

House Bill 402

By: Representatives Davis of the 87th, Drenner of the 85th, Evans of the 83rd, Mitchell of the 88th, Scott of the 76th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 45 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding public officers and employees, so as to revise provisions
3 regarding whistleblowers; to broaden the scope of persons who may report information to
4 public employers; to expand the definition of the term "retaliation"; to extend the statute of
5 limitations regarding public employer retaliation; to provide for a misdemeanor offense for
6 violations; to provide for a short title; to provide for related matters; to repeal conflicting
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Georgia Anti-Corruption Act."

11 **SECTION 2.**

12 Chapter 1 of Title 45 of the Official Code of Georgia Annotated, relating to general
13 provisions regarding public officers and employees, is amended by revising Code
14 Section 45-1-4, relating to complaints or information from public employees as to fraud,
15 waste, and abuse in state programs and operations, as follows:

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16 "45-1-4.

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

18 (1) 'Government agency' means any agency of federal, state, or local government
19 charged with the enforcement of laws, rules, or regulations.

20 (2) 'Law, rule, or regulation' includes any federal, state, or local statute or ordinance or
21 any rule or regulation adopted according to any federal, state, or local statute or
22 ordinance.

23 (3) 'Public employee' means any person who is employed by the executive, judicial, or
24 legislative branch of the state or by any other department, board, bureau, commission,
25 authority, or other agency of the state. ~~This~~ Such term also includes all employees,
26 officials, and administrators of any agency covered by the rules of the State Personnel
27 Board and any local or regional governmental entity that receives any funds from the
28 State of Georgia or any state agency.

29 (4) 'Public employer' means the executive, judicial, or legislative branch of the state; any
30 other department, board, bureau, commission, authority, or other agency of the state
31 which employs or appoints a public employee or public employees; or any local or
32 regional governmental entity that receives any funds from the State of Georgia or any
33 state agency.

34 (5) 'Retaliate' or 'retaliation' refers to the discharge, suspension, or demotion by a public
35 employer of a any person, including, but not limited to, an independent contractor or
36 public employee, or any other adverse ~~employment~~ action taken by a public employer
37 against a ~~public employee~~ any such person in the terms or conditions of employment for
38 disclosing a violation of or noncompliance with a law, rule, or regulation to either a
39 supervisor or government agency.

40 (6) 'Supervisor' means any individual:

41 (A) To whom a public employer has given authority to direct and control the work
42 performance of the affected independent contractor or public employee;

43 (B) To whom a public employer has given authority to take corrective action regarding
44 a violation of or noncompliance with a law, rule, or regulation of which the independent
45 contractor or public employee complains; or

46 (C) Who has been designated by a public employer to receive complaints regarding a
47 violation of or noncompliance with a law, rule, or regulation.

48 (b) A public employer may receive and investigate complaints or information from any
49 person, including, but not limited to, an independent contractor or public employee,
50 concerning the possible existence of any activity constituting fraud, waste, and abuse in or
51 relating to any state programs and operations under the jurisdiction of such public
52 employer.

53 (c) Notwithstanding any other law to the contrary, such public employer shall not after
54 receipt of a complaint or information from a any person, including, but not limited to, an
55 independent contractor or public employee, disclose the identity of the ~~public employee~~
56 person without the written consent of such ~~public employee~~ person, unless the public
57 employer determines such disclosure is necessary and unavoidable during the course of the
58 investigation. In such event, the ~~public employee~~ person shall be notified in writing at least
59 seven days prior to such disclosure.

60 (d)(1) No public employer shall make, adopt, or enforce any policy or practice
61 preventing a any person, including, but not limited to, an independent contractor or public
62 employee, from disclosing a violation of or noncompliance with a law, rule, or regulation
63 or any other duty or requirement to either a supervisor or a government agency, as
64 applicable.

65 (2) No public employer shall retaliate against a any person, including, but not limited to,
66 an independent contractor or public employee, for disclosing a violation of or
67 noncompliance with a law, rule, or regulation to either a supervisor or a government
68 agency, unless the disclosure was made with knowledge that the disclosure was false or
69 with reckless disregard for its truth or falsity.

70 (3) No public employer shall retaliate against a any person, including, but not limited to,
71 an independent contractor or public employee, for objecting to, or refusing to participate
72 in, any activity, policy, or practice of the public employer that the ~~public employee~~
73 person has reasonable cause to believe is in violation of or noncompliance with a law,
74 rule, or regulation.

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

79 (e)(1)(A) Any person, including, but not limited to, an independent contractor or A
80 public employee, who has been the object of retaliation in violation of this Code section
81 may institute a civil action in superior court for relief as set forth in paragraph (2) of
82 this subsection ~~within one year~~ after discovering the retaliation ~~or within three years~~
83 ~~after the retaliation, whichever is earlier.~~

84 (B) In such civil action, no public employer shall have the availability of any
85 justification or excuse for any retaliation, except as provided for in this Code section.

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

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

89 (B) Reinstatement of the independent contractor or public employee to the same
90 position held before the retaliation or to an equivalent position;

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

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

93 (E) Any other compensatory damages allowable at law.

94 (f) A court may award reasonable attorney's fees, court costs, and expenses to a prevailing
95 person, including, but not limited to, an independent contractor or public employee.

96 (g) Any agent of a public employer who violates subsection (d) of this Code section shall
97 be guilty of a misdemeanor."

98 **SECTION 3.**

99 All laws and parts of laws in conflict with this Act are repealed.