

House Bill 885

By: Representatives Moraitakis of the 42nd, Post 4, Epps of the 90th, Brooks of the 47th, Teper of the 42nd, Post 1, Gardner of the 42nd, Post 3, 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 the
6 perception thereof, or because of the race, color, national origin, gender, marital status,
7 sexual orientation, age, religion, or disability status, or the perception thereof, of any person
8 with whom he or she is or may wish to be associated shall have committed unlawful
9 discrimination and shall be liable to the party injured in an action at law, suit in equity, or
10 other proper proceeding for redress; to provide for legislative purpose and intent; to define
11 certain terms; to prohibit discrimination by conspiracy; to prohibit unlawful discrimination
12 in employment practices; to provide exceptions with respect to unlawful discrimination in
13 employment practices; to prohibit unlawful discrimination in public accommodations; to
14 prohibit unlawful discrimination in credit and banking practices; to prohibit unlawful
15 discrimination in insurance practices; to prohibit unlawful discrimination in educational
16 practices; to provide exceptions with respect to unlawful discrimination in educational
17 practices; to prohibit unlawful discrimination through harassment; to provide an exception
18 to unlawful discrimination practices based on a person's age; to provide an exception to
19 unlawful discrimination practices based on a person's gender; to provide that nothing in this
20 Act shall affect court ordered remedies, affirmative action, or conciliation agreements; to
21 provide for enforcement of this Act; to provide procedures with respect to the filing of
22 complaints; to provide for limitation of actions; to provide for records, confidentiality, and
23 reporting requirements; to provide for judicial review of decisions of the Commission on
24 Equal Opportunity; to provide for private causes of action; to provide for civil actions by the
25 Attorney General; to provide remedies; to provide for attorneys' fees; to provide that any
26 person who intentionally commits an unlawful discriminatory act as set forth in this Act or
27 aids, abets, incites, compels, or coerces another to do so commits an unlawful act; to provide
28 a penalty; to provide for related matters; to repeal conflicting laws; and for other purposes.

1 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

2 **SECTION 1.**

3 Chapter 2 of Title 1 of the Official Code of Georgia Annotated, relating to persons and their
4 rights, is amended by designating Code Sections 1-2-1 through 1-2-11 of said chapter as
5 Article 1 of said chapter and adding at the end of said chapter a new Article 2 which shall be
6 known and may be cited as the "Georgia Nondiscrimination Act of 2003" to read as follows:

7 "ARTICLE 2

8 1-2-20.

9 (a) The General Assembly finds and declares that the practice of discrimination based
10 upon a person's race, color, national origin, gender, marital status, sexual orientation, age,
11 religion, or disability status, or the perception thereof, or because of the race, color,
12 national origin, gender, marital status, sexual orientation, age, religion, or disability status,
13 or the perception thereof, of any person with whom he or she is or may wish to be
14 associated in employment, credit, banking, education, insurance, public accommodations,
15 and access to services is against public policy.

16 (b) This article shall be broadly construed to further the purposes stated herein.

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

21 1-2-21.

22 As used in this article, the term:

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

24 (2) 'Commission' means the Commission on Equal Opportunity created in Code Section
25 45-19-24.

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

29 (4) 'Discrimination' means any direct or indirect act or practice of exclusion, distinction,
30 restriction, segregation, limitation, refusal, or denial based upon a person's race, color,
31 national origin, gender, marital status, sexual orientation, age, religion, or disability
32 status, or the perception thereof, or because of the race, color, national origin, gender,
33 marital status, sexual orientation, age, religion, or disability status, or the perception

1 thereof, of any person with whom he or she is or may wish to be associated or the aiding,
2 abetting, inciting, coercing, or compelling of such an act or practice.

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

10 (6) 'Employee' means an individual who is employed by an employer and who resides
11 or works within the State of Georgia.

12 (7) 'Employer' means any person who hires for compensation individuals directly or
13 indirectly.

14 (8) 'Employment agency' means a person or an agency that regularly undertakes, with
15 or without compensation, to procure employees for an employer or to procure for
16 employees opportunities to work for an employer and includes an agent of such a person.

17 (9) 'Harassment' means:

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

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

23 (ii) Work performance or creating an intimidating, hostile, or offensive work
24 environment; or

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

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

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

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

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

1 (10) 'Marital status' means the status of being married, unmarried, engaged, single,
2 divorced, separated, or widowed and any of the conditions associated therewith, including
3 pregnancy or parenthood.

4 (11) 'Person' means one or more individuals and includes, but is not limited to,
5 partnerships, associations, corporations, legal representatives, governments, or any
6 political subdivisions.

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

9 (13) 'Sexual orientation' means a person's heterosexuality, homosexuality, bisexuality,
10 or gender identity or expression, whether actual or perceived.

11 1-2-22.

