

House Bill 941

By: Representatives Epps of the 131st, Smyre of the 136th, Martin of the 47th, Dukes of the 161st, Brooks of the 54th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 1 of the Official Code of Georgia Annotated, relating to persons
2 and their rights, so as to provide that every person who subjects, or causes to be subjected,
3 any person to the deprivation of any rights, privileges, or immunities secured by the
4 Constitution or laws of the State of Georgia, based upon a person's race, color, national
5 origin, gender, marital status, sexual orientation, age, religion, or disability status, or
6 perception thereof, shall have committed unlawful discrimination and shall be liable to the
7 party injured in an action at law, suit in equity, or other proper proceeding for redress; to
8 provide for legislative purpose and intent; to define certain terms; to prohibit discrimination
9 by conspiracy; to prohibit unlawful discrimination in employment practices; to provide
10 exceptions with respect to unlawful discrimination in employment practices; to prohibit
11 unlawful discrimination in public accommodations; to prohibit unlawful discrimination in
12 credit and banking practices; to prohibit unlawful discrimination in insurance practices; to
13 prohibit unlawful discrimination in educational practices; to provide exceptions with respect
14 to unlawful discrimination in educational practices; to prohibit unlawful discrimination
15 through harassment; to provide an exception to unlawful discrimination practices based on
16 a person's age; to provide an exception to unlawful discrimination practices based on a
17 person's gender; to provide that nothing in this Act shall affect court ordered remedies,
18 affirmative action, or conciliation agreements; to create a Civil Rights Division within the
19 Commission on Equal Opportunity and to provide for its powers and duties; to provide for
20 enforcement of this Act; to provide procedures with respect to the filing of complaints; to
21 provide for limitation of actions; to provide for records, confidentiality, and reporting
22 requirements; to provide for judicial review of decisions of the Commission on Equal
23 Opportunity; to provide for private causes of action; to provide for civil actions by the
24 Attorney General; to provide remedies; to provide for attorneys' fees; to provide that any
25 person who intentionally commits an unlawful discriminatory act as set forth in this Act or
26 aids, abets, incites, compels, or coerces another to do so commits an unlawful act; to provide
27 a penalty; to amend Article 2 of Chapter 19 of Title 45 of the Official Code of Georgia
28 Annotated, known as the "Fair Employment Practices Act of 1978," so as to change the

1 definition of a certain term; to change the composition of the Board of Commissioners of the
2 Commission on Equal Opportunity; to provide for the appointment of additional members;
3 to provide for related matters; to repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 **SECTION 1.**

6 Chapter 2 of Title 1 of the Official Code of Georgia Annotated, relating to persons and their
7 rights, is amended by designating Code Sections 1-2-1 through 1-2-11 of said chapter as
8 Article 1 of said chapter and adding at the end of said chapter a new Article 2 to read as
9 follows:

10 "ARTICLE 2

11 1-2-20.

12 (a) The General Assembly finds and declares that the practice of discrimination based
13 upon race, color, national origin, gender, marital status, sexual orientation, age, religion,
14 or disability status, or the perception thereof, in employment, credit, banking, education,
15 insurance, public accommodations, and access to services is against public policy.

16 (b) The general purposes of this article are:

17 (1) To safeguard all individuals from, and promote the elimination of, discrimination on
18 the grounds and in the areas set forth above;

19 (2) To establish a mechanism and a uniform procedure for the enforcement of the state's
20 antidiscrimination laws; and

21 (3) To expand the jurisdiction and authority of the Georgia Commission on Equal
22 Opportunity, as set forth in Code Section 45-19-24.

23 (c) This article shall be broadly construed to further the purposes stated herein.

24 (d) Nothing in this article shall be construed as indicating an intent to repeal, exclude, or
25 limit local or federal laws on the same subject matter that are not inconsistent with this
26 article, it being the intent of the General Assembly to preserve all existing rights and
27 remedies under such laws.

28 (e) The provisions of the article are severable, and if any of its provisions shall be held
29 unconstitutional, or invalidated for any reason, by any court of competent jurisdiction, the
30 decision of such court shall not affect or impair any of the remaining provisions.

1 1-2-21.

2 As used in this article, the term:

3 (1) 'Administrator' means the administrator as defined in Code Section 45-19-22.

