 2301, UJI 13-2302 or UJI 13-2303, if given.

Before this instruction is given, the court must determine as a matter of law that a public policy exists that was violated if plaintiff was discharged for the reason alleged.

A statement of the public policy relied on by the plaintiff and a description of the act or refusal to act which was allegedly the reason for the discharge should be inserted in the instruction as indicated. The choice of bracketed terms in the second sentence is not intended to be exclusive. A word other than "permit", "encourage" or "prohibit" may be used where it would help achieve the purpose of the sentence -- to provide the jury with a clear and comprehensible statement of the public policy that provides the basis for the plaintiff's claim.

The bracketed clause in the third sentence, which raises the issue of public versus private interest, is to be given only in the limited class of "whistleblower" cases in which the plaintiff made a report of wrongdoing to a private party rather than to public authorities. See Committee Commentary.

In some cases, it may be appropriate to give further instruction to the jury on the causation requirement associated with this claim. In those cases, the trial court must

fashion a supplemental instruction based on the court's determination of the governing law.

A retaliatory discharge claim based on an employee's reporting of activities that are illegal or raise health or safety concerns (“whistleblowing”) exists only if the employee's action was taken in furtherance of the public interest rather than primarily to further a private interest. *Garrity v. Overland Sheepskin Co.*, 121 N.M. 710, 917 P.2d 1382 (1996).

New York

§ 740. Retaliatory personnel action by employers; prohibition.

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

- (a) "Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration.
- (b) "Employer" means any person, firm, partnership, institution, corporation, or association that employs one or more employees.
- (c) "Law, rule or regulation" includes any duly enacted statute or ordinance or any rule or regulation promulgated pursuant to any federal, state or local statute or ordinance.
- (d) "Public body" includes the following:
 - (i) the United States Congress, any state legislature, or any popularly-elected local governmental body, or any member or employee thereof;
 - (ii) any federal, state, or local judiciary, or any member or employee thereof, or any grand or petit jury;
 - (iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; or
 - (iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.
- (e) "Retaliatory personnel action" means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.
- (f) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following:

- (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety;
- (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or
- (c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

3. Application. The protection against retaliatory personnel action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has brought the activity, policy or practice in violation of law, rule or

regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice.

4. Violation; remedy. (a) An employee who has been the subject of a retaliatory personnel action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within one year after the alleged retaliatory personnel action was taken.

(b) Any action authorized by this section may be brought in the county in which the alleged retaliatory personnel action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business.

(c) It shall be a defense to any action brought pursuant to this section that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section. It shall also be a defense that the individual was an independent contractor.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this subdivision, a health care employee who has been the subject of a retaliatory action by a health care employer in violation of section seven hundred forty-one of this article may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory personnel action was taken. In addition to the relief set forth in that subdivision, the court, in its discretion, based upon a finding that the employer acted in bad faith in the retaliatory action, may assess the employer a civil penalty of an amount not to exceed ten thousand dollars, to be paid to the improving quality of patient care fund, established pursuant to section ninety-seven-aaaa of the state finance law.

5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:

(a) an injunction to restrain continued violation of this section;

(b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration; and

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees.

6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this section shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law.

§ 741. Prohibition; health care employer who penalizes employees because of complaints of employer violations. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Employee" means any person who performs health care services for and under the control and direction of any public or private employer which provides health care services for wages or other remuneration.

(b) "Employer" means any partnership, association, corporation, the state, or any political subdivision of the state which: (i) provides health care services in a facility licensed pursuant to article twenty-eight or thirty-six of the public health law; (ii) provides health care services within a primary or secondary public or private school or public or private university setting; (iii) operates and provides health care services under the mental hygiene law or the correction law; or (iv) is registered with the department of education pursuant to section sixty-eight hundred eight of the education law.

(c) "Agent" means any individual, partnership, association, corporation, or group of persons acting on behalf of an employer.

(d) "Improper quality of patient care" means, with respect to patient care, any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient.

(e) "Public body" means:

(1) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;

(2) any federal, state or local court, or any member or employee thereof, any grand or petit jury;

(3) any federal, state or local regulatory, administrative or public agency or authority, or instrumentality thereof;

(4) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer;

(5) any federal, state or local department of an executive branch of government; or

(6) any division, board, bureau, office, committee or commission of any of the public bodies described in subparagraph one, two, three, four or five of this paragraph.

(f) "Retaliatory action" means the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(g) "Supervisor" means any person within an employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits a complaint.

2. Retaliatory action prohibited. Notwithstanding any other provision of law, no employer shall take retaliatory action against any employee because the employee does any of the following:

- (a) discloses or threatens to disclose to a supervisor, or to a public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care; or
- (b) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

3. Application. The protection against retaliatory personnel action provided by subdivision two of this section shall not apply unless the employee has brought the improper quality of patient care to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. This subdivision shall not apply to an action or failure to act described in paragraph (a) of subdivision two of this section where the improper quality of patient care described therein presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.
4. Enforcement. A health care employee may seek enforcement of this section pursuant to paragraph (d) of subdivision four of section seven hundred forty of this article.
5. Relief. In any court action brought pursuant to this section it shall be a defense that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

North Carolina

Article 21.

Retaliatory Employment Discrimination.

§ 95-240. Definitions.

The following definitions apply in this Article:

(1) "Person" means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency, or other entity of government.

(2) "Retaliatory action" means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment. (1991

§ 95-241. Discrimination prohibited.

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:

- a. Chapter 97 of the General Statutes.
- b. Article 2A or Article 16 of this Chapter.
- c. Article 2A of Chapter 74 of the General Statutes.
- d. G.S. 95-28.1.
- e. Article 16 of Chapter 127A of the General Statutes.
- f. G.S. 95-28.1A.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.

(4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.

(5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5.

(b) It shall not be a violation of this Article for a person to discharge or take any other unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the evidence that it would have taken the same unfavorable action in the absence of the protected activity of the employee.

§ 95-242. **Complaint; investigation; conciliation.**

(a) An employee allegedly aggrieved by a violation of G.S. 95-241 may file a written complaint with the Commissioner of Labor alleging the violation. The complaint shall be filed within 180 days of the alleged violation. Within 20 days following receipt of the complaint, the Commissioner shall forward a copy of the complaint to the person alleged to have committed the violation and shall initiate an investigation. If the Commissioner determines after the investigation that there is not reasonable cause to

believe that the allegation is true, the Commissioner shall dismiss the complaint, promptly notify the employee and the respondent, and issue a right-to-sue letter to the employee that will enable the employee to bring a civil action pursuant to G.S. 95-243. If the Commissioner determines after investigation that there is reasonable cause to believe that the allegation is true, the Commissioner shall attempt to eliminate the alleged violation by informal methods which may consist of conference, conciliation, and persuasion. The Commissioner shall make a determination as soon as possible and, in any event, not later than 90 days after the filing of the complaint.

(b) If the Commissioner is unable to resolve the alleged violation through the informal methods, the Commissioner shall notify the parties in writing that conciliation efforts have failed. The Commissioner shall then either file a civil action on behalf of the employee pursuant to G.S. 95-243 or issue a right-to-sue letter to the employee enabling the employee to bring a civil action pursuant to G.S. 95-243.

(c) An employee may make a written request to the Commissioner for a right-to-sue letter after 180 days following the filing of a complaint if the Commissioner has not issued a notice of conciliation failure and has not commenced an action pursuant to G.S. 95-242.

(d) Nothing said or done during the use of the informal methods described in subsection (a) of this section may be made public by the Commissioner or used as evidence in a subsequent proceeding under this Article without the written consent of the persons concerned.

(e) The Commissioner's files and the Commissioner's other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are open or pending in the trial court division.

(f) In making inspections and investigations under this Article, the Commissioner or his duly authorized agents may, in addition to exercising the authority granted in G.S. 95-4, issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel reimbursement requirements of the State. In the case of failure or refusal of any person to obey a subpoena under this Article, the district court judge or superior court judge of the county in which the inspection or investigation is conducted shall, upon the application of the Commissioner, have jurisdiction to issue an order requiring compliance.

§ 95-243. Civil action.

(a) An employee who has been issued a right-to-sue letter or the Commissioner of Labor may commence a civil action in the superior court of the county where the violation occurred, where the complainant resides, or where the respondent resides or has his principal place of business.

(b) A civil action under this section shall be commenced by an employee within 90 days of the date upon which the right-to-sue letter was issued or by the Commissioner within 90 days of the date on which the Commissioner notifies the parties in writing that conciliation efforts have failed.

(c) The employee or the Commissioner may seek and the court may award any or all of the following types of relief:

- (1) An injunction to enjoin continued violation of this Article.
- (2) Reinstatement of the employee to the same position held before the retaliatory action or discrimination or to an equivalent position.
- (3) Reinstatement of full fringe benefits and seniority rights.
- (4) Compensation for lost wages, lost benefits, and other economic losses that were proximately caused by the retaliatory action or discrimination.

If in an action under this Article the court finds that the employee was injured by a willful violation of G.S. 95-241, the court shall treble the amount awarded under subdivision (4) of this subsection.

The court may award to the plaintiff and assess against the defendant the reasonable costs and expenses, including attorneys' fees, of the plaintiff in bringing an action pursuant to this section. If the court determines that the plaintiff's action is frivolous, it may award to the defendant and assess against the plaintiff the reasonable costs and expenses, including attorneys' fees, of the defendant in defending the action brought pursuant to this section.

(d) Parties to a civil action brought pursuant to this section shall have the right to a jury trial as provided under G.S. 1A-1, Rules of Civil Procedure.

(e) An employee may only bring an action under this section when he has been issued a right-to-sue letter by the Commissioner.

§ 95-244. Effect of Article on other rights.

Nothing in this Article shall be deemed to diminish the rights or remedies of any employee under any collective bargaining agreement, employment contract, other statutory rights or remedies, or at common law.

§ 95-245. Rules.

The Commissioner may adopt rules needed to implement this Article pursuant to the provisions of Chapter 150B of the General Statutes.

Protection for Reporting Improper Government Activities.

§ 126-84. Statement of policy.

(a) It is the policy of this State that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee constituting:

- (1) A violation of State or federal law, rule or regulation;
- (2) Fraud;
- (3) Misappropriation of State resources;
- (4) Substantial and specific danger to the public health and safety; or
- (5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels.

North Dakota

34-01-20. Employer retaliation prohibited - Civil action for relief - Penalty.

1. An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:

- a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official.
- b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.
- c. The employee refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.

2. An employer who willfully violates this section is guilty of an infraction.

3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later. If the court determines that a violation has or is occurring under this section, the court may order, as the court deems appropriate, reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

Ohio

§ 4113.52. **Right of employee to report violation of law by employer or fellow employee.**

- (A) (1) (a) If an employee becomes aware in the course of the employee's employment of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the employee's employer has authority to correct, and the employee reasonably believes that the violation either is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety or is a felony, the employee orally shall notify the employee's supervisor or other responsible officer of the employee's employer of the violation and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation. If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation within twenty-four hours after the oral notification or the receipt of the report, whichever is earlier, the employee may file a written report that provides sufficient detail to identify and describe the violation with the prosecuting authority of the county or municipal corporation where the violation occurred, with a peace officer, with the inspector general if the violation is within the inspector general's jurisdiction, or with any other appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which the employer is engaged.
- (b) If an employee makes a report under division (A)(1)(a) of this section, the employer, within twenty-four hours after the oral notification was made or the report was received or by the close of business on the next regular business day following the day on which the oral notification was made or the report was received, whichever is later, shall notify the employee, in writing, of any effort of the employer to correct the alleged violation or hazard or of the absence of the alleged violation or hazard.
- (2) If an employee becomes aware in the course of the employee's employment of a violation of chapter 3704, 3734., 6109., or 6111. of the Revised Code that is a criminal offense, the employee directly may notify, either orally or in writing, any appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which the employer is engaged.
- (3) If an employee becomes aware in the course of the employee's employment of a violation by a fellow employee of any state or federal statute, any ordinance or regulation of a political subdivision, or any work rule or company policy of the employee's employer and the employee reasonably believes that the violation either is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety or is a felony, the employee orally shall notify the employee's supervisor or other responsible officer of the employee's employer of the violation and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation.

