

**Accountability Report Card Summary 2009**  
**Georgia**

Georgia does not have a strong state whistleblower law:

- Scoring only 34 out of a possible 100 points; and
- Ranking 46<sup>th</sup> out of 51 (50 states and the District of Columbia).

Georgia has narrow coverage (8 out of 33 possible points) with a poor degree of usability (9 out of 33) and middling remedies (17 out of 33).

*Georgia's full Whistleblower Report Card*                      *page 2*  
*Narrative summary of Georgia's law*                              *page 5*

## Georgia Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale  
O.C.G.A. § 45-1-4 and O.C.G.A. § 9-11-11.1

### 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	0 points
3. Abuse of authority (including violations of agency policy)	3 points	0 points
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
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	1 point
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>8 points</u></b>

<sup>1</sup> Georgia has two statutes that relate to public employee whistleblowers. The first provides the traditional protections for state employees disclosing official wrongdoing. The second statute applies to all citizens and states that the General Assembly of Georgia finds and declares that it is in the public interest to encourage Georgia citizens to participate in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for redress of grievances. The General Assembly further finds and declares that the valid exercise of these constitutional rights should not be chilled through the use of judicial process.

Under the first statute, 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.

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

Do the laws protect disclosures made to –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
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 <sup>2</sup>

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
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>33 points</b>	<b><u>Awarded Score</u></b> <b>9 points</b>

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

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<sup>2</sup> Under the whistleblower statute, **disclosures are made to government agencies and not to a state official or an agency employee.**



**April 16, 2009**

**State Legislation Protecting State Employee Whistleblowers**

**State-** Georgia

**Statute-** O.C.G.A. § 45-1-4 and O.C.G.A. § 9-11-11.1

**Provisions-** Georgia has two statutes that relate to public employee whistleblowers. The first provides the traditional protections for state employees disclosing official wrongdoing. The second applies to all citizens and states that the General Assembly of Georgia finds and declares that it is in the public interest to encourage Georgia citizens to participate in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for redress of grievances. The General Assembly further finds and declares that the valid exercise of these constitutional rights should not be chilled through the use of judicial process.

Under the first statute, 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. Retaliation against a public employee may take place if his/her disclosure was made with the knowledge that it was false or with reckless disregard for its truth or falsity. Also, 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 adverse employment action taken by a public employer against a public employee in the terms and condition of his/her employment.

The statute also prohibits a public employer from making, adopting, or enforcing any policy or practice preventing a public employee from disclosing a violation of, or noncompliance with, any law, rule, or regulation to a supervisor or a government agency. The term “public employer” refers to the executive, judicial or legislative branch of Georgia or any other entity of the state which employs or appoints a public employee, including local and regional government entities that receive funds from the State of Georgia. 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 could 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. However, we did not review whether such remedies might be available for Georgia state employees.

As previously mentioned, according to the Georgia General Assembly the second statute is designed to encourage the citizens of Georgia to exercise their constitutional rights of freedom of speech and the right to petition government for the redress of grievances. 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. 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.