4 (2) 'Commission' means the Commission on Equal Opportunity created in Code Section
5 45-19-24.

6 (3) 'Disability' means, with respect to an individual, a physical or mental impairment
7 which substantially limits one or more major life activities, having a record of such an
8 impairment, or being regarded as having such an impairment.

9 (4) 'Discrimination' means any direct or indirect act or practice of exclusion, distinction,
10 restriction, segregation, limitation, refusal, or denial based upon race, color, national
11 origin, gender, marital status, sexual orientation, age, religion, or disability status, or the
12 perception thereof, or the aiding, abetting, inciting, coercing, or compelling of such an
13 act or practice.

14 (5) 'Division' means the Civil Rights Division created within the Commission on Equal
15 Opportunity pursuant to Code Section 1-2-34.

16 (6) 'Educational institution' means any public or private entity providing educational
17 services including, but not limited to, a university, college, community or junior college,
18 extension course, elementary or secondary school, school system or academy,
19 kindergarten, pre-kindergarten, Head Start, day-care, or nursery; a business, nursing,
20 professional, secretarial, technical, or vocational school; any other private or public
21 school or program providing instructional services to persons within the State of Georgia;
22 or an agent of an educational institution.

23 (7) 'Employee' means an individual who is employed by an employer and who resides
24 or works within the State of Georgia.

25 (8) 'Employer' means any person who hires for compensation individuals directly or
26 indirectly.

27 (9) 'Employment agency' means a person or an agency that regularly undertakes, with
28 or without compensation, to procure employees for an employer or to procure for
29 employees opportunities to work for an employer and includes an agent of such a person.

30 (10) 'Harassment' means:

31 (A) Conduct based upon the race, color, national origin, gender, marital status, sexual
32 orientation, age, religion, or disability status, or the perception thereof, that has the
33 purpose or effect of unreasonably interfering with an individual's:

34 (i) Access to credit, banking services, employment, education, insurance, public
35 accommodations, or services;

1 (ii) Work performance or creating an intimidating, hostile, or offensive work
2 environment; or

3 (iii) Performance as a student or creating an intimidating, hostile, or offensive
4 educational environment; or

5 (B) Unwelcome sexual advances, requests for sexual favors, and other verbal or
6 physical conduct of a sexual nature when:

7 (i) Submission to such conduct is made either explicitly or implicitly a term or
8 condition of an individual's employment or education;

9 (ii) Submission to or rejection of such conduct by an individual is used as the basis
10 for employment or educational decisions affecting such individual; or

11 (iii) Such conduct has the purpose or effect of unreasonably interfering with an
12 individual's performance at work or in school or creating an intimidating, hostile, or
13 offensive working or educational environment.

14 (11) 'Labor organization' means any organization that exists wholly or partly for the
15 purpose of collective bargaining or dealing with employers concerning grievances, terms,
16 or conditions of employment or mutual aid or protection of employees.

17 (12) 'Marital status' means the status of being married, unmarried, engaged, single,
18 divorced, separated, or widowed and any of the conditions associated therewith, including
19 pregnancy or parenthood.

20 (13) 'Person' means one or more individuals and includes, but is not limited to,
21 partnerships, associations, corporations, legal representatives, governments, or any
22 political subdivisions.

23 (14) 'Public accommodations' means any person or entity that provides food, beverages,
24 lodging, entertainment, facilities, accommodations, goods, or services to the public.

25 (15) 'Sexual orientation' means being, or perceived as being, heterosexual, homosexual,
26 or bisexual, or having, or being perceived as having, a self-image or identity not
27 traditionally associated with one's biological maleness or femaleness.

28 1-2-22.

29 (a) Every person who subjects, or causes to be subjected, any person to the deprivation of
30 any rights, privileges, or immunities secured by the Constitution or laws of the State of
31 Georgia, based upon a person's race, color, national origin, gender, marital status, sexual
32 orientation, age, religion, or disability status, or perception thereof, shall have committed
33 unlawful discrimination and shall be liable to the party injured in an action at law, suit in
34 equity, or other proper proceeding for redress.