(B) Except as otherwise provided in division (C) of this section, no employer shall take any disciplinary or retaliatory action against an employee for making any report authorized by division (A)(1) or (2) of this section, or as a result of the employee's having made any inquiry or taken any other action to ensure the accuracy of any information reported under either such division. No employer shall take any disciplinary or retaliatory action against an employee for making any report authorized by division (A)(3) of this section if the employee made a reasonable and good faith effort to determine the accuracy of any information so reported, or as a result of the employee's having made any inquiry or taken any other action to ensure the accuracy of any information reported under that division. For purposes of this division, disciplinary or retaliatory action by the employer includes, without limitation, doing any of the following:

- (1) Removing or suspending the employee from employment;
- (2) Withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled;
- (3) Transferring or reassigning the employee;
- (4) Denying the employee a promotion that otherwise would have been received;
- (5) Reducing the employee in pay or position.

(C) An employee shall make a reasonable and good faith effort to determine the accuracy of any information reported under division (A)(1) or (2) of this section. If the employee who makes a report under either division fails to make such an effort, the employee may be subject to disciplinary action by the employee's employer, including suspension or removal, for reporting information without a reasonable basis to do so under division (A)(1) or (2) of this section.

(D) If an employer takes any disciplinary or retaliatory action against an employee as a result of the employee's having filed a report under division (A) of this section, the employee may bring a civil action for appropriate injunctive relief or for the remedies set forth in division (E) of this section, or both, within one hundred eighty days after the date the disciplinary or retaliatory action was taken, in a court of common pleas in accordance with the Rules of Civil Procedure. A civil action under this division is not available to an employee as a remedy for any disciplinary or retaliatory action taken by an appointing authority against the employee as a result of the employee's having filed a report under division (A) of section 124.341 [124.34.1] of the Revised Code.

(E) The court, in rendering a judgment for the employee in an action brought pursuant to division (D) of this section, may order, as it determines appropriate, reinstatement of the employee to the same position that the employee held at the time of the disciplinary or retaliatory action and at the same site of employment or to a comparable position at that site, the payment of back wages, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies. The court also may award the prevailing party all or a portion of the costs of litigation and, if the employee who brought the action prevails in the action, may award the prevailing employee reasonable attorney's fees, witness fees, and fees for experts who testify at trial, in an amount the court determines appropriate. If the court determines that an employer deliberately has violated division (B) of this section, the court, in making an award of back pay, may include interest at the rate specified in section 1343.03 of the Revised Code.

(F) Any report filed with the inspector general under this section shall be filed as a complaint in accordance with section 121.46 of the Revised Code.

Oklahoma

§74-840-2.5. Whistleblower Act – Short title – Purpose -Disciplinary actions - Definitions.

- A. This section shall be known and may be cited as the “Whistleblower Act”. The purpose of the Whistleblower Act is to encourage and protect the reporting of wrongful governmental activities and to deter retaliation against state employees for reporting those activities. No conviction of any person shall be required to afford protection for any employee under this section.
- B. For purposes of this section, "agency" means any office, department, commission or institution of the state government. No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service, for:
1. Disclosing public information to correct what the employee reasonably believes evidences a violation of the Oklahoma Constitution or law or a rule promulgated pursuant to law;
 2. Reporting a violation of the Oklahoma Constitution, state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety;
 3. Discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature, the print or electronic media or other persons in a position to investigate or initiate corrective action; or
 4. Taking any of the above actions without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command.
- C. Any person who has authority to take, direct others to take, recommend or approve any personnel action shall not take or fail to take any personnel action with respect to any employee for filing an appeal or testifying on behalf of any person filing an appeal with the Oklahoma Merit Protection Commission. This section shall not be construed as prohibiting disciplinary action of an employee who discloses information which the employee:
1. Knows to be false;
 2. Knowingly and willfully discloses with reckless disregard for its truth or falsity; or
 3. Knows to be confidential pursuant to law.
- D. Each state agency, department, institution, board and commission in all branches of state government, including all institutions in The Oklahoma State System of Higher Education, shall prominently post or publish a copy of this section of law in locations where it can reasonably be expected to come to the attention of all employees.
- E. As used in this section:
1. "Disciplinary action" means any direct or indirect form of discipline, any dismissal, demotion, transfer, reassignment, suspension, reprimand, admonishment, warning of possible dismissal, reduction in force, reduction in rank, reduction in status, or withholding of work;
 2. "Probation" means that period of time, after an officer or employee is found to have violated the provisions of this section and corrective action is ordered, during which time that officer's or employee's performance and conduct is being

monitored by the employing agency for further violations of the Oklahoma Personnel Act; and

3. "Mismanagement" means fraudulent activity, criminal misuse of funds or abuse or violation of a well-established, articulated, clear and compelling public policy.

F. Any employee or any former employee aggrieved pursuant to this section may file an appeal with the Oklahoma Merit Protection Commission within sixty (60) days of the alleged violation. The Oklahoma Merit Protection Commission shall promulgate rules to establish procedures for the conduct of investigations. If, after investigation, the Executive Director determines a violation of this section may have occurred, the Executive Director shall appoint a hearing examiner to hear the case as provided for in Section 840-6.6 of this title.

G. If, after the hearing, it is determined that a violation has occurred, the Commission or hearing examiner shall order corrective action pursuant to Section 840-6.6 of this title. Such corrective action shall include, but not be limited to, suspension without pay, demotion or discharge. Any employee found to have violated this section of law, in addition to being suspended or demoted, shall be placed on probation for six (6) months. Such probation shall commence on the date of the final decision filed by the Commission. Any employee who is determined to have violated the Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, while serving said probation shall forfeit the position of the person for one (1) year. Any employee, supervisor or appointing authority of any state agency, whether subject to the provisions of the Merit System of Personnel Administration or in unclassified service, who knowingly and willfully violates the provisions of this section shall forfeit the position of the person and be ineligible for appointment to or employment in a position in state service for a period of at least one (1) year and no more than five (5) years. The decision of the Commission in such cases may be appealed by any party pursuant to Article II of the Administrative Procedures Act.

Oregon

WHISTLEBLOWING

(Disclosures by Public Employees)

659A.200 Definitions for ORS 659A.200 to 659A.224. As used in ORS 659A.200 to 659A.224:

- (1) “Disciplinary action” includes but is not limited to any discrimination, dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.
- (2) “Employee” means a person employed by or under contract with:
 - (a) The state or any agency of or political subdivision in the state;
 - (b) Any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;
 - (c) Employees of the public corporation created under ORS 656.751;
 - (d) Employees of a contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement; and
 - (e) Any person authorized by contract to act on behalf of the state, agency or subdivision.
- (3) “Public employer” means:
 - (a) The state or any agency of or political subdivision in the state; and
 - (b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee.

659A.203 Prohibited conduct by public employer. (1) Subject to ORS 659A.206, except as provided in ORS 659A.200 to 659A.224, it is an unlawful employment practice for any public employer to:

- (a) Prohibit any employee from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly or legislative committee staff acting under the direction of a member of the Legislative Assembly the activities of:
 - (A) The state or any agency of or political subdivision in the state; or
 - (B) Any person authorized to act on behalf of the state or any agency of or political subdivision in the state.
- (b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure of any information that the employee reasonably believes is evidence of:
 - (A) A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;
 - (B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or
 - (C) Subject to ORS 659A.212 (2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is

subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States.

(c) Require any employee to give notice prior to making any disclosure or engaging in discussion described in this section, except as allowed in ORS 659A.206 (1).

(d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions described in this section.

(2) No public employer shall invoke or impose any disciplinary action against an employee for employee activity described in subsection (1) of this section or ORS 659A.212.

659A.206 Effect on public employer's authority over employees. ORS 659A.200 to 659A.224 are not intended to:

(1) Prohibit a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to official legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency or subdivision;

(2) Permit an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and policies pertaining to leaves, unless the employee is requested by a member of the Legislative Assembly or a legislative committee to appear before a legislative committee;

(3) Authorize an employee to represent the employee's personal opinions as the opinions of the agency or subdivision;

(4) Except as specified in ORS 659A.212 (2), authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation;

(5) Restrict or preclude disciplinary action against an employee if the information disclosed by the employee is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety; or

(6) Restrict or impair any judicial right of action an employee or an employer has under existing law. [Formerly 659.515]

659A.209 Effect on public record disclosures. ORS 659A.200 to 659A.224 are not intended to:

(1) Allow disclosure of records exempt from disclosure except as provided in ORS 192.501 to 192.505.

(2) Prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action. [Formerly 659.520]

659A.212 Policy on cooperation with law enforcement officials; duty to report person subject to warrant for arrest. (1) In order to protect the safety of the citizens of this state, it is the policy of this state that all public employers and their employees cooperate with law enforcement officials in the apprehension of persons subject to a felony or misdemeanor warrant for arrest.

(2) Notwithstanding any other law, when an employee reasonably believes that a person receiving services, benefits or assistance from the state or any agency or political subdivision in the state is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States, the employee shall promptly and without delay report to the employee's immediate supervisor or a person designated by the agency by rule to receive such report.

(3) The supervisor or person designated by the agency shall notify the Oregon State Police promptly and without delay of the information supplied by the employee.

(4) The notification required by subsections (2) and (3) of this section shall include disclosure of the name and address of the person, available information concerning the felony or misdemeanor warrant for arrest and other available identifying information.

(5) Information disclosed under this section shall only be used by law enforcement officials to verify the existence of a felony or misdemeanor warrant for arrest of the person and to apprehend the person if a felony or misdemeanor warrant for arrest exists. [Formerly 659.525]

659A.215 Remedies not exclusive. The remedies provided for violations of ORS 659A.203 and 659A.218 under this chapter are in addition to any appeal proceeding available under ORS 240.560 for a state employee or under any comparable provisions for employees of political subdivisions. [Formerly 659.530]

659A.218 Disclosure of employee's name without consent prohibited. (1) The identity of the employee who discloses any of the following shall not be disclosed by a public employer without the written consent of the employee during any investigation of the information provided by the employee, relating to:

(a) Matters described in ORS 659A.203 (1)(b).

(b) Reports required by ORS 659A.212 (2).

(2) Violation of this section is an unlawful employment practice.

659A.221 Uniform application to all public employers; optional procedure for disclosures; rules. (1) The Bureau of Labor and Industries by rule shall ensure that the requirements of ORS 659A.200 to 659A.224 are applied uniformly to all public employers. Each public employer may adopt rules, consistent with Bureau of Labor and Industries rules, that apply to that public employer and that also implement ORS 659A.200 to 659A.224.

(2) A public employer may establish by rule an optional procedure whereby an employee who wishes to disclose information described in ORS 659A.203 (1)(b) may disclose information first to the supervisor, or if the supervisor is involved, to the

supervisor next higher, but the employer must protect the employee against retaliatory or disciplinary action by any supervisor for such disclosure.

659A.224 **Short title.** ORS 659A.200 to 659A.224 shall be known as the Whistleblower Law.

Pennsylvania

WHISTLEBLOWER LAW

§ 1421. Short title.

§ 1422. Definitions.

§ 1423. Protection of employees.

§ 1424. Remedies.

§ 1425. Enforcement.

§ 1426. Penalties.

§ 1427. Construction.

§ 1428. Notice.

§ 1421. Short title.

This act shall be known and may be cited as the Whistleblower Law.

§ 1422. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Appropriate authority."

A Federal, State or local government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the Office of the Attorney General, the Department of the Auditor General, the Treasury Department, the General Assembly and committees of the General Assembly having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

"Employee."

A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for a public body.

"Employer."

A person supervising one or more employees, including the employee in question; a superior of that supervisor; or an agent of a public body.

"Good faith report."

A report of conduct defined in this act as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

"Public body."

All of the following:

A state officer, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State government.

