

House Bill 633

By: Representatives Mobley of the 58th and Beasley-Teague of the 48th, Post 2

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to change the provisions relating to prohibitions against sex discrimination
3 in employment; to prohibit certain discrimination in employment and in membership in labor
4 organizations on the basis of sex, race, or national origin; to define certain terms; to change
5 the provisions relating to the prohibition of discriminatory wage differentials; to change a
6 certain criminal penalty applicable to unlawful discriminatory practices in employment; to
7 provide that the Commissioner of Labor shall promulgate rules which specify the criteria for
8 determining whether a job is dominated by employees of a particular sex, race, or national
9 origin in order to facilitate the enforcement of prohibitions against certain discriminatory
10 practices in employment; to provide that if the court finds that a defendant has engaged in
11 or is engaging in certain unlawful discriminatory practices in employment, the court may
12 enjoin the defendant from engaging in such unlawful discriminatory practices and order such
13 affirmative action as may be appropriate, which may include, but is not limited to,
14 reinstatement, hiring, or upgrading of employees, with or without back pay, or restoration
15 of membership in any defendant labor organization, or any other equitable relief the court
16 deems appropriate; to change a certain limitation on actions for unlawful discriminatory
17 practices in employment; to provide that upon commencement of an individual's
18 employment and at least annually thereafter, every employer subject to this Act shall provide
19 to each employee a written statement sufficient to inform the employee of the employee's
20 job title, wage rate, and the method of calculating the wage; to provide for supplemental
21 notifications under certain circumstances; to require certain employers to make and preserve
22 records that document the wages paid to employees and the method, system, calculations,
23 and other bases used to establish, adjust, and determine the wage rates paid to the employer's
24 employees; to provide that the Commissioner of Labor shall promulgate rules and regulations
25 to carry out the provisions of this Act; to provide for the confidentiality of certain
26 information required to be reported to the Commissioner of Labor; to provide that the
27 Commissioner of Labor may use the information and data collected pursuant to this Act for
28 statistical and research purposes and may compile and publish studies, analyses, reports, and

1 surveys based on the information and data that he or she deems appropriate; to repeal
2 conflicting laws; and for other purposes.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

4 **SECTION 1.**

5 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
6 is amended by striking in its entirety Chapter 5, relating to sex discrimination in employment,
7 and inserting in lieu thereof a new Chapter 5 to read as follows:

8 "CHAPTER 5

9 34-5-1.

10 The General Assembly declares that the practice of discriminating on the basis of sex, race,
11 or national origin by paying wages to employees of ~~one sex~~ at a lesser rate than the rate
12 paid to employees of the opposite sex or of a different race or national origin for
13 ~~comparable work in jobs which require the same, or essentially the same, knowledge, skill,~~
14 ~~effort, and responsibility~~ work in equivalent jobs unjustly discriminates against the person
15 receiving the lesser rate; leads to low worker morale, high turnover, and frequent labor
16 unrest; discourages workers paid at the lesser wage rates from training for higher level
17 jobs; curtails employment opportunities; decreases mobility of workers and increases labor
18 costs; impairs purchasing power and threatens the maintenance of an adequate standard of
19 living by such workers and their families; prevents optimum utilization of the labor
20 resources available to the state; threatens the well-being of citizens of this state; and
21 adversely affects the general welfare. It is declared to be the policy of the State of Georgia
22 to eliminate, as rapidly as possible, by exercise of the police power of this state,
23 discriminatory wage practices based on sex, race, or national origin.

24 34-5-2.

25 As used in this chapter, the term:

26 (1) 'Commissioner' means the Commissioner of Labor of the State of Georgia.

27 (2) 'Employ' means to permit to work.

28 (3) 'Employee' means any individual employed by an employer, other than domestic or
29 agricultural employees, and includes individuals employed by the state or any of its
30 political subdivisions, including public bodies.

1 (4) 'Employer' means any person employing ten or more employees and acting directly or
 2 indirectly in the interest of an employer in relation to an employee. The term 'employer,'
 3 as used in this chapter, means an employer who is engaged in intrastate commerce.

4 (5) 'Equivalent jobs' means jobs or occupations that are equal within the meaning of the
 5 federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), as amended, or jobs or
 6 occupations that are dissimilar but whose requirements are equivalent, when viewed as a
 7 composite of skills, effort, responsibility, and working conditions.

8 (6) 'Market rates' means the rates that employers within a prescribed geographic area
 9 actually pay, or are reported to pay, for specific jobs, as determined by formal or informal
 10 surveys, wage studies, or other means.