35 (b) If two or more persons conspire for the purposes of:

1 (1) Depriving, either directly or indirectly, any person or class of persons of the equal
2 protection of the laws or of equal privileges and immunities under the laws; or

3 (2) Preventing or hindering the constituted authorities of the state from giving to or
4 securing for all persons within the state equal protection of the laws,

5 and if one or more persons engaged therein do, or cause to be done, any act in furtherance
6 of the object of such conspiracy whereby another is injured in his or her person or property
7 or deprived of having or exercising any right or privilege of a citizen of this state, then the
8 party so injured or deprived shall have an action for the recovery of damages against any
9 one or more of the conspirators.

10 1-2-23.

11 (a) It is an unlawful employment practice for an employer to:

12 (1) Limit, segregate, classify, discharge, or fail or refuse to hire or otherwise discriminate
13 against any individual with respect to the individual's compensation, terms, tenure,
14 conditions, upgrading, facilities, or privileges of employment or take any action which
15 would deprive or tend to deprive an individual of employment opportunities or otherwise
16 adversely affect an individual's status as an employee based upon such individual's race,
17 color, national origin, gender, marital status, sexual orientation, age, religion, or disability
18 status, or perception thereof;

19 (2) Take reprisals against any person because he or she has opposed any practices or acts
20 forbidden under this article or because he or she has filed a complaint, testified, or
21 assisted in proceeding under this article; or

22 (3) Aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this
23 article or to attempt to do so.

24 (b) It is an unlawful practice for a labor organization, or its employee or agent, based upon
25 a person's race, color, national origin, gender, marital status, sexual orientation, age,
26 religion, or disability status, or perception thereof, to discriminate against a person seeking
27 membership or against a member with respect to membership rights, hiring, apprenticeship,
28 tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment
29 or to fail to classify properly, refer for employment, or otherwise discriminate against a
30 person or member.

31 (c) It is an unlawful practice for an employment agency, or its employee or agent, based
32 upon a person's race, color, national origin, gender, marital status, sexual orientation, age,
33 religion, or disability status, or perception thereof, to:

34 (1) Refuse to accept, register, classify properly, refer for employment, or otherwise
35 discriminate against a person; or

1 (2) Comply with a request from an employer for referral of applicants for employment
2 if the request, whether direct or indirect, indicates that the employer fails to comply with
3 the provisions of this article.

4 (d) It is an unlawful practice for any person carrying on or conducting any business within
5 this state requiring the employment of labor to bar or discharge from employment or to
6 refuse to hire, employ, or license any individual solely upon the ground of age, when the
7 reasonable demands of the position do not require such an age distinction, provided that
8 such individual is qualified physically, mentally, and by training and experience able to
9 perform satisfactorily the labor assigned to him or her or for which he or she applies.
10 Nothing in this subsection shall affect the retirement policy or system of any employer
11 where such policy or system is not merely a subterfuge to evade the purposes of this article.

12 (e) Any rights granted under this article cannot be waived or forfeited in an employment
13 contract and any such provision will be void ab initio.

14 1-2-24.

15 (a) The provisions of this article shall not apply to:

16 (1) The employment of any individual:

17 (A) By the individual's parent, grandparent, spouse, child, or grandchild; or

18 (B) In the domestic service of any person, except that the provisions of this article
19 prohibiting harassment shall apply to such employment;

20 (2) A religious corporation, association, society, or educational institution with respect
21 to qualifications based upon religion, when religion is a bona fide occupational
22 qualification for employment;

23 (3) The operation of a bona fide seniority system which mandates differences in such
24 things as wages, hiring priorities, layoff priorities, vacation credit, and job assignments
25 based upon seniority; or

26 (4) A restriction imposed by state statute, home rule, charter, ordinance, or civil service
27 rule and applied uniformly and without exception to all individuals, which establishes a
28 maximum age for entry into employment.

29 (b) The provisions of this article shall not mandate or require an employer to execute
30 unreasonable structural changes or purchase expensive equipment to accommodate the
31 employment of a person with a disability.

32 (c) It shall not be an unlawful employment practice for an employer to hire and employ
33 employees based upon gender in those certain instances where gender is a bona fide
34 occupational qualification reasonably necessary to the normal operation of that particular
35 business or enterprise. In such instances, the employer must prove that the practice is

1 justified because all of the excluded individuals are unable to perform the job in question
2 and because the essence of the business operation would otherwise be undermined.

3 1-2-25.