A county, city, township, regional governing body, council, school district, special district or municipal corporation, or a board, department, commission, council or agency.

Any other body which is created by Commonwealth or political subdivision authority or which is funded in any amount by or through Commonwealth or political subdivision authority or a member or employee of that body.

"Waste."

An employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth or political subdivision sources.

"Whistleblower."

A person who witnesses or has evidence of wrongdoing or waste while employed and who makes a good faith report of the wrongdoing or waste, verbally or in writing, to one of the person's superiors, to an agent of the employer or to an appropriate authority.

"Wrongdoing."

A violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

§ 1423. Protection of employees.

(a) **Persons not to be discharged.**-No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

(b) **Discrimination prohibited.**-No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

§ 1424. Remedies.

(a) **Civil action.**-A person who alleges a violation of this act may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

(b) **Necessary showing of evidence.**-An employee alleging a violation of this act must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee or a person acting on behalf of the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority.

(c) **Defense.**-It shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.

(d) **Civil service employees.**-An employee covered by civil service who contests a civil service action, believing it to be motivated by his having made a good faith report, verbally or in writing, of an instance of wrongdoing or waste, may submit as admissible evidence any or all material relating to the action as whistleblower and to the resulting alleged reprisal.

§ 1425. Enforcement.

A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

§ 1426. Penalties.

A person who, under color of an employer's authority, violates this act shall be liable for a civil fine of not more than \$500. Additionally, except where the person holds an elected public office, if the court specifically finds that the person, while in the employment of the Commonwealth or a political subdivision, committed a violation of this act with the intent to discourage the disclosure of criminal activity, the court may order the person's suspension from public service for not more than six months. A civil fine which is ordered under this section shall be paid to the State Treasurer for deposit into the General Fund.

§ 1427. Construction.

This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by an appropriate authority, or impair the rights of any person under a collective bargaining agreement.

§ 1428. Notice.

An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations under this act.

Rhode Island

The Rhode Island Whistleblowers' Protection Act SECTION 28-50-1

§ 28-50-1 Short title. – This chapter may be cited as the "Rhode Island Whistleblowers' Protection Act".

§ 28-50-2 Definitions. – As used in this chapter:

- (1) "Employee" means a person employed by any employer, and shall include, but not be limited to, at-will employees, contract employees and independent contractors.
- (2) "Employer" means any person, partnership, association, sole proprietorship, corporation or other business entity, including any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof in state or municipal government. One shall employ another if services are performed for wages or under any contract of hire, written or oral, express or implied.
- (3) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.
- (4) "Public body" means all of the following:
 - (i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
 - (ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.
 - (iii) A county, city, town, or regional governing body, a council, school district, or a board, department, commission, agency, or any member or employee of the entity.
 - (iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.
 - (v) A law enforcement agency or any member or employee of a law enforcement agency.
 - (vi) The judiciary and any member or employee of the judiciary.
 - (vii) Any federal agency.
- (5) "Supervisor" means any individual to whom an employer has given the authority to direct and control the work performance of the affected employee or any individual who has the authority to take corrective action regarding the violation of a law, rule or regulation about which the employee complains.

§ 28-50-3 Protection. – An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment:

- (1) Because the employee, or a person acting on behalf of the employee, reports or is about to report to a public body, verbally or in writing, a violation which the employee knows or reasonably believes has occurred or is about to occur, of a law or regulation or rule promulgated under the law of this state, a political subdivision of this state, or the

United States, unless the employee knows or has reason to know that the report is false, or

- (2) Because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action, or
- (3) Because an employee refuses to violate or assist in violating federal, state or local law, rule or regulation, or
- (4) Because the employee reports verbally or in writing to the employer or to the employee's supervisor a violation, which the employee knows or reasonably believes has occurred or is about to occur, of a law or regulation or rule promulgated under the laws of this state, a political subdivision of this state, or the United States, unless the employee knows or has reason to know that the report is false. Provided, that if the report is verbally made, the employee must establish by clear and convincing evidence that the report was made.

§ 28-50-4 Relief and damages. – (a) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, or both within three (3) years after the occurrence of the alleged violation of this chapter.

(b) An action commenced pursuant to subsection(a) of this section may be brought in the superior court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.

(c) As used in subsection (a) of this section, "damages" means damages for injury or loss caused by each violation of this chapter.

(d) An employee shall show by clear and convincing evidence that he or she or a person acting on his or her behalf was about to report to a public body, verbally or in writing, a violation, which the employee knew or reasonably believed had occurred or was about to occur, of a law of this state, a political subdivision of this state, or the United States.

§ 28-50-5 Reinstatement. – A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including attorneys' fees if the court determines that the award is appropriate.

§ 28-50-6 Collective bargaining. – This chapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

§ 28-50-7 Exemption. – This chapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with § 28-50-3.

§ 28-50-8 Notices posted. – An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this chapter.

§ 28-50-9 Severability. – If any provision of this chapter or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this chapter are declared to be severable.

South Carolina

EMPLOYMENT PROTECTION FOR REPORTS OF VIOLATIONS OF STATE OR FEDERAL LAW OR REGULATION

SECTION 8-27-10. Definitions.

For purposes of this chapter:

(1) "Public body" means a department of the State; a state board, commission, committee, agency, or authority; a public or governmental body or political subdivision of the State, including counties, municipalities, school districts, or special purpose or public service districts; an organization, corporation, or agency supported in whole or in part by public funds or expending public funds; or a quasi-governmental body of the State and its political subdivisions.

(2) "Employee" means an employee of a department of the State; a state board, commission, committee, agency, or authority; a public or governmental body or political subdivision of the State, including counties, municipalities, school districts, or special purpose or public service districts; an organization, corporation, or agency supported in whole or in part by public funds or expending public funds; or a quasi-governmental body of the State and its political subdivisions. "Employee" does not include those persons enumerated within the provisions of Section 8-17-370.

(3) "Appropriate authority" means, respectively, the public body that employs the person making the report; or a federal, state, or local governmental body, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or wrongdoing. If a report is made to an entity other than the public body employing the person making the report, the employing public body must be notified as soon as practicable by the entity that received the report. The term includes, but it is not limited to, the South Carolina Law Enforcement Division, the Solicitor's Office, the State Ethics Commission, the State Auditor, the Legislative Audit Council, and the Office of Attorney General.

(4) "Report" means a written document alleging waste or wrongdoing that contains the following information:

- (a) the date of disclosure;
- (b) the name of the employee making the report; and
- (c) the nature of the wrongdoing and the date or range of dates on which the wrongdoing allegedly occurred. A report must be made within sixty days of the date the reporting employee first learns of the alleged wrongdoing.

(5) "Wrongdoing" means action by a public body which results in substantial abuse, misuse, destruction, or loss of substantial public funds or public resources.

"Wrongdoing" also includes an allegation that a public employee has intentionally violated federal or state statutory law or regulations or other political subdivision ordinances or regulations or a code of ethics, which violation is not merely technical or of a minimum nature.

SECTION 8-27-20. No retaliation for filing report of wrongdoing; disciplinary action for unfounded or bad faith report or mere technical violation; reward for report resulting in savings; State Employee Suggestion Program not superseded.

(A) No public body may dismiss, suspend from employment, demote, or decrease the compensation of an employee of a public body because the employee files a report with an appropriate authority of wrongdoing. If the appropriate authority determines the employee's report is unfounded, or amounts to a mere technical violation, and is not made in good faith, the public body may take disciplinary action including termination. Any public body covered by this chapter may impose disciplinary sanctions, in accordance with its internal disciplinary procedures, against any of its direct line supervisory employees who retaliate against another employee for having filed a good faith report under this chapter.

(B) If the employee's report results in a saving of any public money from the abuses described in this chapter, twenty-five percent of the estimated net savings resulting from the first year of implementation of the employee's report, but not more than two thousand dollars, must be rewarded to the employee by the public body as determined by the State Budget and Control Board. This chapter does not supersede the State Employee Suggestion Program. For employees of state agencies participating in the program, items that they identify involving wrongdoing must be referred as a suggestion to the program by the employee. An employee is entitled to only one reward either under this section or under the program, at the employee's option.

SECTION 8-27-30. Civil action against employing public body for retaliation; remedies; exhaustion of remedies and other prerequisites; time in which to bring action.

(A) If an employee is dismissed, suspended from employment, demoted, or receives a decrease in compensation, within one year after having timely reported an alleged wrongdoing under this chapter, the employee may institute a nonjury civil action against the employing public body for (1) reinstatement to his former position; (2) lost wages; (3) actual damages not to exceed fifteen thousand dollars; and (4) reasonable attorney fees as determined by the court, but this award of attorney fees may not exceed ten thousand dollars for any trial and five thousand dollars for any appeal. The action must be brought in the court of common pleas of the county in which the employment action occurred. No action may be brought under this chapter unless (1) the employee has exhausted all available grievance or other administrative remedies; and (2) any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of alleged wrongdoing.

(B) An action under this chapter must be commenced within one year after the accrual of the cause of action or exhaustion of all available grievance or other administrative and judicial remedies or is forever barred.

SECTION 8-27-40. Dismissal, suspension, demotion or decrease in compensation for independent cause permitted.

Notwithstanding the filing of a report pursuant to this chapter, a public body may dismiss, suspend, demote, or decrease the compensation of an employee for causes independent of the filing of a protected report as described in Section 8-27-20.

South Dakota

3-6A-2. Definition of terms. Terms as used in this chapter, unless the context otherwise requires, mean:

- (1) "Appointing authority," department secretaries, bureau commissioners, division directors, and heads of the several state institutions;
- (2) "Commission," the Career Service Commission;
- (3) "Bureau," a major subdivision of the Department of Executive Management;
- (4) "Bureau commissioner," the head of a bureau;
- (5) "Career service," positions in the executive branch of state government to which this chapter applies;
- (6) "Career service employee," an employee covered by the provisions of this chapter;
- (7) "Class of positions," all career service positions which are sufficiently similar in kind or subject matter of work performed, level of difficulty and responsibility, and qualification requirements to warrant similar treatment in personnel and pay administration;
- (8) "Department secretary," an individual appointed by and serving at the pleasure of the Governor to administer one of the major departments of state government;
- (9) "Deputy," an individual who serves as first assistant to, and at the pleasure of, a department secretary, bureau commissioner, or division director where allowed by law;
- (10) "Division director," an individual appointed by and serving at the pleasure of the department secretary to administer a division within a major department of state government;
- (11) "Eligible applicant," a position applicant who meets the minimum qualification requirements for a respective position;
- (12) "Employee," any employee working in the executive branch of state government, paid by the State of South Dakota, or remunerated by other funds raised, appropriated or otherwise generated by the state;
- (13) "Personnel commissioner," the commissioner of the Bureau of Personnel;
- (14) "Position," a collection of duties and responsibilities assigned by the appointing authority to one individual.

3-6A-52. Grievance for retaliation against whistle blower. 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.

27B-8-43. Retaliation against whistle-blower forbidden--Definition. No agency, community service provider, facility, or school may retaliate against any staff who reports in good faith suspected abuse, neglect, or exploitation, or against any person with a developmental disability with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation. There is a rebuttable presumption of retaliation for any adverse actions taken within ninety days of a report of

abuse, neglect, or exploitation.

Adverse action means only those adverse actions arising solely from the filing of an abuse report. For the purposes of this chapter, adverse action means any action taken by a community service provider or facility against the person making the report or against the person with a developmental disability because of the report and includes:

- (1) Discharge or transfer from the community service provider or facility except for clinical reasons;
- (2) Discharge from or termination of employment;
- (3) Demotion or reduction in remuneration for services; or
- (4) Restriction or prohibition of access to services and supports or the persons served.

Tennessee

8-50-603. Discipline or discrimination for communication prohibited - Damages.

