

House Bill 165

By: Representative Willard of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 45 of the Official Code of Georgia Annotated, relating to public officers and
2 employees, so as to enact the "Whistleblower Protection Act"; to repeal a provision relating
3 to complaints or information from public employees as to fraud, waste, and abuse in state
4 programs and operations; to prohibit an employer from taking retaliatory action against an
5 employee for disclosing certain information and other protected activities; to provide for civil
6 actions; to provide for the burden of proof; to provide for remedies; to require posting of
7 notice by employer; to provide for preemption; to provide for other matters relative to the
8 foregoing; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,
12 is amended by striking Code Section 45-1-4, relating to complaints or information from
13 public employees as to fraud, waste, and abuse in state programs and operations, and
14 inserting in lieu thereof the following:

15 "45-1-4.

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

17 ~~(1) 'Public employee' means any person who is employed by the executive branch of the~~
18 ~~state or by any other department, board, bureau, commission, authority, or other agency~~
19 ~~of the state except the office of the Governor, the judicial branch, or the legislative~~
20 ~~branch.~~

21 ~~(2) 'Public employer' means the executive branch of the state and any other department,~~
22 ~~board, bureau, commission, authority, or other agency of the state which employs or~~
23 ~~appoints a public employee or public employees except the office of the Governor, the~~
24 ~~judicial branch, or the legislative branch.~~

25 ~~(b) A public employer may receive and investigate complaints or information from any~~
26 ~~public employee concerning the possible existence of any activity constituting fraud, waste,~~

1 and abuse in or relating to any state programs and operations under the jurisdiction of such
2 public employer.

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

9 ~~(d) No action against any public employee shall be taken or threatened by any public
10 employer who has authority to take, direct others to take, recommend, or approve any
11 personnel action as a reprisal for making a complaint or disclosing information to the
12 public employer unless the complaint was made or the information was disclosed with the
13 knowledge that it was false or with willful disregard for its truth or falsity.~~

14 ~~(e) Any action taken in violation of subsection (d) of this Code section shall give the
15 public employee a right to have such action set aside in a proceeding instituted in the
16 superior court. Reserved."~~

17 SECTION 2.

18 Said title is further amended by inserting at the end thereof a new chapter, to be designated
19 Chapter 25, to read as follows:

20 "CHAPTER 25

21 45-25-1.

22 This chapter shall be known and may be cited as the 'Whistleblower Protection Act.'

23 45-25-2.

24 As used in this chapter, the term:

25 (1) 'Employee' means any individual who performs services for or under the control and
26 direction of an employer for wages or other remuneration. The term shall also include
27 an applicant for employment, a former employee, or an authorized representative of an
28 employee.

29 (2) 'Employer' means any individual; partnership; association; corporation, whether
30 public or private which transacts business with the State of Georgia; all branches of state
31 government; the several counties and municipalities of the state or any other political
32 subdivision of the state; any school district; any special district; or any authority,

1 commission, or board or any other agency or instrumentality thereof. The term shall also
2 include agents, contractors, or subcontractors of an employer.

3 (3) 'Improper quality of patient care' means, with respect to patient care by an employer
4 that is a health care provider, any practice, procedure, action, or failure to act which
5 violates any law or any rule, regulation, or declaratory ruling adopted pursuant to law or
6 any professional code of ethics.

7 (4) 'Public body' means:

8 (A) The United States Congress, the General Assembly, or any municipal or county
9 governing authority or any member or employee thereof;

10 (B) Any federal, state, or local judiciary, or any member or employee thereof, or any
11 grand or petit jury;

12 (C) Any federal, state, or local regulatory, administrative, or public agency or authority
13 or instrumentality thereof;

14 (D) Any federal, state, or local law enforcement agency, prosecutorial office, or police
15 or peace officer;

16 (E) Any federal, state, or local department of an executive branch of government; or

17 (F) Any division, board, bureau, office, committee, or commission of any of the public
18 bodies described in the subparagraphs of this paragraph.

