

**Accountability Report Card Summary 2022**  
**Nebraska**

Nebraska has an uneven state whistleblower law:

- Scoring 50 out of a possible 100 points, but its scope is varied;
- Ranking 40<sup>th</sup> out of 51 (50 states and the District of Columbia).

Nebraska's statute has fair coverage (17 out of 33 possible points) with moderate usability (13 out of 33) and average remedies (19 out of 33), plus the one bonus point awarded for employee notification of rights.

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

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## Nebraska Accountability Index Report card

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

State Government Effectiveness Act – Neb. Rev. Stat. Ann. § 81-2701 to 2711 (2005)

Nebraska Fair Employment Practice Act – Neb. Rev. Stat. Ann. § 48-1114 (2019)

### 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 <sup>1</sup>
2. Gross mismanagement	3 points	3 points
3. Abuse of authority (including violations of agency policy)	3 points	0 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
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>17 points</u></b>

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

Do the laws protect disclosures made to –

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

<sup>1</sup> A public employee may provide a written allegation of wrongdoing, meaning an action which (a) is a violation of any law, (b) results in gross mismanagement or gross waste of funds, or (c) creates a substantial and specific danger to public health and safety. R.R.S. Neb. § 81-2703(5).

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

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

Does the state law –

8. Require an investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	0 point <sup>4</sup>
9. Have a statute of limitations of one year or longer for filing complaints	3 points (2 points if 6 months or longer and 1 point if 60 days or longer)	3 points <sup>5</sup>
10. Allow qui tam or false claim actions for recovery of “bounty” in cases of fraud against the state	5 points (2 points if a qui tam statute of limited scope)	0 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>13 points</u></b>

<sup>2</sup> Statute protects disclosures to the Nebraska Public Counsel or elected officials. R.R.S. Neb. § 81-2705.

<sup>3</sup> No action can be taken as a reprisal for providing information or testimony, pursuant to an investigation or hearing under the statute to the Public Counsel, an elected state official, a personnel board, or the direct or chief operating officer. R.R.S. Neb. § 81-2705.

<sup>4</sup> The claim may be investigated by the Public Counsel or other official. R.R.S. Neb. § 81-2704.

<sup>5</sup> The Nebraska whistleblower statute does not contain a statute of limitations for state employee whistleblower complaints. Nebraska law provides that the statute of limitations on such claims is 4 years based on any of the following provisions of the Nebraska Code, 25-206, 25-207, or 25-212.

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

Does the statute provide for –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment	4 points	4 points <sup>6</sup>
2. Opportunity for administrative challenge	4 points	4 points
3. Opportunities for court challenge	4 points	4 points <sup>7</sup>
4. Trial by jury	3 points	0 points
5. Burden shifting upon prima facie showing.	1 point	1 point <sup>8</sup>
6. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	3 points	3 points
7. Actual/compensatory damages	3 points	0 points
8. Interim relief, injunction or stay of personnel actions	3 points	3 points <sup>9</sup>
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	0 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>19 points</u></b>

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

<b>Factor</b>	<b>Maximum Score</b>	<b>Awarded Score</b>
Posting	1 point	1 point <sup>10</sup>

<sup>6</sup> Any person who has authority to take or effect employee personnel actions shall not take a personnel action against an employee for making a protected disclosure. R.R.S. Neb. § 81-2705.

<sup>7</sup> An employee who is concerned about the State Personnel Board's or another personnel board's decision, who has been or is about to be injured by a prohibited personnel action, shall be entitled to maintain a cause of action pursuant to the Nebraska Administrative Procedure Act for damages, reinstatement, back pay, and such other relief, including preliminary relief, as the court considers appropriate. R.R.S. Neb. § 81-2709.

<sup>8</sup> The personnel action shall be presumed to have been taken against such employee because the employee establishes that a personnel action was taken against him or her after he or she submitted a protected disclosure. Such presumption may be rebutted by appropriate evidence. §§ 81-2707(4), -2709(2).

<sup>9</sup> Board may stay or reverse the personnel action. R.R.S. Neb. § 81-2707(1).