- (a) It is unlawful for any public employer to discipline, threaten to discipline or otherwise discriminate against an employee because such employee exercised that employee's right to communicate with an elected public official.
- (b) If the court of competent jurisdiction determines that a public employer has disciplined, threatened to discipline or otherwise discriminated against an employee because such employee exercised the rights provided by this part, such employee shall be entitled to treble damages plus reasonable attorney fees

50-1-304. Discharge for refusal to participate in or remain silent about illegal activities, or for legal use of agricultural product - Damages - Frivolous lawsuits.

- (a) No employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities.
- (b) In addition to all employees in private employment, the provisions of this section 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.
- (c) As used in this section, "illegal activities" means activities that are in violation of the criminal or civil code of this state or the United States or any regulation intended to protect the public health, safety or welfare.
- (d)
 - (1) Any employee terminated in violation of subsection (a) shall have a cause of action against the employer for retaliatory discharge and any other damages to which the employee may be entitled.
 - (2) Any employee terminated in violation of subsection (a) solely for refusing to participate in, or for refusing to remain silent about, illegal activities who prevails in a cause of action against an employer for retaliatory discharge for such actions shall be entitled to recover reasonable attorney fees and costs.
- (e)
 - (1) No employee shall be discharged or terminated solely for participating or engaging in the use of an agricultural product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law, if such employee participates or engages in such use in a manner that complies with all applicable employer policies regarding such use during times at which such employee is working.
 - (2) No employee shall be discharged or terminated solely for participating or engaging in the use of such product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law if such employee participates or engages in such activity during times when such employee is not working.
- (f)
 - (1) This section shall not be used for frivolous lawsuits, and anyone trying to do so is subject to sanction as provided in subdivision (f)(2).
 - (2) If any employee files a cause of action 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 upon 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 fee.

(g) As used in this section:

(1) "Employee" includes an employee of the state, or any municipality, county, department, board, commission, agency, instrumentality, political subdivision or any other entity thereof; and

(2) "Employer" includes also the state, or any municipality, county, department, board, commission, agency, instrumentality, political subdivision or any other entity thereof.

Texas

CHAPTER 554. PROTECTION FOR REPORTING VIOLATIONS OF LAW

§ 554.001. DEFINITIONS. In this chapter:

- (1) "Law" means:
 - (A) a state or federal statute;
 - (B) an ordinance of a local governmental entity; or
 - (C) a rule adopted under a statute or ordinance.
- (2) "Local governmental entity " means a political subdivision of the state, including a:
 - (A) county;
 - (B) municipality;
 - (C) public school district; or
 - (D) special-purpose district or authority.
- (3) "Personnel action" means an action that affects a public employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation.
- (4) "Public employee" means an employee or appointed officer other than an independent contractor who is paid to perform services for a state or local governmental entity.
- (5) "State governmental entity " means:
 - (A) a board, commission, department, office, or other agency in the executive branch of state government, created under the constitution or a statute of the state, including an institution of higher education, as defined by Section 61.003, Education Code;
 - (B) the legislature or a legislative agency; or
 - (C) the Texas Supreme Court, the Texas Court of Criminal Appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

§ 554.002. RETALIATION PROHIBITED FOR REPORTING VIOLATION

OF LAW. (a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority.

(b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

- (1) regulate under or enforce the law alleged to be violated in the report;
- or
- (2) investigate or prosecute a violation of criminal law.

§ 554.003. RELIEF AVAILABLE TO PUBLIC EMPLOYEE. (a) A public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Section 554.002 is entitled to sue for:

- (1) injunctive relief;
- (2) actual damages;
- (3) court costs; and
- (4) reasonable attorney fees.

(b) In addition to relief under Subsection (a), a public employee whose employment is suspended or terminated in violation of this chapter is entitled to:

- (1) reinstatement to the employee's former position or an equivalent position;
- (2) compensation for wages lost during the period of suspension or termination;
- and
- (3) reinstatement of fringe benefits and seniority rights lost because of the suspension or termination.

(c) In a suit under this chapter against an employing state or local governmental entity, a public employee may not recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount that exceeds:

- (1) \$50,000, if the employing state or local governmental entity has fewer than 101 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;
- (2) \$100,000, if the employing state or local governmental entity has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;
- (3) \$200,000, if the employing state or local governmental entity has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year; and
- (4) \$250,000, if the employing state or local governmental entity has more than 500 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year.

(d) If more than one subdivision of Subsection (c) applies to an employing state or local governmental entity, the amount of monetary damages that may be recovered from the entity in a suit brought under this chapter is governed by the applicable provision that provides the highest damage award.

§ 554.0035. WAIVER OF IMMUNITY. A public employee who alleges a violation of this chapter may sue the employing state or local governmental entity for the relief provided by this chapter. Sovereign immunity is waived and abolished to the extent of liability for the relief allowed under this chapter for a violation of this chapter.

§ 554.004. BURDEN OF PROOF; PRESUMPTION; AFFIRMATIVE

DEFENSE. (a) A public employee who sues under this chapter has the burden of proof, except that if the suspension or termination of, or adverse personnel action against, a public employee occurs not later than the 90th day after the date on which the employee reports a violation of law, the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.

(b) It is an affirmative defense to a suit under this chapter that the employing state or local governmental entity would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under this chapter of a violation of law.

§ 554.005. LIMITATION PERIOD. Except as provided by Section 554.006, a public employee who seeks relief under this chapter must sue not later than the 90th day after the date on which the alleged violation of this chapter:

- (1) occurred; or
- (2) was discovered by the employee through reasonable diligence.

§ 554.006. USE OF GRIEVANCE OR APPEAL PROCEDURES. (a) A public employee must initiate action under the grievance or appeal procedures of the employing state or local governmental entity relating to suspension or termination of employment or adverse personnel action before suing under this chapter.

(b) The employee must invoke the applicable grievance or appeal procedures not later than the 90th day after the date on which the alleged violation of this chapter:

- (1) occurred; or
- (2) was discovered by the employee through reasonable diligence.

(c) Time used by the employee in acting under the grievance or appeal procedures is excluded, except as provided by Subsection (d), from the period established by Section 554.005.

(d) If a final decision is not rendered before the 61st day after the date procedures are initiated under Subsection (a), the employee may elect to:

(1) exhaust the applicable procedures under Subsection (a), in which event the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under this chapter; or

(2) terminate procedures under Subsection (a), in which event the employee must sue within the time remaining under Section 554.005 to obtain relief under this chapter.

§ 554.007. WHERE SUIT BROUGHT. (a) A public employee of a state governmental entity may sue under this chapter in a district court of the county in which the cause of action arises or in a district court of Travis County.

(b) A public employee of a local governmental entity may sue under this chapter in a district court of the county in which the cause of action arises or in a district court of any county in the same geographic area that has established with the county in which the cause of action arises a council of governments or other regional commission under Chapter 391, Local Government Code.

§ 554.008. CIVIL PENALTY. (a) A supervisor who in violation of this chapter suspends or terminates the employment of a public employee or takes an adverse personnel action against the employee is liable for a civil penalty not to exceed \$15,000.

(b) The attorney general or appropriate prosecuting attorney may sue to collect a civil penalty under this section.

(c) A civil penalty collected under this section shall be deposited in the state treasury.

(d) A civil penalty assessed under this section shall be paid by the supervisor and may not be paid by the employing governmental entity.

(e) The personal liability of a supervisor or other individual under this chapter is limited to the civil penalty that may be assessed under this section.

§ 554.009. NOTICE TO EMPLOYEES. (a) A state or local governmental entity shall inform its employees of their rights under this chapter by posting a sign in a prominent location in the workplace.

(b) The attorney general shall prescribe the design and content of the sign required by this section.

§ 554.010. AUDIT OF STATE GOVERNMENTAL ENTITY AFTER

SUIT. (a) At the conclusion of a suit that is brought under this chapter against a state governmental entity subject to audit under Section 321.013 and in which the entity is required to pay \$10,000 or more under the terms of a settlement agreement or final judgment, the attorney general shall provide to the state auditor's office a brief memorandum describing the facts and disposition of the suit.

(b) Not later than the 90th day after the date on which the state auditor's office receives the memorandum required by Subsection (a), the auditor may audit or investigate the state governmental entity to determine any changes necessary to correct the problems that gave rise to the whistleblower suit and shall recommend such changes to the Legislative Audit Committee, the Legislative Budget Board, and the governing board or chief executive officer of the entity involved. In conducting the audit or investigation, the auditor shall have access to all records pertaining to the suit.

Utah

67-21-1. **Short title.**

This chapter is known as the "Utah Protection of Public Employees Act."

67-21-2. **Definitions.**

As used in this chapter:

- (1) "Adverse action" means to discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.
- (2) "Communicate" means a verbal, written, broadcast, or other communicated report.
- (3) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied.
- (4) (a) "Employer" means the employing state agency or political subdivision of the state.
(b) "Employer" includes an agent of an employer.
- (5) "Public body" means any of the following:
 - (a) a state officer, employee, agency, department, division, bureau, board, commission, council, authority, educational institution, or any other body in the executive branch of state government;
 - (b) an agency, board, commission, council, institution member, or employee of the legislative branch of state government;
 - (c) a county, city, town, regional governing body, council, school district, special district, or municipal corporation, board, department, commission, council, agency, or any member or employee of them;
 - (d) any other body that is created by state or local authority, or that is primarily funded by or through state or local authority, or any member or employee of that body;
 - (e) a law enforcement agency or any member or employee of a law enforcement agency; and
 - (f) the judiciary and any member or employee of the judiciary.

67-21-3. **Reporting of governmental waste or violations of law -- Employer action -- Exceptions.**

- (1) (a) An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or any recognized entity of the United States.
(b) For purposes of Subsection (a), an employee is presumed to have communicated in good faith if he gives written notice or otherwise formally communicates the waste, violation, or reasonable suspicion to the state auditor. This presumption may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false, or frivolous.
- (2) An employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court

proceeding, legislative or other inquiry, or other form of administrative review held by the public body.

(3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law of this state, a political subdivision of this state, or the United States, or a rule or regulation adopted under the authority of the laws of this state, a political subdivision of this state, or the United States.

(4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of any laws, rules, or regulations.

67-21-4. Remedies for employee bringing action -- Proof required.

(1) As used in this section, "damages" means damages for injury or loss caused by each violation of this chapter.

(2) An employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within 180 days after the occurrence of the alleged violation of this chapter.

(3) An action begun under this section may be brought in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(4) To prevail in an action brought under the authority of this section, the employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on his behalf engaged or intended to engage in an activity protected under Section **67-21-3**.

67-21-5. Court orders for violation of chapter.

(1) A court, in rendering a judgment in an action brought under this chapter, may order reinstatement of the employee at the same level, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies.

(2) A court shall also award the complainant all or a portion of the costs of litigation, which are defined to include reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

67-21-6. Civil fine.

(1) A person who violates this chapter is liable for a civil fine of not more than \$500.

(2) A civil fine which is ordered under this chapter shall be submitted to the state treasurer for deposit in the General Fund.

67-21-7. No impairment of employee rights under collective bargaining agreement.

This chapter shall not be construed to diminish or impair the rights of an employee under any collective bargaining agreement.

67-21-8. No compensation when participation in public inquiry.

This chapter shall not be construed to require an employer to compensate an employee

for participation in an investigation, hearing, or inquiry held by a public body in accordance with Section **67-21-3**.

67-21-9. Notice of contents of this chapter -- Posting.

An employer shall post notices and use other appropriate means to keep employees informed of their protections and obligations under this chapter.

Vermont

§ 507. Whistleblower protection; health care employees; prohibitions; hearing; notice.

(a) For the purposes of this subchapter:

(1) The "American Nurses Credentialing Center (ANCC)" means the national organization that developed the Magnet Recognition Program. The Magnet Recognition Program recognizes excellence in nursing services and is based on quality indicators and standards of nursing practice as defined in the American Nurses Association's Scope and Standards for Nurse Administrators. The ANCC has the authority to designate "Magnet" status to hospitals that have demonstrated their current and ongoing commitment to excellence in nursing practice.

(2) "Employee" means any person who performs services for wages or other remuneration under the control and direction of any public or private employer.