11 ~~(5)~~(7) 'Occupation' means any industry, trade, business or branch thereof, or any
 12 employment or class of employment.

13 ~~(6)~~(8) 'Person' means one or more individuals, partnerships, corporations, legal
 14 representatives, trustees, trustees in bankruptcy, or voluntary associations.

15 ~~(7)~~(9) 'Wage rate' means all compensation for employment, including payment in kind and
 16 amounts paid by employers for employee benefits.

17 34-5-3.

18 (a) It shall be an unlawful discriminatory practice for an employer to discriminate between
 19 employees, or for a labor organization to cause or attempt to cause an employer to ~~No~~
 20 ~~employer having employees subject to any provisions of this chapter shall discriminate;~~
 21 ~~within any establishment in which such employees are employed, between employees, on~~
 22 ~~the basis of sex, race, or national origin by:~~

23 (1) Paying ~~paying~~ wages to employees in ~~such establishment~~ at a rate less than the rate
 24 ~~at which he pays wages~~ paid to employees of the opposite sex or of a different race or
 25 national origin in such establishment for equal work in equivalent jobs ~~which require~~
 26 ~~equal skill, effort, and responsibility and which are performed under similar working~~
 27 ~~conditions;~~ or

28 (2) Paying wages to employees in a job that is dominated by employees of a particular
 29 sex, race, or national origin at a rate less than the rate paid to employees in another job
 30 that is dominated by employees of the opposite sex or of a different race or national
 31 origin for work in equivalent jobs;

32 provided, however, that it shall not be an unlawful discriminatory practice for an employer
 33 to pay different wage rates to employees ~~except where such payment is~~ the payments are
 34 ~~made pursuant to~~ ~~(1)~~(A) a seniority system, ~~(2)~~(B) a merit system, ~~(3)~~(C) a system which
 35 measures earnings by quantity or quality of production, or ~~(4)~~(D) any bona fide a
 36 ~~differential based on any other~~ factor other than sex, race, or national origin. An employer

1 who is paying a wage rate differential in violation of this subsection shall not, in order to
2 comply with this subsection, reduce the wage rate of any employee.

3 (b) It shall also be unlawful for any person to cause or attempt to cause an employer to
4 discriminate against any employee in violation of this chapter.

5 (c) It shall be unlawful for any person to discharge or in any other manner discriminate
6 against any employee covered by this chapter because such employee has made a
7 complaint to his or her employer or any other person or has instituted or caused to be
8 instituted any proceeding under or related to this chapter or has testified or is about to
9 testify in any such proceedings. Any person who violates any provision of this Code
10 section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished
11 by a fine of not less than to exceed \$100.00 nor more than \$1,000.00 for each offense.

12 (d) To facilitate the enforcement of this Code section, the Commissioner shall promulgate
13 rules which specify the criteria for determining whether a job is dominated by employees
14 of a particular sex, race, or national origin. Criteria shall include factors such as whether
15 the job has ever been formally classified as or traditionally considered to be a 'male' or
16 'female' or 'white' or 'minority' job, whether there is a history of discrimination against
17 women or minority groups with regard to wages, assignment, or access to jobs, or other
18 terms and conditions of employment, and the demographic composition of the work force
19 in equivalent jobs.

20 34-5-4.

21 (a) The Commissioner shall have the power and it shall be his or her duty to carry out this
22 chapter; and for this purpose the Commissioner or his or her authorized representative shall
23 have the power to:

24 (1) Assist any employer to ensure that all employees are receiving comparable pay for
25 comparable work in jobs which require comparable skill, effort, and responsibility;

26 (2) Assist any employer so that the character of the work and operations on which
27 persons are employed can be compared, to question such persons, and to obtain such
28 other information as is reasonably necessary for the administration and enforcement of
29 this chapter; and

30 (3) Eliminate pay practices unlawful under this chapter by informal methods of
31 conference, conciliation, and persuasion.

32 (b) The Commissioner is authorized to request witnesses to appear and to produce
33 pertinent records for examination by the Commissioner or his or her authorized
34 representative in the county of the place of business of the employer and such witnesses
35 shall be paid the same fees as are allowed witnesses attending the superior courts of this
36 state. In the event of failure of a person to attend, testify, or produce records voluntarily,

1 the Commissioner may make application to the superior court of the county in which the
 2 business is located and, after notice and hearing, the court, in its discretion, and upon
 3 proper cause shown, may issue an order requiring the person to appear before the
 4 Commissioner or his or her authorized representative and testify or produce records as
 5 requested by the Commissioner.

