

Accountability Report Card Summary 2022
Maryland

Maryland has a good state whistleblower law:

- Scoring 74 out of a possible 100 points; and
- Ranking 5th out of 51 (50 states and the District of Columbia).

Maryland's statute has fairly broad coverage (20 out of 33 possible points) with a very good degree of usability (29 out of 33) and average remedies (24 out of 33), plus the one bonus point awarded for employee notification of rights.

Maryland's full Whistleblower Report Card
Narrative summary of Maryland's law

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Maryland Accountability Index Report card

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

Md. Code Ann., State Fin. & Proc. § 11-301 to -306 (2004) (whistleblower protection for state contractors); Md. Code Ann., State Pers. & Pens. § 5-301 to -311 (1996) (Whistleblower Law in the Executive Branch of State Government)

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

Does the statute cover disclosures of –

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

Does the statute provide –

8. Employee may refuse to carry out illegal or improper orders	1 point	0 points
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	0 points
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>20 points</u>

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

¹ § 5-305. A supervisor, appointing authority, or the head of a principal unit of state government may not take or refuse to take any personnel action as a reprisal against an employee who (1) discloses information that the employee reasonably evidences (i) an abuse of authority, gross mismanagement, or gross waste of money; (ii) a substantial or specific danger to public health and safety; (iii) a violation of law; or (2) following a disclosure under either (i), (ii), or (iii) seeks a remedy provided under the statute, or any other law or policy governing the employee’s unit.

Do the laws protect disclosures made to –

Factor	Maximum Points	Awarded Points
1. Any person or organization, including public media	24 points	24 points ²

Or does the statute protect disclosures made to –

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

Does the state law –

8. Require an investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	0 points
9. Have a statute of limitations of one year or longer for filing complaints	3 points (2 points if 6 months or longer and 1 point if 60 days or longer)	3 points ³
10. Allow qui tam or false claim actions for recovery of “bounty” in cases of fraud against the state	5 points (2 points if a qui tam statute of limited scope)	2 points ⁴
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>29 points</u>

² The statute does not provide that disclosures are made only to certain person, officials or organizations. The only restriction on disclosure of information is: a disclosure that is specifically prohibited by law can only be made exclusively to the Maryland Attorney General, who will designate an assistant Attorney General, who can investigate to see whether there has been an illegality or impropriety.

³ § 5-309. A complaint must be filed within 6 months after the complainant first knew or reasonably should have known of the violation of the prohibition against reprisals. § 11-30 the action shall be brought within 1 year after the alleged violation of § 11-303

⁴ Maryland False Health Claims Act § 2-601 *et. seq.* (2012).

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

Does the statute provide for –

Factor	Maximum Points	Awarded Points
1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment	4 points	4 points
2. Opportunity for administrative challenge	4 points	4 points
3. Opportunities for court challenge	4 points	4 points ⁵
4. Trial by jury	3 points	0 points
5. Burden shifting upon prima facie showing.	1 point	0 points
6. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	3 points	3 points
7. Actual/compensatory damages	3 points	3 points ⁶
8. Interim relief, injunction or stay of personnel actions	3 points	3 points ⁷
9. Transfer preference for prevailing whistleblower or ban on blackballing	3 points	0 points
10. Punitive damages or other fines and penalties	2 points	0 points
11. Personnel actions against managers found to have retaliated	3 points	3 points ⁸
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>24 points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 point ⁹

Totals

100 points

74 points

⁵ § 5-310(e). Judicial review - a complainant or appointing authority may appeal the decision issued under subsection (c) of this section.

⁶ § 11-305(5) require compensation for lost wages, benefits, and other remuneration

⁷ § 11-305(1) In any action brought under this subtitle, a court may: (1) issue an injunction to restrain continued violation of § 11-303 of this subtitle;

⁸ § 5-309(e)(2)(iv). Appropriate disciplinary may be taken against the person responsible for the reprisal action

⁹ § 5-304

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Maryland

Statute: Maryland Whistleblower Law in the Executive Branch of State Government-Md. Code Ann., State Pers. & Pens. § 5-301 to -311 (2004); Maryland State Contractor Employees' Whistleblower Protection, Md. Code Ann., State Fin. & Proc. § 11-301 to -306 (1996)

Provisions: A supervisor, appointing authority, or the head of a principal unit of state government 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 or specific danger to public health and safety; (iii) a violation of law; or (2) following a disclosure under (1) seeks a remedy provided under the statute, or any other law or policy governing the employee's unit. This protection 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 § 5-313 of the Maryland Whistleblower Law.

An employee who seeks relief for a violation of the statute may elect to file with the Secretary of a state department a complaint under the statute or a grievance under another provision of Maryland statutes. A complaint under the statute must be filed within 6 months after the complainant first knew or reasonably should have known of the violation. If the Secretary or his designee determines that a violation has occurred, he/she shall take appropriate remedial action. Such action may include removal of any detrimental information from the employee's personnel file, require the head of the principal unit to reinstate the employee, award back pay, and take appropriate disciplinary action against the individual who caused the violation. The employee may appeal a decision under the statute to the Office of Administrative Hearings. It may award costs of the litigation and attorney's fees. While the decision of the Office of Administrative Hearings is considered the final decision of the agency, the statute does provides for court review of its decision. The statute does not preclude an action for defamation or invasion of privacy. Information obtained as part of an investigation conducted under this subtitle is confidential.

Statute: Maryland State Contractor Employees' Whistleblower Protection §11-301 to -306.

Provisions: An employer may not take or refuse to take any personnel action as a reprisal against an employee because the employee discloses information that the employee reasonably believes evidences an abuse of authority, gross mismanagement, or gross waste of money; a substantial and specific danger to public health or safety; or a violation of law; objects to or refuses to participate in any activity, policy, or practice in violation of law; or following a disclosure under item (1) of this section, seeks a remedy provided under this subtitle.

Any employee who is subject to a personnel action in violation of § 11-303 of this subtitle may institute a civil action in the county where the alleged violation occurred; the employee resides; or the employer maintains its principal office in the State.

The action shall be brought within 1 year after the alleged violation of § 11-303 of this subtitle occurred or within 1 year after the employee first became aware of the alleged violation of § 11-303 of this subtitle.