(3) "Employer" means:

(A) a hospital as defined in subdivision 1902(1) of Title 18; or

(B) a nursing home as defined in subdivision 7102(7) of Title 33.

(4) "Improper quality of patient care" means any practice, procedure, action, or failure to act of an employee or employer that violates any provisions of the Nurse Practice Act, codes of ethics, hospital policies, or any other established standards of care related to public or patient health or safety.

(5) "Law" means any law, rule or regulation duly enacted or adopted by this state, a political subdivision of this state, or the United States.

(6) "Public body" means (A) the United States Congress, any state legislature or any popularly elected local government body, or any member or employee thereof; (B) any federal, state, or local judiciary, or any member or employee thereof, or any jury; (C) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; (D) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer; or (E) any division, board, bureau, office, committee, or commission of any of the public bodies described in this subdivision.

(7) "Retaliatory action" means discharge, threat, suspension, demotion, denial of promotion, discrimination, or other adverse employment action regarding the employee's compensation, terms, conditions, location, or privileges of employment.

(8) "Supervisor" means any person who has the authority to direct and control the work performance of an employee.

(b) No employer shall take retaliatory action against any employee because the employee does any of the following:

(1) Discloses or threatens to disclose to any person or entity any activity, policy, practice, procedure, action, or failure to act of the employer or agent of the employer that the employee reasonably believes is a violation of any law or that the employee reasonably believes constitutes improper quality of patient care.

(2) Provides information to, or testifies before, any public body conducting an investigation, a hearing, or an inquiry that involves allegations that the employer

has violated any law or has engaged in behavior constituting improper quality of patient care.

(3) Objects to or refuses to participate in any activity, policy, or practice of the employer or agent that the employee reasonably believes is in violation of a law or constitutes improper quality of patient care.

(c) Subdivisions (b)(1) and (3) of this section shall not apply unless an employee first reports the alleged violation of law or improper quality of patient care to the employer, supervisor, or other person designated by the employer to address reports by employees of improper quality of patient care, and the employer has had a reasonable opportunity to address the violation. The employer shall address the violation under its compliance plan, if one exists. The employee shall not be required to make a report under this subsection if the employee reasonably believes that doing so would be futile because making the report would not result in appropriate action to address the violation.

(d) Nothing in this subchapter shall be deemed to diminish the rights, privileges, or remedies of any employee under any law or under any collective bargaining agreement or employment contract.

§ 508. Enforcement.

(a) An employee aggrieved by a violation of this subdivision may:

- (1) utilize any available internal process, grievance procedure, or similar process available to the employee to maintain or restore any loss of employment rights with the employer; or
- (2) bring an action in the superior court of the county in which the violation is alleged to have occurred.

(b) The initiation or completion of an internal process, grievance procedure, or similar process under subdivision (a)(1) of this section shall not be a condition precedent to bringing an action in superior court under subdivision (a)(2) of this section.

(c) No later than July 1, 2005, all hospitals as defined in subdivision 1902(1) of Title 18 shall revise their internal processes referred to in subdivision (a)(1) to include and be consistent with ANCC Magnet Recognition Program standards that support the improvement of quality patient care and professional nursing practice.

(d) If the court finds that the employer has violated subsection 507(b) of this title, the court shall order, as appropriate:

- (1) reinstatement of the employee, including employment benefits, seniority, and same or equivalent position, shift schedule, or hours worked as the employee had before the retaliatory action;
- (2) payment of back pay, lost wages, benefits, and other remuneration;
- (3) any appropriate injunctive relief;
- (4) compensatory damages;
- (5) punitive damages;
- (6) attorney fees; or
- (7) and other appropriate relief.

§ 509. Notice.

(a) No later than December 1, 2004, the commissioner of labor and industry shall develop and distribute to each employer a standard notice as provided in this section. Each notice shall be in clear and understandable language and shall include:

(1) a summary of this subchapter;

(2) that an employee, in order to receive the protections of this subchapter, must report, pursuant to subsection 507(c) of this title, to the employer, to the supervisor, or to the person designated to receive notifications; and

(3) a space for the name, title, and contact information of the person to whom the employee must make a report under subsection 507(c) of this title.

(b) No later than January 1, 2005, each employer shall post the notice in the employer's place of business to inform the employees of their protections and obligations under this subchapter. The employer shall post the notice in a prominent and accessible location in the workplace. The employer shall indicate on the notice the name or title of the individual the employer has designated to receive notifications pursuant to subsection 507(c) of this title.

(c) An employer who violates this section by not posting the notice as required is liable for a civil fine of \$100.00 for each day of willful violation.

Virginia

§ 40.1-51.2:1. Discrimination against employee for exercising rights prohibited.

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.

§ 40.1-51.2:2. Remedy for discrimination.

A. Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of § 40.1-51.2:1 may, within 60 days after such violation occurs, file a complaint with the Commissioner alleging such discharge or discrimination. The employee shall be prohibited from seeking relief under this section if he fails to file such complaint within the 60-day time period. Upon receipt of such complaint, the Commissioner shall cause such investigation to be made as he deems appropriate. If, upon such investigation, he determines that the provisions of § 40.1-51.2:1 have been violated, he shall attempt by conciliation to have the violation abated without economic loss to the employee. In the event a voluntary agreement cannot be obtained, the Commissioner shall bring an action in a circuit court having jurisdiction over the person charged with the violation. The court shall have jurisdiction, for cause shown, to restrain violations and order appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay plus interest at a rate not to exceed eight percent per annum.

B. Should the Commissioner, based on the results of his investigation of the complaint, refuse to issue a charge against the person that allegedly discriminated against the employee, the employee may bring action in a circuit court having jurisdiction over the person allegedly discriminating against the employee, for appropriate relief.

§ 54.1-515. Employer discrimination; penalty.

Any employer who discriminates against or otherwise penalizes an employee who complains to or cooperates with the Board or any other governmental agency in administering this chapter is subject to the penalties in § 54.1-517.

§ 63.2-1730. Retaliation or discrimination against complainants.

No assisted living facility, adult day care center or child welfare agency may retaliate or discriminate in any manner against any person who (i) in good faith complains or provides information to, or otherwise cooperates with, the Department or any other agency of government or any person or entity operating under contract with an agency of government, having responsibility for protecting the rights of residents of assisted living facilities, participants in adult day care centers or children in child welfare agencies, (ii) attempts to assert any right protected by state or federal law, or (iii) assists any person in asserting such right.

Washington

RCW 4.24.500

Good faith communication to government agency — Legislative findings — Purpose.

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

RCW 4.24.510

Communication to government agency or self-regulatory organization — Immunity from civil liability.

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

RCW 4.24.520

Good faith communication to government agency — When agency or attorney general may defend against lawsuit — Costs and fees.

In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under RCW 4.24.510 may intervene in and defend against any suit precipitated by the communication to the agency. In the event that a local governmental agency does not intervene in and defend against a suit arising from any communication protected under chapter 234, Laws of 1989, the office of the attorney general may intervene in and defend against the suit. An agency prevailing upon the defense provided for in RCW 4.24.510 shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish the defense provided for in RCW 4.24.510, the party bringing the action shall be entitled to recover from the agency costs and reasonable attorney's fees incurred in proving the defense inapplicable or invalid.

42.40.010

Policy.

It is the policy of the legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures. It is also the policy of the legislature that employees should be encouraged to identify rules warranting review or provide information to the rules review committee, and it is the intent of the legislature to protect the rights of these employees. [1995 c 403 § 508; 1982 c 208 § 1.]

42.40.020

Definitions.

As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

- (1) "Auditor" means the office of the state auditor.
- (2) "Employee" means any individual employed or holding office in any department or agency of state government.
- (3) "Good faith" means a reasonable basis in fact for the communication. "Good faith" is lacking when the employee knows or reasonably ought to know that the report is malicious, false, or frivolous.
- (4) "Gross waste of funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- (5) (a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:
 - (i) Which is [a] gross waste of public funds or resources as defined in this section;
 - (ii) Which is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature; or
 - (iii) Which is of substantial and specific danger to the public health or safety.
- (b) "Improper governmental action" does not include personnel actions, for which other remedies exist, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any action which may be taken under chapter 41.06 RCW, or other disciplinary action except as provided in RCW 42.40.030.
- (6) "Substantial and specific danger" means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.
- (7) "Use of official authority or influence" includes taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation, or any adverse action under chapter 41.06 RCW, or other disciplinary action.

(8) "Whistleblower" means an employee who in good faith reports alleged improper governmental action to the auditor, initiating an investigation under RCW 42.40.040. For purposes of the provisions of this chapter and chapter 49.60 RCW relating to reprisals and retaliatory action, the term "whistleblower" also means: (a) An employee who in good faith provides information to the auditor in connection with an investigation under RCW 42.40.040 and an employee who is believed to have reported asserted improper governmental action to the auditor or to have provided information to the auditor in connection with an investigation under RCW 42.40.040 but who, in fact, has not reported such action or provided such information; or (b) an employee who in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so.

42.40.030

Right to disclose improper governmental actions — Interference prohibited.

(1) An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to: (a) Disclose to the auditor (or representative thereof) information concerning improper governmental action; or (b) identify rules warranting review or provide information to the rules review committee.

(2) Nothing in this section authorizes an individual to disclose information otherwise prohibited by law.

42.40.035

Duty of correctness — Penalties for false information.

An employee must make a reasonable attempt to ascertain the correctness of the information furnished and may be subject to disciplinary actions, including, but not limited to, suspension or termination, for knowingly furnishing false information as determined by the employee's appointing authority.

42.40.040

Report of improper governmental action — Investigations and reports by auditor, agency.

- (1) (a) In order to be investigated, an assertion of improper governmental action must be provided to the auditor within one year after the occurrence of the asserted improper governmental action.
- (b) The auditor has the authority to determine whether to investigate any assertions received. In determining whether to conduct either a preliminary or further investigation, the auditor shall consider factors including, but not limited to: The nature and quality of evidence and the existence of relevant laws and rules; whether the action was isolated or systematic; the history of previous assertions regarding the same subject or subjects or subject matter; whether other avenues are available for addressing the matter; whether the matter has already been investigated or is in litigation; the seriousness or significance of the

asserted improper governmental action; and the cost and benefit of the investigation. The auditor has the sole discretion to determine the priority and weight given to these and other relevant factors and to decide whether a matter is to be investigated. The auditor shall document the factors considered and the analysis applied.

(c) The auditor also has the authority to investigate assertions of improper governmental actions as part of an audit conducted under chapter 43.09 RCW. The auditor shall document the reasons for handling the matter as part of such an audit.

(2) Subject to subsection (5)(c) of this section, the identity of a whistleblower is confidential at all times unless the whistleblower consents to disclosure by written waiver or by acknowledging his or her identity in a claim against the state for retaliation.

(3) Upon receiving specific information that an employee has engaged in improper governmental action, the auditor shall, within five working days of receipt of the information, mail written acknowledgement to the whistleblower at the address provided stating whether a preliminary investigation will be conducted. For a period not to exceed thirty working days from receipt of the assertion, the auditor shall conduct such preliminary investigation of the matter as the auditor deems appropriate.

(4) In addition to the authority under subsection (3) of this section, the auditor may, on its own initiative, investigate incidents of improper state governmental action.

(5) (a) If it appears to the auditor, upon completion of the preliminary investigation, that the matter is so unsubstantiated that no further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the whistleblower.

(b) The written notification shall contain a summary of the information received and of the results of the preliminary investigation with regard to each assertion of improper governmental action.

(c) In any case to which this section applies, the identity of the whistleblower shall be kept confidential unless the auditor determines that the information has been provided other than in good faith.

(d) With the agency's consent, the auditor may forward the assertions to an appropriate agency to investigate and report back to the auditor no later than sixty working days after the assertions are received from the auditor. The auditor is entitled to all investigative records resulting from such a referral. All procedural and confidentiality provisions of this chapter apply to investigations conducted under this subsection. The auditor shall document the reasons the assertions were referred.