4 It is an unlawful practice for any person being the owner, lessee, proprietor, manager,
5 superintendent, agent, or employee of any place of public accommodation, directly or
6 indirectly, to:

7 (1) Discriminate against any person based upon that person's race, color, national origin,
8 gender, marital status, sexual orientation, age, religion, or disability status, or perception
9 thereof, in the provision of any of the accommodations, advantages, facilities, services,
10 or privileges thereof; or

11 (2) Publish, circulate, issue, display, post, or mail any written or printed communication,
12 notice, or advertisement to the effect that any of the accommodations, advantages,
13 facilities, services, or privileges of any such place shall be refused, withheld from, or
14 denied to any person or that the patronage of any person is unwelcome or objectionable
15 based upon race, color, national origin, gender, marital status, sexual orientation, age,
16 religion, or disability status, or perception thereof.

17 1-2-26.

18 The provisions of this article relating to gender shall not apply to:

19 (1) Restrooms, locker rooms, and similar facilities; or

20 (2) Restricting membership on an athletic team or in a program or event to participants
21 of one sex if the restriction is necessary to preserve the unique character of the team,
22 program, or event and it would not substantially reduce comparable athletic opportunities
23 for the other sex.

24 1-2-27.

25 It is an unlawful credit or banking practice for any creditor, bank, or financial institution,
26 or its employee or agent, to discriminate in the extension of personal or commercial credit,
27 or in the requirements for obtaining credit, or in the provision of, or access to, financial,
28 banking, or credit services based upon race, color, national origin, gender, marital status,
29 sexual orientation, age, religion, or disability status, or perception thereof.

30 1-2-28.

31 It is an unlawful insurance practice for any insurance provider, its employee or agent,
32 whether or not an independent agent, to discriminate in the extension of personal,
33 automobile, residential, or commercial insurance, or in the requirements for obtaining

1 personal, automobile, residential, or commercial insurance based upon race, color, national
2 origin, gender, marital status, sexual orientation, age, religion, or disability status, or
3 perception thereof.

4 1-2-29.

5 It is an unlawful education practice for any educational institution, its employee or agent,
6 based upon the race, color, national origin, gender, marital status, sexual orientation, age,
7 religion, or disability status, or perception thereof, to:

8 (1) Deny a person admission to, or exclude, expel, suspend, or transfer a person from,
9 or deny a person access to the activities, benefits, facilities, programs, or services of the
10 educational institution;

11 (2) Separate a person or persons into different classes, academic tracks, or courses of
12 study; or

13 (3) Provide a person with an inadequate public education which does not support,
14 through curriculum, finances, standards, instructional staff, technology, or other means,
15 the person's development of essential competencies in order that such person may realize
16 his or her potential.

17 1-2-30.

18 (a) It is not an unlawful practice for a religious or denominational educational institution
19 to limit admissions or give preference to applicants of the same religion.

20 (b) It is not an unlawful practice for pre-kindergarten, Head Start, primary, elementary, or
21 secondary educational schools or institutions to consider an individual's age when placing
22 the individual in an appropriate class or grade.

23 (c) The provisions of this Code section relating to education shall not restrict or limit the
24 rights, procedures, and remedies available under:

25 (1) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794;

26 (2) The Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq.;

27 (3) The Individuals with Disabilities Education Act, 20 U.S.C., Section 1401, et seq.; and

28 (4) Georgia laws and regulations implementing these federal statutes.

29 (d) With respect to educational institutions of undergraduate higher education, it is not an
30 unlawful practice to limit admissions or give preferences to applicants based upon gender
31 where an institution traditionally and continually from its establishment has had a policy
32 of admitting only students of one gender.

1 (e) It is not an unlawful practice for an educational institution to provide programs or
2 services designed to meet the needs of individuals with disabilities or with limited
3 proficiency in English.

4 (f) It is not an unlawful practice for an educational institution to develop and implement
5 methods and strategies to increase the participation of individuals of a particular race,
6 color, national origin, gender, marital status, sexual orientation, age, religion, or disability
7 status in programs or services in which individuals of that particular race, color, national
8 origin, gender, marital status, sexual orientation, age, religion, or disability status have been
9 traditionally underrepresented.

10 1-2-31.

11 (a) It is an unlawful practice for any person to harass another person based upon the
12 person's race, color, national origin, gender, marital status, sexual orientation, age, religion,
13 or disability status, or perception thereof, in the areas of employment, credit, banking,
14 education, insurance, and public accommodations or access to services.