19 (5) 'Retaliatory action' means the discharge, suspension, demotion, harassment, or
20 blacklisting of or the refusal to hire an employee, or other adverse employment action
21 taken against an employee in the terms and conditions of employment, or other actions
22 which interfere with an employee's ability to engage in protected activity set forth in
23 Code Section 45-25-3.

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

28 45-25-3.

29 An employer shall not take any retaliatory action against an employee because the
30 employee does any of the following:

31 (1) Discloses, threatens to disclose, or is about to disclose to a supervisor or to a public
32 body an activity, policy, or practice of the employer, a coemployee, or another employer
33 that the employee reasonably believes is in violation of a law or a rule or regulation
34 promulgated pursuant to law or, in the case of an employee who is a licensed or certified
35 health care professional, reasonably believes constitutes improper quality of patient care;

1 (2) Provides information to or testifies before any public body conducting an
2 investigation, hearing, or inquiry into any violation of law or a rule or regulation
3 promulgated pursuant to law by the employer, a coemployee, or another employer or, in
4 the case of an employee who is a licensed or certified health care professional, provides
5 information to or testifies before any public body conducting an investigation, hearing,
6 or inquiry into the quality of patient care;

7 (3) Discloses, threatens to disclose, or is about to disclose to a supervisor or to a public
8 body an activity, policy, or practice of the employer, a coemployee, or another employer
9 that the employee reasonably believes is incompatible with a clear mandate of public
10 policy concerning the public health, safety, or welfare or the protection of the
11 environment;

12 (4) Assists or participates in a proceeding to enforce the provisions of this chapter; or

13 (5) Objects to, opposes, or refuses to participate in any activity, policy, or practice which
14 the employee reasonably believes:

15 (A) Is in violation of a law or a rule or regulation promulgated pursuant to law or, if
16 the employee is a licensed or certified health care professional, constitutes improper
17 quality of patient care;

18 (B) Is fraudulent or criminal; or

19 (C) Is incompatible with a clear mandate of public policy concerning the public health,
20 safety, or welfare or the protection of the environment.

21 45-25-4.

22 Upon a violation of any of the provisions of this chapter, an aggrieved employee or former
23 employee may, within one year, institute a civil action in a court of competent jurisdiction.

24 Upon the application of any party, a jury trial shall be directed to try the validity of any
25 claim under this chapter specified in the suit.

26 45-25-5.

27 A violation of this chapter has occurred only if the employee demonstrates, by a
28 preponderance of the evidence, that any behavior described in Code Section 45-25-3 was
29 a contributing factor in the retaliatory action alleged in the complaint by the employee.

30 However, relief may not be ordered under Code Section 45-25-6 if the employer
31 demonstrates by clear and convincing evidence that it would have taken the same
32 unfavorable personnel action in the absence of such behavior.

1 45-25-6.

2 A person claiming relief under this chapter may seek special, general, and punitive
3 damages, and equitable relief. The equitable relief sought may include reinstatement of
4 position, including benefits and rights of seniority, and injunctive relief. If a person
5 prevails under this cause of action and is awarded damages or equitable relief, such
6 claimant may then seek reasonable attorney's fees and expenses of litigation. This claim
7 shall be determined by the trial court upon motion and, if requested by any party, hearing.

8 45-25-7.

9 Nothing in this chapter shall be deemed to diminish the rights, privileges, or remedies of
10 any employee under any other federal or state law or regulation or under any collective
11 bargaining agreement or employment contract. No employee may waive through a private
12 contract any right set forth in this chapter, except as set forth in Code Section 45-25-9, and
13 no employee may be compelled to adjudicate his or her rights under this chapter pursuant
14 to a collective bargaining agreement or any other arbitration agreement.

15 45-25-8.

16 The rights afforded employees under this chapter may not be waived or modified, except
17 through a court approved settlement agreement reached with the voluntary participation
18 and consent of the employee and employer. An employer may not require an employee to
19 waive, as a condition of settlement, his or her right to reasonably engage in conduct
20 protected under Code Section 45-25-3."

21 **SECTION 3.**

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