(6) During the preliminary investigation, the auditor shall provide written notification of the nature of the assertions to the subject or subjects of the investigation and the agency head. The notification shall include the relevant facts and laws known at the time and the procedure for the subject or subjects of the investigation and the agency head to respond to the assertions and information obtained during the investigation. This notification does not limit the auditor from considering additional facts or laws which become known during further investigation.

(7) (a) If it appears to the auditor after completion of the preliminary investigation that further investigation, prosecution, or administrative action is warranted, the

auditor shall so notify the whistleblower, the subject or subjects of the investigation, and the agency head and either conduct a further investigation or issue a report under subsection (10) of this section.

(b) If the preliminary investigation resulted from an anonymous assertion, a decision to conduct further investigation shall be subject to review by a three-person panel convened as necessary by the auditor prior to the commencement of any additional investigation. The panel shall include a state auditor representative knowledgeable of the subject agency operations, a citizen volunteer, and a representative of the attorney general's office. This group shall be briefed on the preliminary investigation and shall recommend whether the auditor should proceed with further investigation.

(c) If further investigation is to occur, the auditor shall provide written notification of the nature of the assertions to the subject or subjects of the investigation and the agency head. The notification shall include the relevant facts known at the time and the procedure to be used by the subject or subjects of the investigation and the agency head to respond to the assertions and information obtained during the investigation.

(8) Within sixty working days after the preliminary investigation period in subsection (3) of this section, the auditor shall complete the investigation and report its findings to the whistleblower unless written justification for the delay is furnished to the whistleblower, agency head, and subject or subjects of the investigation. In all such cases, the report of the auditor's investigation and findings shall be sent to the whistleblower within one year after the information was filed under subsection (3) of this section.

(9) (a) At any stage of an investigation under this section the auditor may require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the investigation at any designated place in the state. The auditor may issue subpoenas, administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the superior court for the county in which the person to whom the subpoena is addressed resides or is served may issue an order requiring the person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The auditor may order the taking of depositions at any stage of a proceeding or investigation under this chapter. Depositions shall be taken before an individual designated by the auditor and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(c) Agencies shall cooperate fully in the investigation and shall take appropriate action to preclude the destruction of any evidence during the course of the investigation.

(d) During the investigation the auditor shall interview each subject of the investigation. If it is determined there is reasonable cause to believe improper governmental action has occurred, the subject or subjects and the agency head shall be given fifteen working days to respond to the assertions prior to the issuance of the final report.

- (10) (a) If the auditor determines there is reasonable cause to believe an employee has engaged in improper governmental action, the auditor shall report the nature and details of the activity to:
- (i) The subject or subjects of the investigation and the head of the employing agency; and
 - (ii) If appropriate, the attorney general or such other authority as the auditor determines appropriate.
- (b) The auditor has no enforcement power except that in any case in which the auditor submits an investigative report containing reasonable cause determinations to the agency, the agency shall send its plan for resolution to the auditor within fifteen working days of having received the report. The agency is encouraged to consult with the subject or subjects of the investigation in establishing the resolution plan. The auditor may require periodic reports of agency action until all resolution has occurred. If the auditor determines that appropriate action has not been taken, the auditor shall report the determination to the governor and to the legislature and may include this determination in the agency audit under chapter 43.09 RCW.
- (11) Once the auditor concludes that appropriate action has been taken to resolve the matter, the auditor shall so notify the whistleblower, the agency head, and the subject or subjects of the investigation. If the resolution takes more than one year, the auditor shall provide annual notification of its status to the whistleblower, agency head, and subject or subjects of the investigation.
- (12) This section does not limit any authority conferred upon the attorney general or any other agency of government to investigate any matter.

42.40.050 Retaliatory action against whistleblower — Remedies.

- (1) Any person who is a whistleblower, as defined in RCW 42.40.020, and who has been subjected to workplace reprisal or retaliatory action is presumed to have established a cause of action for the remedies provided under chapter 49.60 RCW. For the purpose of this section "reprisal or retaliatory action" means but is not limited to any of the following:
- (a) Denial of adequate staff to perform duties;
 - (b) Frequent staff changes;
 - (c) Frequent and undesirable office changes;
 - (d) Refusal to assign meaningful work;
 - (e) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
 - (f) Demotion;
 - (g) Reduction in pay;
 - (h) Denial of promotion;
 - (i) Suspension;
 - (j) Dismissal;
 - (k) Denial of employment;
 - (l) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; and
 - (m) A change in the physical location of the employee's workplace or a change in

the basic nature of the employee's job, if either are in opposition to the employee's expressed wish.

(2) The agency presumed to have taken retaliatory action under subsection (1) of this section may rebut that presumption by proving by a preponderance of the evidence that the agency action or actions were justified by reasons unrelated to the employee's status as a whistleblower.

(3) Nothing in this section prohibits an agency from making any decision exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. However, the agency also shall implement any order under chapter 49.60 RCW (other than an order of suspension if the agency has terminated the retaliator).

42.40.070 Summary of chapter available to employees.

A written summary of this chapter and procedures for reporting improper governmental actions established by the auditor's office shall be made available by each department or agency of state government to each employee upon entering public employment. Employees shall be notified by each department or agency of state government each year of the procedures and protections under this chapter.

42.40.080 Contracting for assistance.

The auditor has the authority to contract for any assistance necessary to carry out the provisions of this chapter.

42.40.090 Administrative costs.

The cost of administering this chapter is funded through the auditing services revolving account created in RCW 43.09.410.

42.40.100 Assertions against auditor.

A whistleblower wishing to provide information under this chapter regarding asserted improper governmental action against the state auditor or an employee of that office shall provide the information to the attorney general who shall act in place of the auditor in investigating and reporting the matter.

RCW 49.60.210 Unfair practices — Discrimination against person opposing unfair practice — Retaliation against whistleblower.

(1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW.

RCW 70.124.100 Retaliation against whistleblowers and residents — Remedies — Rules.

(1) An employee who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies

provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department about suspected abuse, neglect, financial exploitation, or abandonment by any person in a state hospital may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2) (a) An attempt to discharge a resident from a state hospital or any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint substantiated by the department has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a functional assessment conducted by the department that shows that the resident's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or employee of a state hospital or any person licensed under Title 18 RCW, who in good faith reports alleged abuse, neglect, financial exploitation, or abandonment to the department or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a state hospital from exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a state hospital from: (a) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (b) for facilities with six or fewer residents, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases where a whistleblower has been terminated or had hours of employment reduced due to the inability of a facility to meet payroll.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6) No resident who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected, nor shall anything in this chapter be construed to authorize, permit, or require medical treatment contrary to the stated or clearly implied objection of such a person.

(7) The department shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes.

West Virginia

§6C-1-3. Discriminatory and retaliatory actions against whistle-blowers prohibited.

(a) No employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee, acting on his own volition, or a person acting on behalf of or under the direction of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

(b) No employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

Wisconsin

230.80 Definitions. In this subchapter:

- (1) "Abuse of authority" means an arbitrary or capricious exercise of power.
- (1m) "Appointing authority" means the chief officer of any governmental unit unless another person is authorized to appoint subordinate staff by the constitution or any law.
- (2) "Disciplinary action" means any action taken with respect to an employee which has the effect, in whole or in part, of a penalty, including but not limited to any of the following:
 - (a) Dismissal, demotion, transfer, removal of any duty assigned to the employee's position, refusal to restore, suspension, reprimand, verbal or physical harassment or reduction in base pay.
 - (b) Denial of education or training, if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation or other personnel action.
 - (c) Reassignment.
 - (d) Failure to increase base pay, except with respect to the determination of a discretionary performance award.
- (3) "Employee" means any person employed by any governmental unit except:
 - (a) A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.
 - (b) A person who is, or whose immediate supervisor is, assigned to an executive salary group or university senior executive salary group under s. 20.923.
- (4) "Governmental unit" means any association, authority, board, commission, department, independent agency, institution, office, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor, and the courts, but excluding the Health Insurance Risk-Sharing Plan Authority. "Governmental unit" does not mean any political subdivision of the state or body within one or more political subdivisions that is created by law or by action of one or more political subdivisions.
- (5) "Information" means information gained by the employee which the employee reasonably believes demonstrates:
 - (a) A violation of any state or federal law, rule or regulation.
 - (b) Mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health and safety.
- (6) "Merit further investigation" means reasonably indicates the existence of a situation justifying inquiry.
- (7) "Mismanagement" means a pattern of incompetent management actions which are wrongful, negligent or arbitrary and capricious and which adversely affect the efficient accomplishment of an agency function. "Mismanagement" does not mean the mere failure to act in accordance with a particular opinion regarding management techniques.
- (8) "Retaliatory action" means a disciplinary action taken because of any of the following:
 - (a) The employee lawfully disclosed information under s. 230.81 or filed a complaint under s. 230.85 (1).
 - (b) The employee testified or assisted or will testify or assist in any action or

proceeding relating to the lawful disclosure of information under s. 230.81 by another employee.

(c) The appointing authority, agent of an appointing authority or supervisor believes the employee engaged in any activity described in par. (a) or (b).

(9) "Substantial waste of public funds" means an unnecessary expenditure of a substantial amount of money or a series of unnecessary expenditures of smaller amounts of money.

230.81 Employee disclosure.

(1) An employee with knowledge of information the disclosure of which is not expressly prohibited by state or federal law, rule or regulation may disclose that information to any other person. However, to obtain protection under s. 230.83, before disclosing that information to any person other than his or her attorney, collective bargaining representative or legislator, the employee shall do either of the following:

(a) Disclose the information in writing to the employee's supervisor.

(b) After asking the division of equal rights which governmental unit is appropriate to receive the information, disclose the information in writing only to the governmental unit that the division of equal rights determines is appropriate. The division of equal rights may not designate the department of justice, the courts, the legislature or a service agency under subch. IV of ch. 13 as an appropriate governmental unit to receive information. Each appropriate governmental unit shall designate an employee to receive information under this section.

(2) Nothing in this section prohibits an employee from disclosing information to an appropriate law enforcement agency, a state or federal district attorney in whose jurisdiction the crime is alleged to have occurred, a state or federal grand jury or a judge in a proceeding commenced under s. 968.26, or disclosing information pursuant to any subpoena issued by any person authorized to issue subpoenas under s. 885.01. Any such disclosure of information is a lawful disclosure under this section and is protected under s. 230.83.

(3) Any disclosure of information by an employee to his or her attorney, collective bargaining representative or legislator or to a legislative committee or legislative service agency is a lawful disclosure under this section and is protected under s. 230.83.

230.82 Processing of information.

(1) A governmental unit to which an employee discloses information under s. 230.81 (1) shall process it as provided in this section. Within 30 days of receiving the information, the governmental unit shall either initially determine if it merits further investigation or refer the information to a governmental unit better able to initially determine if it merits further investigation. A governmental unit which initially determines information to merit further investigation shall, within 30 days of that determination, either commence a full investigation into the truth of the information or refer the information to a governmental unit better able to conduct such an investigation, which shall commence it within 30 days of referral. A governmental unit may disclose or refer information to an appropriate law enforcement agency or district or federal attorney as part of an investigation or in lieu of referral to another governmental unit, if the law enforcement

agency or district or federal attorney is best able to conduct the investigation. Any full investigation commenced shall be completed within a reasonable time.

(2) A governmental unit which initially determines that information merits further investigation, or which after a full investigation finds information to be true, shall so inform the employee and his or her appointing authority in writing. A governmental unit which initially determines information not to merit further investigation, refers the information to another governmental unit or after a full investigation finds information to be untrue shall so inform the employee in writing.

(3) A governmental unit which investigates or otherwise processes information disclosed under s. 230.81 may require that an interview with any employee described in s. 230.80 (3), except a management or supervisory employee immediately involved in the subject matter of the information disclosed, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the governmental unit to give the appointing authority reasonable notice prior to the interview.

(4) A governmental unit shall keep the identity of the employee confidential until the governmental unit determines the information merits further investigation. If a governmental unit conducts a full investigation, it shall keep the identity of the employee confidential if it is reasonably possible to do so.