15 (b) An employer, employment agency, labor organization, or educational institution is
16 subject to vicarious liability to a victimized employee or student for an actionable hostile
17 environment created by a supervisor with immediate or successively higher authority over
18 the employee or by a teacher or agent with authority over the student. When no tangible
19 action is taken, the employer, employment agency, labor organization, or educational
20 institution may raise an affirmative defense to liability or damages, subject to proof by a
21 preponderance of the evidence, by showing:

22 (1) It exercised reasonable care to prevent and correct promptly any harassing behavior;

23 or

24 (2) The plaintiff unreasonably failed to take advantage of any accessible preventive or
25 corrective opportunities provided by the employer or educational institution or to avoid
26 harm otherwise.

27 No affirmative defense is available when the harassment culminates in a tangible
28 employment or educational action.

29 (c) With respect to peer harassment among fellow employees or students, an employer,
30 employment agency, labor organization, or educational institution is responsible for any
31 acts of peer harassment in the workplace or educational institution where the employer,
32 employment agency, labor organization, or educational institution, its agents, supervisory
33 employees, or teachers knew or should have known of the conduct, unless it can show that
34 it took immediate and appropriate corrective action.

1 (d) Each educational institution must adopt and make available a policy that prohibits
2 harassment of students, provides procedures for reporting harassment of students, provides
3 appropriate remedies and protections for harassed students, and provides appropriate
4 sanctions against those who commit harassment. The lack of such a policy creates a
5 rebuttable presumption of liability.

6 (e) Every employer should adopt and make available a policy that prohibits harassment of
7 employees, provides procedures for reporting harassment, provides appropriate remedies
8 for harassed employees, and provides appropriate sanctions against those who commit
9 harassment. The lack of such policy will be evidence of liability and may be admitted at
10 trial to prove negligence, intent to discriminate, or failure to use reasonable care to prevent
11 or correct harassment.

12 1-2-32.

13 The provisions of this article relating to age shall not apply to persons who have not
14 attained the age of majority.

15 1-2-33.

16 Nothing in this article shall be construed to:

- 17 (1) Affect or prohibit court ordered remedies, affirmative action, or conciliation
18 agreements that are in accordance with the law; or
19 (2) Prohibit the state or any state agency, political subdivision, or public authority from
20 complying with federal regulations, taking action to prevent the forfeiture or permit the
21 receipt of federal funds, or secure information.

22 1-2-34.

23 (a) There is created a Civil Rights Division of the Commission on Equal Opportunity to
24 assist the administrator in carrying out the provisions of this article and in developing and
25 implementing policies and programs to combat unlawful discrimination.

26 (b) The administrator shall establish and publish such rules as are necessary to the orderly
27 administration of this article. Said rule making is to be governed by Chapter 13 of Title 50,
28 the 'Georgia Administrative Procedure Act.'

29 1-2-35.

30 It is an unlawful practice for a party to a conciliation agreement made pursuant to
31 subsection (e) of Code Section 1-2-36 to violate the terms of the agreement.

1 1-2-36.

2 (a) As used in this Code section, the term 'respondent' means a person charged with an act
3 or practice unlawful under this article.

4 (b) An individual claiming to be aggrieved by an unlawful practice, such an individuals´
5 representative, or the Attorney General may file with the administrator a written, sworn
6 complaint stating that an unlawful practice has been committed setting forth the facts upon
7 which the complaint is based and setting forth facts sufficient to enable the administrator
8 to identify the respondent so charged. The form of the complaint will be as determined by
9 the administrator. The administrator shall have an absolute right to join the commission
10 as a plaintiff in any action filed with the administrator. Such joinder may occur at any
11 time, without limitation, with only written notice to the other parties and, if such joinder
12 is postdetermination or after the withdrawal of the claim before the commission under
13 subsection (a) of Code Section 1-2-41, to any court at which the matter has been filed. The
14 administrator´s staff shall promptly investigate the allegations of unlawful practice set forth
15 in the complaint and, within a reasonable period of time, shall serve the respondent with
16 a copy of the complaint. The complaint shall be barred unless filed within two years after
17 the alleged unlawful practice occurs.

