

Accountability Report Card Summary 2022
Georgia

Georgia has one of the weakest state whistleblower laws in the country:

- Scoring only 42 out of a possible 100 points; and
- Ranking 46th out of 51 (50 states and the District of Columbia).

Georgia has narrow coverage (11 out of 33 possible points) with a poor degree of usability (14 out of 33) and middling remedies (17 out of 33).

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Georgia Accountability Index Report card

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

Ga. Code Ann. § 45-1-4 (1993) and Ga. Code Ann. § 9-11-11.1 (1996)

Ga. Code Ann. § 23-3-120 to -127 (2012) (Georgia Taxpayer Protection False Claims Act)

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	0 points
3. Abuse of authority (including violations of agency policy)	3 points	3 points ²
4. Waste of public funds or resources	3 points	0 points
5. Danger to health and/or public safety and/or environment	5 points	0 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	1 point ³
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	1 point ⁴
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>11 points</u>

¹ Under O.C.G.A. § 45-1-4(d)(2), no public employer shall retaliate against a public employee for disclosing a violation of, or noncompliance with, any federal or state statute or any rule, or regulation adopted according to such statutes, to either a supervisor or any agency of the federal or state government charged with the enforcement of laws, rules, or regulations.

² “A public employer may receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations under the jurisdiction of such public employer.” § 45-1-4(b).

³ “No public employer shall retaliate against a public employee for objecting to, or refusing to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation.” O.C.G.A. § 45-1-4(d)(3).

⁴ “No public employer shall make, adopt, or enforce any policy or practice preventing a public employee from disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency.” O.C.G.A. § 45-1-4(d)(1).

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

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	3 points	3 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	3 points
7. Anyone as provided in paragraphs 2 thru 6 (above) without prior disclosure to another state official or supervisor	3 points	0 points ⁵

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 ⁶
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)	5 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>14 points</u>

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

⁵ Under the whistleblower statute, disclosures are made to government agencies and not to a state official or an agency employee.

⁶ A public employee “may institute a civil action...within one year after discovering the retaliation or within three years after the retaliation, whichever is earlier.” O.C.G.A. § 45-1-4(e)(1).

Statute: Ga. Code Ann. § 45-1-4 (1993) and Ga. Code Ann. § 9-11-11.1 (1996)
Ga. Code Ann. § 23-3-120 to -127 (2012) (Georgia Taxpayer Protection False Claims Act)

Provisions: O.C.G.A. § 45-1-4 provides that no public employer shall retaliate against a public employee for disclosing a violation of, or noncompliance with, any federal or state statute or any rule, or regulation adopted according to such statutes, to either a supervisor or any agency of the federal or state government charged with the enforcement of laws, rules, or regulations. This protection does not apply if the claim is not made in good faith and is found to be false. No public employer should retaliate against a public employee for objecting to, or refusing to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of, or noncompliance with, any law, rule, or regulation. The term “retaliate” refers to any action taken by a public employer against a public employee which adversely effects the terms and condition of their employment.

The statute prohibits a public employer from making, adopting, or enforcing any policy or practice which prevents a public employee from disclosing a violation of any law, rule, or regulation to a supervisor or a government agency. "Government agency" only refers to an agency of federal, state, or local government charged with the enforcement of laws, rules, or regulations, which a “supervisor” has the limited definition of any individual (A) To whom a public employer has given authority to direct and control the work performance of the affected public employee; (B) To whom a public employer has given authority to take corrective action regarding a violation of or noncompliance with a law, rule, or regulation of which the public employee complains; or (C) Who has been designated by a public employer to receive complaints regarding a violation of or noncompliance with a law, rule, or regulation. A public employer may receive or investigate complaints or information from any employee concerning the possible existence of any activity constituting fraud, waste, and abuse in, or relating to, any state programs and operations under the jurisdiction of such public employer.

A public employee who has been the object of proscribed retaliation may bring a civil action for relief within one year of discovering the retaliation or within three years after the retaliation, whichever is earlier. A court may order a variety of relief: an injunction restraining the proscribed behavior; reinstatement of the public employee, including fringe benefits and seniority rights; compensation for lost wages and benefits; and any other compensatory damages allowable by law. If the employee prevails, a court may also award court costs, attorney’s fees, and expenses. The statute does not prescribe any administrative remedies the public employee might take, although such remedies may exist under other instruments, including a collective bargaining agreement or under the employee’s employment contract.

O.C.G.A. § 9-11-11.1 is designed to encourage the citizens of Georgia to exercise their constitutional rights of freedom of speech and the right to petition. The Georgia General Assembly finds that these rights should not be chilled through abuse of the judicial process. The statute provides that these rights may be exercised through any written or oral statement, writing, petition made before, or to, a legislative, executive, or judicial

proceeding or any other proceeding authorized by law, or any written or oral statement, writing, or petition made in connection with any issue under consideration or review by a legislative, judicial, or judicial body, or any other official proceeding authorized by law. These rights may also be exercised through any written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern; or any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern. The statute also provides that persons filing a court claim attacking a citizen's exercise of these constitutional rights must satisfy certain requirements. In any such claim filed in court, the claimant and his attorney must file a written verification under oath that they have read the claim, that to the best of their knowledge the claim is well-grounded in fact and is warranted by existing law, and that the claim is not interposed for any improper purpose.

Under Georgia Taxpayer Protection False Claims Act, Ga. Code Ann. § 23-3-120 to -127 (2012)

Any employee, contractor, or agent shall be entitled to all relief necessary to make such employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by such employee, contractor, agent or associated others in furtherance of a civil action under this Code section or other efforts to stop one or more violations of this article.

Relief under this code includes reinstatement with the same seniority status that such employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. A civil action under this subsection may be brought in an appropriate court of this state for relief provided in this Code section. Furthermore, a civil action under this provision may not be brought more than three years after the date when the discrimination occurred.