230.83 Retaliatory action prohibited.

(1) No appointing authority, agent of an appointing authority or supervisor may initiate or administer, or threaten to initiate or administer, any retaliatory action against an employee.

(2) This section does not apply to an employee who discloses information if the employee knows or anticipates that the disclosure is likely to result in the receipt of anything of value for the employee or for the employee's immediate family, unless the employee discloses information in pursuit of any award offered by any governmental unit for information to improve government administration or operation.

(3) Nothing in this section restricts the right of an employer to take appropriate disciplinary action against an employee who knowingly makes an untrue statement or discloses information the disclosure of which is expressly prohibited by state or federal law, rule or regulation.

230.85 Enforcement.

(1) An employee who believes that a supervisor or appointing authority has initiated or administered, or threatened to initiate or administer, a retaliatory action against that employee in violation of s. 230.83 may file a written complaint with the division of equal rights, specifying the nature of the retaliatory action or threat thereof and requesting relief, within 60 days after the retaliatory action allegedly occurred or was threatened or after the employee learned of the retaliatory action or threat thereof, whichever occurs last.

(2) The division of equal rights shall receive and, except as provided in s. 230.45 (1m),

investigate any complaint under sub. (1). In the course of investigating or otherwise processing such a complaint, the division of equal rights may require that an interview with any employee described in s. 230.80 (3), except a management or supervisory employee who is a party to or is immediately involved in the subject matter of the complaint, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the division of equal rights to give the appointing authority reasonable notice prior to the interview. If the division of equal rights finds probable cause to believe that a retaliatory action has occurred or was threatened, it may endeavor to remedy the problem through conference, conciliation or persuasion. If that endeavor is not successful, the division of equal rights shall issue and serve a written notice of hearing, specifying the nature of the retaliatory action which has occurred or was threatened, and requiring the person named, in this section called the "respondent", to answer the complaint at a hearing. The notice shall specify the place of hearing and a time of hearing not less than 30 days after service of the complaint upon the respondent nor less than 10 days after service of the notice of hearing. If, however, the division of equal rights determines that an emergency exists with respect to a complaint, the notice of hearing may specify a time of hearing within 30 days after service of the complaint upon the respondent, but not less than 10 days after service of the notice of hearing. The testimony at the hearing shall be recorded or taken down by a reporter appointed by the division of equal rights.

(3) (a) After hearing, the division of equal rights shall make written findings and orders. If the division of equal rights finds that the respondent engaged in or threatened a retaliatory action, it shall order the employee's appointing authority to insert a copy of the findings and orders into the employee's personnel file and, if the respondent is a natural person, order the respondent's appointing authority to insert such a copy into the respondent's personnel file. In addition, the division of equal rights may take any other appropriate action, including but not limited to the following:

1. Order reinstatement or restoration of the employee to his or her previous position with or without back pay.
2. Order transfer of the employee to an available position for which the employee is qualified within the same governmental unit.
3. Order expungement of adverse material relating to the retaliatory action or threat from the employee's personnel file.
4. Order payment of the employee's reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent who is a natural person if that governmental unit received notice and an opportunity to participate in proceedings before the division of equal rights.
5. Recommend to the appointing authority of a respondent who is a natural person that disciplinary or other action be taken regarding the respondent, including but not limited to any of the following:
 - a. Placement of information describing the respondent's violation of s. 230.83 in the respondent's personnel file.

- b. Issuance of a letter reprimanding the respondent.
- c. Suspension.
- d. Termination.

(b) If, after hearing, the division of equal rights finds that the respondent did not engage in or threaten a retaliatory action it shall order the complaint dismissed. The division of equal rights shall order the employee's appointing authority to insert a copy of the findings and orders into the employee's personnel file and, if the respondent is a natural person, order the respondent's appointing authority to insert such a copy into the respondent's personnel file. If the division of equal rights finds by unanimous vote that the employee filed a frivolous complaint it may order payment of the respondent's reasonable actual attorney fees and actual costs. Payment may be assessed against either the employee or the employee's attorney, or assessed so that the employee and the employee's attorney each pay a portion. To find a complaint frivolous the division of equal rights must find that s. 802.05 (2) has been violated.

(c) Pending final determination by the division of equal rights of any complaint under this section, the division of equal rights may make interlocutory orders.

(d) Interim earnings or amounts earnable with reasonable diligence by the person subjected to the retaliatory action or threat shall reduce back pay otherwise allowable. Amounts received by the person subjected to the retaliatory action or threat as unemployment benefits or welfare payments do not reduce the back pay otherwise allowable, but shall be withheld from the person subjected to the retaliatory action or threat and immediately paid to the unemployment reserve fund or to the welfare agency making the payment.

(4) The division of equal rights shall serve a certified copy of the findings and order on the respondent and, if the respondent is a natural person, upon the respondent's appointing authority.

(5) (a) If a respondent does not comply with any lawful order by the division of equal rights, for each such failure the respondent shall forfeit a sum of not less than \$10 nor more than \$100. Every day during which a respondent fails to comply with any order of the division of equal rights constitutes a separate violation of that order.

(b) As an alternative to par. (a), the division of equal rights may enforce an order by a suit in equity.

(6) (a) If a disciplinary action occurs or is threatened within the time prescribed under par. (b), that disciplinary action or threat is presumed to be a retaliatory action or threat thereof. The respondent may rebut that presumption by a preponderance of the evidence that the disciplinary action or threat was not a retaliatory action or threat thereof.

(b) Paragraph (a) applies to a disciplinary action under s. 230.80 (2) (a) which occurs or is threatened within 2 years, or to a disciplinary action under s. 230.80 (2) (b), (c) or (d) which occurs or is threatened within one year, after an employee discloses information under s. 230.81 which merits further investigation or after the employee's appointing authority, agent of an appointing authority or supervisor learns of that disclosure, whichever is later.

230.86 Discipline based on surveillance.

(1) No appointing authority may take any disciplinary action based in whole or in part on wiretapping, electronic surveillance or one-way mirrors unless that surveillance produces evidence that the employee against whom disciplinary action is taken has committed a crime or unless that surveillance is authorized by the appointing authority and is conducted in accordance with the rules promulgated under s. 16.004 (12).

(2) Subsection (1) does not apply to wiretapping, electronic surveillance or one-way mirrors used to monitor security or used for public safety purposes at a state institution.

230.87 Judicial review.

(1) Findings and orders of the division of equal rights under this subchapter are subject to judicial review under ch. 227. Upon that review, or in any enforcement action, the department of justice shall represent the division of equal rights unless a conflict of interest results from that representation. A court may order payment of a prevailing appellant employee's reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent who is a natural person if that governmental unit received notice and an opportunity to appear before the court.

(2) If the court finds that the appeal is frivolous, it shall award to the respondent reasonable attorney fees and costs. Payment may be assessed fully against the appellant, including a governmental unit, or the appellant's attorney or assessed so that the appellant and the appellant's attorney each pay a portion. To find an appeal frivolous, the court must find one or more of the following:

(a) The appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The appellant or appellant's attorney knew, or should have known, that the appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

230.88 Payment of award, judgment or settlement; effect of order, arbitration award or commencement of court action.

(1) Payment. Any award, judgment or settlement obtained by an employee under this subchapter shall be paid from the funds appropriated under s. 20.865 (1) (a), (g) and (q).

(2) Effect.

(a) A final order issued under s. 230.85 or 230.87 which has not been appealed and for which the time of appeal has passed binds all parties who were subjected to the jurisdiction of the division of equal rights or the court and who received an opportunity to be heard. With respect to these parties, the decree is conclusive as to all issues of law and fact decided.

(b) No collective bargaining agreement supersedes the rights of an employee under this subchapter. However, nothing in this subchapter affects any right of an employee to pursue a grievance procedure under a collective bargaining agreement under subch. V of ch. 111, and if the division of equal rights determines that a grievance arising under such a collective bargaining agreement involves the same parties and matters as a

complaint under s. 230.85, it shall order the arbitrator's final award on the merits conclusive as to the rights of the parties to the complaint, on those matters determined in the arbitration which were at issue and upon which the determination necessarily depended.

(c) No later than 10 days before the specified time of hearing under s. 230.85 (2), an employee shall notify the division of equal rights orally or in writing if he or she has commenced or will commence an action in a court of record alleging matters prohibited under s. 230.83 (1). If the employee does not substantially comply with this requirement, the division of equal rights may assess against the employee any costs attributable to the failure to notify. Failure to notify the division of equal rights does not affect a court's jurisdiction to proceed with the action. Upon commencement of such an action in a court of record, the division of equal rights has no jurisdiction to process a complaint filed under s. 230.85 except to dismiss the complaint and, if appropriate, to assess costs under this paragraph.

*(d) The commission lost its subject matter jurisdiction over the appellant's whistleblower complaint once an action was filed in the federal district court that included allegations of state whistleblower violations. The state did not waive the jurisdictional issue by informing the commission that it had no objection to holding the commission proceeding in abeyance while the claims were pursued in federal court. The legislature expressly withdrew the power of the commission to adjudicate whistleblower claims once an action alleging those claims is filed in a court of record. *Albrechtsen v. Department of Workforce Development*, 2005 WI App 241, ___ Wis. 2d ___, ___ N.W.2d ___, 04-2130.*

230.89 Rule making and reporting.

(1) The division of equal rights shall promulgate rules to carry out its responsibilities under this subchapter.

(2) Every 2 years, the division of equal rights shall submit a report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), regarding complaints filed, hearings held and actions taken under this subchapter, including the dollar amount of any monetary settlement or final monetary award which has become binding on the parties.

230.90 Government employer retaliation prohibited.

(1) In this section: (a) "Disciplinary action" means any action taken with respect to an employee which has the effect, in whole or in part, of a penalty.

- (b) "Employee" means any person employed by any governmental unit except:
1. A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.
 2. A person who is, or whose immediate supervisor is, assigned to an executive salary group or university senior executive salary group under s. 20.923.

(c) "Governmental unit" means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts.

"Governmental unit" does not mean the University of Wisconsin Hospitals and Clinics Authority, the Health Insurance Risk-Sharing Plan Authority, or any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivisions.

(d) "Information" means information gained by the employee which the employee reasonably believes demonstrates:

1. A violation of any state or federal law, rule or regulation.
2. Mismanagement or abuse of authority in state government, a substantial waste of public funds or a danger to public health and safety.

(2) An employee may bring an action in circuit court against his or her employer or employer's agent, including this state, if the employer or employer's agent retaliates, by engaging in a disciplinary action, against the employee because the employee exercised his or her rights under the first amendment to the U.S. constitution or article I, section 3, of the Wisconsin constitution by lawfully disclosing information or because the employer or employer's agent believes the employee so exercised his or her rights. The employee shall bring the action within 2 years after the action allegedly occurred or after the employee learned of the action, whichever occurs last. No employee may bring an action against the office of state employment relations as an employer's agent.

(3) If, following the close of all evidence in an action under this section, a court or jury finds that retaliation was the primary factor in an employer's or employer's agent's decision to engage in a disciplinary action, the court or jury may not consider any evidence offered by the employer or employer's agent that the employer or employer's agent would have engaged in the disciplinary action even if the employee had not disclosed, or the employer or employer's agent had not believed the employee disclosed, the information.

(4) If the court or jury finds that the employer or employer's agent retaliated against the employee, the court shall take any appropriate action, including but not limited to the following:

- (a) Order placement of the employee in his or her previous position with or without back pay.
- (b) Order transfer of the employee to an available position for which the employee is qualified within the same governmental unit.
- (c) Order expungement of adverse material relating to the retaliatory action or threat from the employee's personnel file.
- (cm) Order the employer to pay compensatory damages.
- (d) Order the employer to pay the employee's reasonable attorney fees.
- (e) Order the employer or employer's agent to insert a copy of the court order into the employee's personnel file.
- (f) Recommend to the employer that disciplinary or other action be taken regarding the employer's agent, including but not limited to any of the following:
 1. Placement of information describing the agent's action in his or her personnel file.
 2. Issuance of a letter reprimanding the agent.
 3. Suspension.
 4. Termination.