18 (c) The administrator shall determine within a reasonable period of time whether there is
19 reasonable cause to believe the respondent has engaged in an unlawful practice. If it is
20 determined that there is no reasonable cause to believe that the respondent has engaged in
21 an unlawful practice, the administrator shall issue an order dismissing the complaint.

22 (d) Within ten days after receiving a copy of the order dismissing the complaint, the
23 complainant may file with the administrator an application for reconsideration of the order.
24 Upon such application, the administrator shall determine within 15 days whether there is
25 reasonable cause to believe that the respondent has engaged in an unlawful practice. If it
26 is again determined that there is no reasonable cause to believe that the respondent has
27 engaged in an unlawful practice, the administrator shall issue an order dismissing the
28 complaint. Such dismissal shall not prejudice the complainant´s right to file an action
29 under this article with any court of competent jurisdiction.

30 (e) After investigation or after the review provided for in subsection (d) of this Code
31 section, if the administrator determines that there is reasonable cause to believe that the
32 respondent has engaged in an unlawful practice, then the administrator´s staff shall first
33 endeavor to eliminate the alleged unlawful practice by conference, conciliation, and
34 persuasion. The terms of a conciliation agreement reached with a respondent may require
35 the respondent to refrain from the commission of unlawful discriminatory practices in the
36 future and make such further provisions as may be agreed upon between the administrator
37 and the respondent. If a conciliation agreement is entered into, the administrator shall issue

1 and serve on the complainant a final order stating its terms. Except for the terms of the
2 conciliation agreement, neither the administrator nor any agent thereof shall make public
3 without the written consent of the complainant and the respondent information concerning
4 efforts in the particular case to eliminate an unlawful practice by conference, conciliation,
5 or persuasion, whether or not there is a determination of reasonable cause or a conciliation
6 agreement.

7 (f) In the event the administrator determines that there is reasonable cause to believe that
8 a respondent has engaged in an unlawful practice as defined in this article and the
9 administrator's staff is unable to eliminate the alleged unlawful practice by conference,
10 conciliation, and persuasion, the administrator shall issue a formal charge of
11 discrimination, stating that there is reasonable cause to believe that a discriminatory act has
12 taken place. Such a charge shall include findings of fact and conclusions of law and shall
13 be made available to all parties.

14 (g) At the expiration of one year from the date of a conciliation agreement and at other
15 times in its reasonable discretion, the administrator's staff may investigate whether the
16 terms of the agreement have been and are being complied with by the respondent. The
17 administrator shall report the findings to the complainant and respondent. If the
18 administrator finds reasonable cause to believe that the agreement has been breached, the
19 complainant may seek enforcement of the agreement in the superior court of the county in
20 which the alleged violation took place or in the county of the respondent's residence.

21 (h) The administrator shall issue to the complainant and the respondent, 90 days from the
22 date the complaint was filed and every 90 days thereafter, a status report summarizing any
23 action taken with respect to the complaint. The status reports required by this subsection
24 shall be issued until final resolution of the complaint.

25 1-2-37.

26 (a) The administrator may issue subpoenas in aid of investigations under this article. Such
27 subpoenas may order witnesses or parties to appear at a particular place and time and
28 submit to questions and produce documents, order a party to give access to premises or
29 property under the ownership or control of that party at a particular time, order a witness
30 or party to answer and swear to the truth of written interrogatories within 30 days of
31 service, or order a witness or party to affirm or deny written admissions within 30 days of
32 service. The terms contained in this subsection should be interpreted as are similar terms
33 contained in Code Sections 9-11-26 through 9-11-36.

34 (b) Witnesses summoned by a subpoena under this Code section shall be entitled to the
35 same witness and mileage fees as witnesses in proceedings in superior courts. Fees payable

1 to a witness summoned by a subpoena issued at the request of a party shall be paid by the
2 party.

3 (c) If a party or witness fails or refuses to comply with a subpoena issued under subsection
4 (a) of this Code section, the administrator may apply, through the Attorney General for an
5 order compelling compliance with the subpoena to the appropriate superior court. In
6 considering the application for an order compelling compliance with the subpoena, the
7 superior court may use, at its discretion, any of the remedies available under Code Section
8 9-11-37.

9 1-2-38.

