

Senate Bill 278

By: Senators Merritt of the 9th, Jones II of the 22nd, Orrock of the 36th, Jordan of the 6th, Rahman of the 5th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
2 employment security, so as to provide protections for employees against retaliation for
3 reporting violations of law; to provide for definitions; to provide for remedies; to provide for
4 damages; to waive sovereign immunity; to provide for the burden of proof and affirmative
5 defense; to provide for limitations of actions; to provide for appeals; to provide for venue;
6 to provide for civil penalties; to provide for notice to employees; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment
11 security, is amended by adding a new article to read as follows:

12 "ARTICLE 12

13 34-8-300.

14 As used in this article, the term:

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15 (1) 'Employee' means an employed individual or appointed officer other than an
16 independent contractor who is paid to perform services for an employer.

17 (2) 'Employer' means any person or entity that employs one or more employees and shall
18 include the State of Georgia and its political subdivisions and instrumentalities.

19 (3) 'Law' means:

20 (A) A state or federal statute;

21 (B) An ordinance of a local governmental entity; or

22 (C) A rule adopted under a statute or ordinance.

23 (4) 'Personnel action' means an action that affects a public employee's compensation,
24 promotion, demotion, transfer, work assignment, or performance evaluation.

25 34-8-301.

26 (a) An employer may not suspend or terminate the employment of, or take other adverse
27 personnel action against, an employee who in good faith reports a violation of law by the
28 employer or another employee to an appropriate law enforcement authority.

29 (b) A report shall be made to an appropriate law enforcement authority if the authority is
30 a part of an employer or of the federal government that the employee in good faith believes
31 is authorized to:

32 (1) Regulate under or enforce the law alleged to be violated in the report; or

33 (2) Investigate or prosecute a violation of criminal law.

34 34-8-302.

35 (a) An employee whose employment is suspended or terminated or who is subjected to an
36 adverse personnel action in violation of Code Section 34-8-301 is entitled to sue for:

37 (1) Injunctive relief;

38 (2) Actual damages;

39 (3) Court costs; and

40 (4) Reasonable attorney fees.

41 (b) In addition to relief under subsection (a) of this Code section, an employee whose
42 employment is suspended or terminated in violation of this article is entitled to:

43 (1) Reinstatement to the employee's former position or an equivalent position;

44 (2) Compensation for wages lost during the period of suspension or termination; and

45 (3) Reinstatement of fringe benefits and seniority rights lost because of the suspension
46 or termination.

47 (c) In a suit under this article against an employer, an employee may not recover
48 compensatory damages for future pecuniary losses, emotional pain, suffering,
49 inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses
50 in an amount that exceeds:

51 (1) Fifty thousand dollars, if the employer has fewer than 101 employees in each of 20
52 or more calendar weeks in the calendar year in which the suit is filed or in the preceding
53 year;

54 (2) One hundred thousand dollars, if the employer has more than 100 and fewer than 201
55 employees in each of 20 or more calendar weeks in the calendar year in which the suit
56 is filed or in the preceding year;

57 (3) Two hundred thousand dollars, if the employer has more than 200 and fewer than 501
58 employees in each of 20 or more calendar weeks in the calendar year in which the suit
59 is filed or in the preceding year; and

60 (4) Two hundred fifty thousand dollars, if the employer has more than 500 employees
61 in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in
62 the preceding year.

63 (d) If more than one paragraph of subsection (c) of this Code section applies to an
64 employer, the amount of monetary damages that may be recovered from the entity in a suit
65 brought under this article is governed by the applicable provision that provides the highest
66 damage award.

67 34-8-303.

68 An employee who alleges a violation of this article may sue the employer for the relief
69 provided by this article. Sovereign immunity is waived and abolished to the extent of
70 liability for the relief allowed under this article for a violation of this article.

71 34-8-304.

72 (a) An employee who sues under this article has the burden of proof, except that if the
73 suspension or termination of, or adverse personnel action against, an employee occurs not
74 later than 90 days after the date on which the employee reports a violation of law, the
75 suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be
76 because the employee made the report.

77 (b) It is an affirmative defense to a suit under this article that the employer would have
78 taken the action against the employee that forms the basis of the suit based solely on
79 information, observation, or evidence that is not related to the fact that the employee made
80 a report protected under this article of a violation of law.

81 34-8-305.

82 Except as provided by Code Section 34-8-306, an employee who seeks relief under this
83 article must sue not later than 90 days after the date on which the alleged violation of this
84 article:

85 (1) Occurred; or

86 (2) Was discovered by the employee through reasonable diligence.

87 34-8-306.

88 (a) An employee must initiate action under the grievance or appeal procedures of the
89 employer relating to suspension or termination of employment or adverse personnel action
90 before suing under this article.

91 (b) The employee must invoke the applicable grievance or appeal procedures not later
92 than 90 days after the date on which the alleged violation of this article:

93 (1) Occurred; or

94 (2) Was discovered by the employee through reasonable diligence.

95 (c) Time used by the employee in acting under the grievance or appeal procedures is
96 excluded, except as provided by subsection (d) of this Code section, from the period
97 established by Code Section 34-8-305.

98 (d) If a final decision is not rendered within 60 days after the date procedures are initiated
99 under subsection (a) of this Code section, the employee may elect to:

100 (1) Exhaust the applicable procedures under subsection (a) of this Code section, in which
101 event the employee must sue not later than 30 days after the date those procedures are
102 exhausted to obtain relief under this article; or

103 (2) Terminate procedures under subsection (a) of this Code section, in which event the
104 employee must sue within the time remaining under Code Section 34-8-305 to obtain
105 relief under this article.

106 34-8-307.

107 An employee may sue under this article in the superior court of the county in which the
108 cause of action arises or the Superior Court of Fulton County.

109 34-8-308.

110 (a) A supervisor who in violation of this article suspends or terminates the employment
111 of an employee or takes an adverse personnel action against the employee is liable for a
112 civil penalty not to exceed \$15,000.00.

113 (b) The Attorney General or appropriate prosecuting attorney may sue to collect a civil
114 penalty under this Code section.

115 (c) A civil penalty collected under this Code section shall be deposited in the state
116 treasury.

117 (d) A civil penalty assessed under this Code section shall be paid by the supervisor and
118 may not be paid by the employer.

119 (e) The personal liability of a supervisor or other individual under this article is limited to
120 the civil penalty that may be assessed under this Code section.

121 34-8-309.

122 (a) An employer shall inform its employees of their rights under this article by posting a
123 sign in a prominent location in the workplace.

124 (b) The Attorney General shall prescribe the design and content of the sign required by this
125 section."

126

SECTION 2.

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