

House Bill 206

By: Representatives Long of the 61st, Dollar of the 45th, Willard of the 49th, Jacobs of the 80th,
Fludd of the 66th, 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 for public officers and employees, so as to modify provisions relating to
3 making complaints or reporting information pertaining to fraud, waste, or abuse or violations
4 of the law by public employees or agencies; to provide for penalties; to provide for related
5 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

12 "45-1-4.

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

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

16 (2) 'Law, rule, or regulation' includes any federal, state, or local statute or ordinance or
17 any rule or regulation adopted according to any federal, state, or local statute or
18 ordinance.

19 (3) 'Public employee' means any person who is employed by the executive, judicial, or
20 legislative branch of the state or by any other department, board, bureau, commission,
21 authority, or other agency of the state. This term also includes all employees, officials,
22 and administrators of any agency covered under the State Personnel Administration and
23 any local or regional governmental entity that receives any funds from the State of
24 Georgia or any state agency.

25 (4) 'Public employer' means the executive, judicial, or legislative branch of the state; any
26 other department, board, bureau, commission, authority, or other agency of the state

27 which employs or appoints a public employee or public employees; or any local or
 28 regional governmental entity that receives any funds from the State of Georgia or any
 29 state agency.

30 (5) 'Retaliate' or 'retaliation' ~~refers to~~ means:

31 (A) The discharge, suspension, or demotion by a public employer or supervisor of
 32 a public employee or any other adverse employment action taken by a public employer
 33 or supervisor against a public employee in the terms or conditions of employment for
 34 disclosing a violation of or noncompliance with a law, rule, or regulation or for
 35 reporting fraud, waste, or abuse to either a supervisor or government agency;

36 (B) Threatening to take any adverse employment action in the terms or conditions of
 37 employment, including, but not limited to, discharge, suspension, demotion, negative
 38 employee evaluations, or refusal to promote or interference with a promotion for
 39 disclosing a violation of or noncompliance with a law, rule, or regulation or for
 40 reporting fraud, waste, or abuse to either a supervisor or government agency; and

41 (C) Creating a hostile work environment for a public employee by a continuous pattern
 42 and practice of negative or unprofessional behavior directed exclusively toward a public
 43 employee for disclosing a violation of or noncompliance with a law, rule, or regulation
 44 or for reporting fraud, waste, or abuse to either a supervisor or government agency.

45 (6) 'Supervisor' means any individual:

46 (A) To whom a public employer has given authority to direct and control the work
 47 performance of the affected public employee;

48 (B) To whom a public employer has given authority to take corrective action regarding
 49 a violation of or noncompliance with a law, rule, or regulation of which the public
 50 employee complains; or

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

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

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

63 (d)(1) No public employer or supervisor shall make, adopt, or enforce any policy or
64 practice preventing a public employee from disclosing fraud, waste, or abuse in or
65 relating to any state program or operation or a violation of or noncompliance with a law,
66 rule, or regulation to either a supervisor or a government agency.

67 (2) No public employer or supervisor shall retaliate against a public employee for
68 disclosing a violation of or noncompliance with a law, rule, or regulation or for disclosing
69 any activity constituting fraud, waste, or abuse to either a supervisor or a government
70 agency, unless the disclosure was made with knowledge that the disclosure was false or
71 with reckless disregard for its truth or falsity. For a period of 24 months following the
72 date that a complaint or disclosure protected by this Code section is made by a public
73 employee, there shall be a rebuttable presumption that any adverse action taken by a
74 public employer or supervisor relating to the terms or conditions of employment,
75 including any threats to take an adverse employment action or the creation of a hostile
76 work environment, is done in retaliation against the public employee for making such
77 complaint or disclosure.

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

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

86 (e)(1) A public employee who has been ~~the object of retaliation~~ retaliated against by his
87 or her public employer or supervisor in violation of this Code section may institute a civil
88 action in superior court for relief as set forth in paragraph (2) of this subsection within
89 one year after discovering the retaliation or within three years after the retaliation,
90 whichever is earlier.

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

- 93 (A) An injunction restraining continued violation of this Code section;
94 (B) Reinstatement of the employee to the same position held before the retaliation or
95 to an equivalent position;
96 (C) Reinstatement of full fringe benefits and seniority rights;
97 (D) Compensation for lost wages, benefits, and other remuneration; and
98 (E) Any other compensatory damages allowable at law.

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

101 (g) Where a public employee makes a complaint or disclosure to a public employer
102 regarding a teacher, instructor, or other licensed or certified educator who has allegedly:

103 (1) Acted in violation of a law, rule, or regulation;

104 (2) Committed fraud, waste, or abuse; or

105 (3) Retaliated against the public employee,

106 the public employer shall make a report of such complaint or disclosure to the Georgia
107 Professional Standards Commission. The commission is authorized to consider and impose
108 sanctions which shall be in addition to any sanctions provided for in this Code section.

109 (h) A supervisor who retaliates against a public employee in violation of this Code section
110 shall be guilty of a misdemeanor and upon conviction thereof be fined not less than
111 \$1,000.00 nor more than \$10,000.00 or confined for a period not exceeding 12 months, or
112 both.

113 (i) A public employee who knowingly and intentionally makes a false or misleading report
114 against a supervisor or public employer regarding such supervisor's or employer's
115 noncompliance with a law, rule, or regulation or fraud, waste, or abuse shall be guilty of
116 a misdemeanor and upon conviction thereof be fined not less than \$1,000.00 nor more than
117 \$10,000.00 or confined for a period not exceeding 12 months, or both."

118 **SECTION 2.**

119 This Act shall become effective on July 1, 2011.

120 **SECTION 3.**

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