10 (a)(1) When a charge of reasonable cause under Code Section 1-2-36 is issued, any party
11 may elect to have the claims asserted in that charge decided in a civil action brought by
12 the Attorney General on behalf of the aggrieved person as provided under paragraph (2)
13 of this subsection or to have the claims asserted in that charge decided in an action
14 brought before an administrative law judge under the Office of State Administrative
15 Hearings as provided for in subsection (d) of this Code section. In addition, any named
16 complainant to a charge of reasonable cause issued under Code Section 1-2-36 may elect,
17 without prejudice, to opt out of any action that may be brought by the Attorney General
18 or before an administrative law judge. The election must be in writing and must be
19 received by the commission not later than 20 days after the issuance of the determination.
20 The first election received by the commission controls the choice of forum. In the
21 absence of any valid election, the administrator shall decide the forum. The person
22 making such election shall give notice of doing so to all parties to whom the charge
23 relates.

24 (2) If an election is made under paragraph (1) of this subsection to have the claims
25 asserted in a cause determination brought by the Attorney General on behalf of the
26 aggrieved person in a civil action, the administrator shall, within 30 days, refer the matter
27 to the Attorney General. Within 30 days of receipt of the referral the Attorney General
28 shall review the charge and determine whether such findings are well grounded in fact
29 and warranted by law. If the Attorney General concurs with the administrator's findings
30 of fact and conclusions of law, the Attorney General shall bring an action in a superior
31 court to enforce the provisions of this article within the time allowed by the appropriate
32 statute of limitations. The action so filed shall be styled 'Georgia Commission on Equal
33 Opportunity, on behalf of (the charging parties), and (any additional plaintiffs) versus the
34 respondents.' If the Attorney General disagrees with any or all of the administrator's
35 findings of fact and conclusions of law, the Attorney General shall remand the matter
36 back to the administrator, stating in writing, with particularity, the source and nature of

1 the disagreement. Upon such remand, the administrator shall, after all necessary
2 additional review and investigation, reissue the charge, dismiss the charge, amend the
3 charge, or elect to have the matter heard before an administrative law judge as provided
4 for in subsection (e) of this Code section.

5 (b) The administrator shall have the power to engage in efforts to conciliate and settle any
6 matter brought by the commission throughout the pendency of the matter.

7 (c)(1) The court may impose the following civil fines if the respondent has been
8 adjudged to have committed an unlawful discriminatory act or practice:

9 (A) Up to \$50,000.00, if the respondent has not previously been found guilty in any
10 court of competent jurisdiction of committing a practice illegal under this article;

11 (B) Up to \$250,000.00, if the respondent has previously been found guilty in any court
12 of competent jurisdiction of committing a practice illegal under this article.

13 (2) The court shall award reasonable attorneys' fees and costs, including expert witness
14 fees and other reasonable litigation costs, to the administrator or aggrieved person in any
15 action in which the administrator or aggrieved person prevails. No attorneys' fees shall
16 be awarded to a respondent in any action in which the respondent prevails except for
17 abusive litigation as provided for in Article 5 of Chapter 7 of Title 51.

18 (3) In addition to the remedies set forth in paragraphs (1) and (2) of this subsection, the
19 court may award:

20 (A) Preventive and equitable relief, including a permanent or temporary injunction or
21 other order against the person responsible for the violation as is necessary to assure the
22 full and complete enjoyment of the rights guaranteed by this article;

23 (B) Compensatory and punitive damages;

24 (C) Sale, exchange, lease, rental, assignment, or sublease of real property to a person;

25 (D) Return or placement of any person to a prior or appropriate placement in an
26 educational institution; or

27 (E) Requiring educational institutions to provide persons with the curriculum, finances,
28 standards, instructional staff, technology, or other aspects of an adequate public
29 education which supports the person's development of essential competencies in order
30 that such person may realize his or her potential.

31 (d) If an election is made under paragraph (1) of subsection (a) of this Code section to
32 have the claims asserted in a cause determination brought before an administrative law
33 judge of the Office of State Administrative Hearings, the hearing will be conducted
34 according to Chapter 13 of Title 50. The administrative law judge shall have available all
35 remedies available to a superior court under this article. Judicial review of the final
36 decision of the administrative law judge shall be governed by Chapter 13 of Title 50.