6 (c) The Commissioner shall have the authority to issue such rules and regulations
 7 appropriate to the carrying out of this chapter.

8 34-5-5.

9 (a) In any civil action brought against any employer who violates Code Section 34-5-3, if
 10 the court finds that a defendant has engaged in or is engaging in any unlawful
 11 discriminatory practice as defined in this chapter, the court may enjoin the defendant from
 12 engaging in such unlawful discriminatory practice and order such affirmative action as may
 13 be appropriate, which may include, but is not limited to, reinstatement, hiring, or upgrading
 14 of employees, with or without back pay, or restoration of membership in any defendant
 15 labor organization, or any other equitable relief the court deems appropriate.

16 ~~(a)~~(b) Any employer who violates Code Section 34-5-3 shall be liable to the employee
 17 affected in the amount of his or her unpaid wages. Back pay liability shall not accrue from
 18 a date more than two years prior to the filing of the complaint. An action to recover such
 19 liability may be maintained in any court of competent jurisdiction by the aggrieved
 20 employee. The court in such action shall, in cases of violation, in addition to any judgment
 21 awarded to plaintiff, allow costs of the action and a reasonable attorney's fee not to exceed
 22 25 percent of the judgment to be paid by the defendant.

23 ~~(b)~~(c) Court action under this Code section may be commenced no later than ~~one year~~ two
 24 years after the cause of action accrues.

25 34-5-6.

26 In the event any dispute should arise between any employer and employee covered by this
 27 chapter in relation to any subject matter which is covered by this chapter, either of the
 28 parties shall have the right to request arbitration of the dispute. The party requesting
 29 arbitration shall file written notice of his or her request with the opposite party by either
 30 registered or certified mail or statutory overnight delivery. Within 30 days after receipt of
 31 such notice, the other party shall either accept or reject the arbitration offer. If the offer is
 32 accepted, the employer and the employee shall each select and appoint one arbitrator within
 33 ten days after acceptance. The arbitrators so selected shall then select a county adjoining
 34 the county in which the business of the employer is located and in which the dispute arose
 35 and the judge of the superior court or the senior judge thereof in terms of length of service

1 on the bench of the judicial circuit in which such selected county shall be located shall
2 appoint a third arbitrator who shall act as the ~~chairman~~ chairperson of the arbitration
3 committee. The arbitration committee shall meet at such time as shall be fixed by the
4 ~~chairman~~ chairperson and, after giving notice of the hearing to the parties concerned and
5 affording them an opportunity to appear and be heard on the matters in dispute, shall
6 proceed to resolve all matters contained within the request for arbitration. The decision of
7 the arbitration committee shall be binding upon the parties affected, except that either party
8 may appeal such decision to any court of competent jurisdiction within 30 days from
9 publication of the decision.

10 34-5-7.

11 Every employer subject to this chapter shall keep an abstract or copy of this chapter posted
12 in a conspicuous place in or about the premises wherein any employee is employed.
13 Employers shall be furnished copies or abstracts of this chapter by the state upon request
14 and without charge.

15 34-5-8.

16 (a) Upon commencement of an individual's employment and at least annually thereafter,
17 every employer subject to this chapter shall provide to each employee a written statement
18 sufficient to inform the employee of the employee's job title, wage rate, and the method
19 of calculating the wage. The notice shall be supplemented whenever an employee is
20 promoted or reassigned to a different position with the employer; provided, however, that
21 the employer is not required to issue supplemental notifications for temporary
22 reassignments that are no greater than three months in duration.

23 (b) Every employer subject to this chapter shall make and preserve records that document
24 the wages paid to employees and the method, system, calculations, and other bases used
25 to establish, adjust, and determine the wage rates paid to the employer's employees. Every
26 employer subject to this chapter shall preserve the records and make reports for periods
27 determined by the Commissioner. The Commissioner shall promulgate rules and
28 regulations to carry out the provisions of this Code section.

29 (c) The rules promulgated or adopted by the Commissioner shall provide for the protection
30 of confidentiality of employees and shall expressly require that reports shall not include the
31 names or other identifying information from which readers can discern the identities of
32 employees. The rules may also identify circumstances that warrant a prohibition on
33 disclosing reports or information identifying the employer.

1 (d) The Commissioner may use the information and data collected pursuant to this Code
2 section for statistical and research purposes and may compile and publish studies, analyses,
3 reports, and surveys based on the information and data that the Commissioner deems
4 appropriate."

5 **SECTION 2.**

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