<sup>10</sup> Employer must post a written notice, and provide electronic notice of an employee's rights and obligations under the statute. R.R.S. Neb. § 81-2711.

**Totals**

**100 points**

**50 points**

## **State Legislation Protecting State Employee Whistleblowers (updated July 2022)**

**State:** Nebraska

**Statute:** State Government Effectiveness Act – Neb. Rev. Stat. Ann. § 81-2701 to 2711 (2005); Nebraska Fair Employment Practice Act – Neb. Rev. Stat. Ann. § 48-1114 (2019).

**Provisions:** The primary purpose of the State Government Effectiveness Act is to encourage public officials and employees to disclose information concerning possible violations of law and fiscal waste or mismanagement in state government to elected state officials or the Public Counsel and to prohibit reprisals for such disclosures by state employees.

A public employee may provide a written allegation of wrongdoing to the Public Counsel or any elected state official, which may conduct a preliminary investigation and determine whether reasonable ground exist to support the employee's allegation. "Wrongdoing," as defined in the statute, includes any action by a state agency or employee which (a) is a violation of any law, (b) results in gross mismanagement or gross waste of funds, or (c) creates a substantial and specific danger to public health and safety. If the Public Counsel or the state official finds reason to believe that a reasonable ground exists to support the employee's allegation of wrongdoing, the Public Counsel may conduct a formal investigation.

No public employer shall take any personnel action against an employee (1) because of the disclosure of information by the employee to the Public Counsel or a state elected official which the employee reasonably believes evidences wrongdoing; (2) as a reprisal for the submission of an allegation of wrongdoing or a violation of this provision of law to the Public Counsel or elected state official by such employee; or (3) as a reprisal for providing information or testimony, pursuant to an investigation or hearing under this Act to the Public Counsel, a elected state official, a personnel board, or the direct or chief operating officer of an agency. The Public Counsel shall receive any allegation of a violation of this section., and investigate to determine whether there are grounds to believe that a violation has occurred or is about to occur.

If the Public Counsel finds that there are grounds to believe by a preponderance of the evidence that a violation has occurred, he or she shall transmit such finding in writing to the employee who raised the allegation and also to the Governor and, as appropriate, to the State Personnel Board. Upon receiving the Public Counsel's finding that a violation has occurred or is about to occur, the employee may petition the State Personnel Board or the personnel appeals board to hold a hearing. If the finding transmitted to these bodies by the Public Counsel includes a finding that a violation has occurred or will occur within 2 years after the employee engaged in an action for which he or she is protected from retaliation, the Board or the personnel appeals board may stay or reverse the personnel action until a hearing can be held. After determining that a violation has occurred, the

Board or personnel appeals board shall have authority to grant back pay or other relief it deems appropriate, including reasonable attorney's fees.

An employee who is concerned about the Board's or board's decision, who has been or is about to be injured by a prohibited personnel action, shall be entitled to maintain a cause of action pursuant to the Administrative Procedure Act for damages, reinstatement, back pay, and such other relief, including preliminary relief, as the court considers appropriate. A prohibited personnel action shall be presumed to have been taken against such employee because the employee establishes that a personnel action was taken against him or her after he or she submitted an allegation of wrongdoing or provided information to the Public Counsel. Such presumption may be rebutted by appropriate evidence. This standard applied in both administrative proceedings and in a civil action.

No employee shall intentionally misuse the State Government Effectiveness Act. Such employee may be subject to disciplinary action as is deemed appropriate by the director or chief operating agency of the employee's agency. Notice of the protections under this statute must be posted in the office and sent electronically to each agency employee.

The Nebraska Fair Employment Practice Act makes it unlawful 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 (a) has opposed any practice made an unlawful employment practice by the Nebraska Fair Employment Practice Act, (b) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the act, (c) has opposed any practice or refused to carry out any action unlawful under federal law or the laws of this state or (d) has inquired about, discussed, or disclosed information regarding employee wages, benefits, or other compensation. The statute applies to the State of Nebraska, governmental agencies, and political subdivisions.