1 (e) If the administrator, at any time subsequent to the filing of a complaint, determines,
2 based upon evidence admissible under Chapter 11 of Title 9, the 'Georgia Civil Practice
3 Act,' that there is good reason to believe that an act prohibited by this Code section has or
4 is about to take place and will cause any aggrieved person to suffer irremediable harm
5 thereby, the administrator may issue a temporary restraining order or order granting
6 preliminary or temporary relief. Such an order by the administrator will contain the act or
7 acts so enjoined, the preliminary or temporary relief so ordered, and a proffer of the
8 evidence supporting the order. An order issued by the administrator under this subsection
9 may be served upon the persons affected by the injunction in any manner necessary to
10 constitute actual notice of the order. An order issued by the administrator under this
11 subsection may be enforced by the Attorney General in the superior court in which any
12 person or entity so enjoined resides and will expire in five days after the service of the
13 order. In addition to the power granted by this subsection, the administrator may seek,
14 through the Attorney General's office, such injunctive relief as is available under Code
15 Section 9-11-65. No order issued under this Code section will affect the initiation or
16 continuation of administrative processing or procedures, nor will it diminish any rights or
17 remedies available under this article.

18 1-2-39.

19 (a) The commission shall keep a record of every complaint that is filed with it.

20 (b) No later than ten days after receipt of a written complaint of unlawful discrimination
21 under subsection (b) of Code Section 1-2-36, the commission shall notify the complainants
22 by certified mail of their right to pursue the matter in superior court under the terms of this
23 article and deadlines or limitations on such rights and shall set forth a timetable under
24 which the complainant must proceed.

25 (c) No complaint shall be filed under this article except with the administrator of the
26 Commission on Equal Opportunity, the administrator's designee, or with the superior
27 courts. No complaint under this article may be filed after the expiration of two years after
28 the date upon which the alleged unlawful practice occurred or the last occurrence in a
29 pattern of ongoing discriminatory practices.

30 1-2-40.

31 All records of the commission shall be kept confidential and shall not be disclosed except
32 as required by order of a court of competent jurisdiction or as otherwise provided by law.
33 The commission shall issue and make public an annual report showing the number of
34 complaints filed and their status and disposition by type and number.

1 1-2-41.

2 (a) Any aggrieved person, within two years after the occurrence of an allegedly
3 discriminatory act, may initiate suit in superior court under this article after 60 days from
4 the filing a complaint with the commission. Upon the application of any party, a jury trial
5 shall be directed to try the validity of any claim under this article specified in the suit. All
6 remedies available in common-law tort actions shall be available to prevailing plaintiffs in
7 addition to any remedies provided by this article or any other state statute. Prosecution of
8 such suit in superior court under this article shall constitute a withdrawal of a complaint
9 filed with the commission during the pendency of such suit.

10 (b) An aggrieved party may not commence a civil action under this article where the
11 complaint forms the basis of a charge issued by the administrator, if the commission has
12 commenced a hearing under this article with respect to such charge. In computing the
13 two-year period specified in subsection (a) of this Code section, the time spent in
14 administrative proceedings involving the complaint before the commission under this
15 article shall not be counted.

16 1-2-42.

17 (a) The Attorney General, based upon reasonable belief that any person has been denied
18 any of the rights guaranteed by this article and where such denial raises an issue of general
19 public importance, may commence a civil action for appropriate relief in superior court.

20 (b) The Attorney General may commence a civil action in superior court for appropriate
21 relief with respect to a breach of conciliation agreement to which the commission is a party
22 referred to the Attorney General by the administrator not later than 90 days after the
23 referral of the alleged breach.

24 (c) The Attorney General, on behalf of the administrator or other party at whose request
25 a subpoena is issued under this article, may enforce such subpoena in appropriate
26 proceedings in the superior court in the county in which the person to whom the subpoena
27 was addressed resides, was served, or transacts business.

28 (d) In a civil action brought by the Attorney General under this Code section the court may
29 use all remedies found in subsection (c) of Code Section 1-2-38 or subsection (a) of Code
30 Section 1-2-41.

31 (e) Upon timely application, any person may intervene in a civil action commenced by the
32 Attorney General under this article which involves an alleged discriminatory action to
33 which such person is an aggrieved party or a conciliation agreement to which such person
34 is a party. The court may grant such appropriate relief to any such intervening party as is
35 authorized under subsection (c) of Code Section 1-2-38 or subsection (a) of Code Section
36 1-2-41."