Wyoming

§ 27-11-109 **Investigation of violations; proceedings; confidentiality of trade secrets**

(a) The commission or chairman, in their discretion, may make such public or private investigations as they deem necessary to determine whether any person or employer has violated, or is about to violate, any provision of this act, or any rules, regulation, or order hereunder, or to aid in the enforcement of this act, or in the prescribing of rules and regulations hereunder, may require or permit any person to file a statement in writing, under oath or otherwise, as they determine, as to all the facts and circumstances concerning the matter to be investigated and may publish information concerning any violation of this act, rule, regulation or order hereunder.

(b) For the purpose of any investigation or proceeding under this act any member of the commission or any officer designated by the chairman may administer oaths and affirmations, subpoena witnesses, and compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records, which the commission or its chairman deem relevant or material to the inquiry.

(c) In case of contumacy by or refusal to obey a subpoena issued to any person, any Wyoming district court, upon application by the commission or its chairman, may issue to the person an order requiring him to appear before the commission or the officer designated by them, to produce documentary evidence if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt of court.

(d) When the commission or the department shall discover or have reason to believe that any provision of the employment health and safety laws or any rule is being violated, written notice shall be served upon the person violating the same to comply with the notice within a reasonable time, to be fixed in the notice, which notice shall specify the time to be not more than thirty (30) days, except that such time may be extended for good cause shown. The notice shall specify the violation and shall be posted at or near the site of violation for a period of three (3) days or until the violation is abated, whichever is longer:

(i) In fixing the time in such notice and any extension of time, consideration shall be given to the nature of the failure or defect constituting the violation, the probable danger thereof, and the probable length of time and amount of labor required to correct the violation;

(ii) If the violation continues after the expiration of the period of time fixed in the notice, including any such extension of time, enforcement in this type of case will be sought by the commission or by the department by filing a complaint and seeking a cease and desist order in the district court;

(iii) Proposed penalty amounts shall be clearly stated as part of the notice of violation, but shall be a separate document which need not be posted with the notice of violation;

(iv) Nothing in paragraphs (i) and (ii) of this subsection shall be applicable to W.S. 27-11-106(b).

(e) No employer shall discharge or in any manner discriminate against any employee because such employee has filed any notice of complaint or has instituted, or caused to be instituted, any proceeding under or related to this act or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others any right afforded by this act.

(f) All information reported or likewise obtained by the department in connection with any inspection or investigation under this act which contains or which might reveal a trade secret shall be considered as confidential for the purpose of this act: except that such information may be disclosed to other representatives of the department concerned with carrying out this act or when relevant in any proceedings as required under this act. In any such proceedings, the department, the commission, the review board or the court shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

**STATE WHISTLEBLOWER STATUTES:
PROTECTION FOR THIRD PARTY DISCLOSURE**

STATE and Statutory Reference(s)	STATUTE:	COMMENTS
<p>Colorado</p> <p>SEE: C.R.S. §24-114-101</p>	<p>Prohibits retaliation against an employee on account of that employee’s disclosure of information.</p> <p>“Disclosure of information” is defined as, “the written provision of evidence to <i>any person</i>, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure regarding a private enterprise under contract with a state agency which, if not disclosed, could result in the waste of public funds, could endanger the public health, safety, or welfare, or could otherwise adversely affect the interests of the state.</p>	<p>The words “any person” are not defined nor explained in the statute or relevant case law.</p> <p>However, the Colorado court has defined other terms within the statute broadly. SEE <i>Gransert v. State of Colorado</i>, 348 F.Supp.2d 1215, 1226-8 (2004). (Defining the term “supervisor” broadly as justified by the purpose of the statute); SEE ALSO <i>Woodsmall v. Regional Trans. Dis.</i>, 800 P.2d 63 (Colo. 1990). (Holding that the standard for notice requirements should be “substantial compliance” rather than strict compliance).</p>
<p>Indiana</p> <p>SEE: IC 22-5-3-3(c)</p>	<p>A private employer must first report a violation in writing to the private employer. However, if the private employer is the entity the employee believes is committing the offense, the employee may report to either the private employer or any public official or agency entitled to receive such a report.</p> <p>If there is no “good faith effort” made to correct the reported problem</p>	<p>The words “any person, agency, or organization” are not defined in the statute or relevant case law.</p> <p>The whistleblower statute is codified in the state’s black listing laws, and provides “limited” protection. <i>Logan v. Indiana</i></p>

STATE and Statutory Reference(s)	STATUTE:	COMMENTS
	<p>within a reasonable time, the employee may then submit a written report of the incident to <i>any person, agency, or organization</i>.</p>	<p><i>Dept. of Corrections</i>, 2005 WL 3003077 (S.D.Ind. Nov. 8, 2005).</p> <p>SEE ALSO, New Hampshire Whistleblower Statute that also seems to allow disclosure to anyone if the employer has failed to promptly respond to an internal report.</p>
<p>Kansas</p> <p>SEE: Kansas Whistleblower Act</p> <p>KS ST §75-2973(d)(1)</p>	<p>(d) No supervisor or appointing authority of any state agency shall:</p> <p>(1) Prohibit any employee of the state agency from reporting any violation of state or federal law or rules and regulation to <i>any person, agency or organization</i>.</p> <p>(2) Require any such employee to give notice to the supervisor or appointing authority prior to making any such report</p>	<p>SEE: <i>Lytle v. City of Haysville</i>, 138 F.3d 857 (Kan. 1998). In <i>Lytle</i> court held that a police officer's interests in disclosing possible unlawful conduct to the media and officer's attorney was far outweighed by the employer's interests in maintaining confidentiality and avoiding workplace disruption. The court did not, however, hold that the police officer made the disclosure to the inappropriate entity, implying that disclosure to the media is protected under the statute.</p> <p>SEE ALSO: 15 COMENT 357 at 364 (Stating that Kansas is the only state with a statute specifically protecting whistleblowing to any nongovernmental external party as an initial channel)</p>

STATE and Statutory Reference(s)	STATUTE:	COMMENTS
Kentucky SEE: Ky. Rev. Stat. Ann. §61.102(1)	No employer may retaliate against an employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Kentucky Legislative Ethics Commission . . . <i>or any other appropriate body or authority</i> ...any facts or information relative to an actual or suspected violation.	The terms “any other appropriate body or authority” are not defined within the statute or relevant case law. In contrast, most states that intend to exclude media disclosure do so explicitly by defining terms such as “appropriate law enforcement entity” or “public body.” For example, SEE: §1422 Pennsylvania Whistleblower Law

STATE and Statutory Reference(s)	STATUTE:	COMMENTS
<p>New Hampshire</p> <p>SEE: Whistleblower Protection Act</p> <p>N.H. Rev. Stat. Ann. §25:E-2</p>	<p>No employer shall retaliate against an employee because,</p> <p>(a) The employee, in good faith, reports or causes to be reported, verbally or in writing, what the employee has reasonable cause to believe is a violation of any law or rule.</p> <p>Note: The employee must first bring the alleged violation to the attention of a person having supervisory authority with the employer, and then allowed the employer a reasonable opportunity to correct that violation, unless the employee has specific reason to believe that reporting such violation to his employer would not result in promptly remedying the violation.</p>	<p>The Statute does not define to whom the disclosure should be reported to.</p> <p>SEE: Indiana’s whistleblower statute that also, seems to allow disclosure to anyone if the employer has failed to promptly respond to an internal report.</p>

STATE and Statutory Reference(s)	STATUTE:	COMMENTS
<p>New Mexico</p> <p>SEE: Retaliatory Discharge</p> <p>NMRA, Civ. UJI 13-2304</p>	<p>If [employee] was discharged because [employee disclosed information of a possible employer violation] and if [employee’s] conduct which triggered the discharge was taken in furtherance primarily of a public interest rather than primarily a private interest, then the discharge was in violation of public policy and was wrongful.</p> <p>DIRECTIONS FOR USE: [T]he issue of public versus private interest is to be given only in the limited class of ‘whistleblower’ cases in which the plaintiff made a report of wrongdoing <i>to a private party rather than to public authorities</i>.</p>	<p>“Private party” is not defined in the statute or in the relevant case law.</p> <p>However, the New Mexico courts seemed much more concerned with the intent behind the disclosure rather than to whom disclosure was made. SEE: <i>Garrity v. Overland Sheepskin Co.</i>, 121 N.M. 710, 917 P.2d 1382 (1996).</p> <p>SEE ALSO: <i>Roth v. Veteran’s Admin.</i>, 856 F.2d 1401, 1408 (9th Cir. 1988). (Refusing to broaden qualified immunity because the court “decline[d] to adopt a rule that would effectively eviscerate whistleblower protection for public employees”).</p>
<p>North Carolina</p> <p>SEE: N.C. Gen. Stat. §126-84 (1989)</p>	<p>(a) It is the policy of this State that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, <i>or other appropriate authority...</i>”</p> <p>(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting <i>to public bodies</i> about matters of public concern, including offering testimony to or testifying before appropriate legislative panels.</p>	<p>The terms “or other appropriate authority” and “public body” are not defined within the statute or relevant case law.</p> <p>However, a majority of states that use similar wording define the terms as governmental bodies or the like, excluding the media. For example, SEE: Pennsylvania Whistleblower Law §1422</p>

STATE and Statutory Reference(s)	STATUTE:	COMMENTS
<p>Oklahoma</p> <p>SEE: Whistleblower Act</p> <p>§840-2.5(b)(3)</p>	<p>Disciplinary action against an employee is prohibited when it is for:</p> <p>(3) Discussing the operations and function of the agency, either specifically or generally, with the Governor, members of the Legislature, <i>the print or electronic media</i> or other persons in a position to investigate or initiate corrective action.</p>	<p>SEE ALSO: <i>Hinson v. Cameron</i>, 742 P.2d 549, 553 (Okl. 1987) (Stating a general public policy exception protects whistleblowers for “reporting internally, publicly, or both”).</p>
<p>Vermont</p> <p>SEE: Whistleblower Protection</p> <p>VT. ST. T. 21 §507(b)(1)</p>	<p>(b) No employer shall take retaliatory action against any employee because the employee does any of the following:</p> <p>(1) Discloses or threatens to disclose to <i>any person or entity</i> any activity, policy, practice, procedure, action, or failure to act of the employer or agent of the employer that the employee reasonable believes is a violation of any law.</p>	<p>The phrase “any person or entity” is not defined within the statute or relevant case law.</p>

STATE and Statutory Reference(s)	STATUTE:	COMMENTS
<p>Wisconsin</p> <p>SEE: Employee disclosure</p> <p>W.S.A. §230.81 (1) and</p> <p>Retaliatory Action Prohibited</p> <p>§W.S.A. 230.83(2)</p>	<p><u>§230.81(1)</u>: An employee with knowledge of information the disclosure of which is not expressly prohibited by state or federal law, rule or regulation may disclose that information <i>to any other person</i>. However, to obtain protection under s. 230.83, before disclosing that information <i>to any person other than his or her attorney, collective bargaining representative or legislator</i>, the employee shall do either of the following:</p> <p>(a) Disclose the information in writing to the employee’s supervisor.</p> <p>(b) [D]isclose the information in writing only to the governmental unit that the division of equal rights determines is appropriate.</p> <p><u>§230.83(2)</u>: This section does not apply to an employee who discloses information if the employee <i>knows or anticipates that the disclosure is likely to result in the receipt of anything of value</i> for the employee or for the employee’s immediate family.</p> <p>[NOTE: The exception does not apply where the award for disclosure is offered by any governmental unit in order to improve government administration or operation].</p>	<p>The terms “any other person” and “any other person other than his or her attorney, collective, bargaining representative or legislator” are not defined in the statute or relevant case law.</p> <p>The statute incorporates the importance of the employee’s intent, as does the New Mexico statute.</p>

* Federal Legislation protecting disclosure to the media. The False Claims Act, 31 U.S.C.A. § 3730, states:

“No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transaction in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.”