12 (a) Every person who subjects, or causes to be subjected, any person to the deprivation of
13 any rights, privileges, or immunities secured by the Constitution or laws of the State of
14 Georgia, based upon a person's race, color, national origin, gender, marital status, sexual
15 orientation, age, religion, or disability status, or the perception thereof, or because of the
16 race, color, national origin, gender, marital status, sexual orientation, age, religion, or
17 disability status, or the perception thereof, of any person with whom he or she is or may
18 wish to be associated shall have committed unlawful discrimination and shall be liable to
19 the party injured in an action at law or other proper proceeding for redress.

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

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

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

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

30 1-2-23.

31 The State of Georgia and all of its contracting agencies shall include in all contracts
32 negotiated on or after July 1, 2003, a provision obligating the contractor to comply with
33 this article in connection with any work to be performed in this state and requiring the
34 contractor to include a similar provision in all subcontracts for work to be performed in this
35 state.

1 1-2-24.

2 (a) Subject to the provisions of Code Section 1-2-25, it shall be unlawful employment
3 practice for an employer to:

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

11 (2) Take adverse action against any person because he or she has opposed any practices
12 or acts forbidden under this article or because he or she has filed a complaint, testified,
13 or assisted in proceeding under this article; or

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

16 (b) It shall be an unlawful practice for an employment agency, or its employee or agent,
17 based upon a person's race, color, national origin, gender, marital status, sexual orientation,
18 age, religion, or disability status, or perception thereof, to:

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

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

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

32 (d) Any rights granted under this article cannot be waived or forfeited in an employment
33 contract and any such provision shall be void ab initio.

34 1-2-25.

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

36 (1) The employment of any individual:

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

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

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

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

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

13 (5) Employers with fewer than 15 employees.

14 (b) It shall not be an unlawful employment practice for an employer to hire and employ
15 employees based upon gender in those certain instances where gender is a bona fide
16 occupational qualification reasonably necessary to the normal operation of that particular
17 business or enterprise. In such instances, the employer must prove that the practice is
18 justified because all of the excluded individuals are unable to perform the job in question
19 and because the essence of the business operation would otherwise be undermined.

20 1-2-26.

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

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

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

27 1-2-27.

28 It shall be an unlawful practice for any person who is the owner, lessee, proprietor,
29 manager, superintendent, agent, or employee of any place of public accommodation,
30 directly or indirectly, to:

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

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

7 1-2-28.

8 It shall be an unlawful credit or banking practice for any creditor, bank, or financial
9 institution, or its employee or agent, to discriminate in the extension of personal or
10 commercial credit, or in the requirements for obtaining credit, or in the provision of, or
11 access to, financial, banking, or credit services based upon race, color, national origin,
12 gender, marital status, sexual orientation, age, religion, or disability status, or perception
13 thereof.

14 1-2-29.

15 It shall be an unlawful insurance practice for any insurance provider, its employee or agent,
16 whether or not an independent agent, to discriminate in the extension of all forms of
17 insurance, including, but not limited to life, health, automobile, residential, or commercial
18 insurance, or in the requirements for obtaining life, health, automobile, residential, or
19 commercial insurance, based upon race, color, national origin, gender, marital status,
20 sexual orientation, age, religion, or disability status, or perception thereof.

21 1-2-30.

22 Subject to the provisions of Code Section 1-2-31, it shall be an unlawful education practice
23 for any educational institution, or its employee or agent, based upon the race, color,
24 national origin, gender, marital status, sexual orientation, age, religion, or disability status,
25 or perception thereof, to:

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

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

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

1 1-2-31.

2 (a) It shall not be an unlawful practice for a religious or denominational educational
3 institution to limit admissions or give preference to applicants of the same religion.

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

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

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

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

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

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

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

17 (e) It shall not be an unlawful practice for an educational institution to provide programs
18 or services designed to meet the needs of individuals with disabilities or with limited
19 proficiency in English.

20 (f) It shall not be an unlawful practice for an educational institution to develop and
21 implement methods and strategies to increase the participation of individuals of a particular
22 race, color, national origin, gender, marital status, sexual orientation, age, religion, or
23 disability status in programs or services in which individuals of that particular race, color,
24 national origin, gender, marital status, sexual orientation, age, religion, or disability status
25 have been traditionally underrepresented.

26 1-2-32.

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

31 (b) An employer, employment agency, or educational institution is subject to vicarious
32 liability to an employee or student for whom an actionable hostile environment has been
33 created by a supervisor with immediate or successively higher authority over the employee
34 or by a teacher or agent with authority over the student. When no tangible action is taken
35 against the employee or student, the employer, employment agency, or educational

1 institution may raise an affirmative defense to liability or damages, subject to proof by a
2 preponderance of the evidence, by showing:

3 (1) It exercised reasonable care to detect, prevent, and correct promptly any harassing
4 behavior; or

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

8 No affirmative defense is available to the employer, employment agency, or educational
9 institution when the harassment culminates in a tangible employment or educational action.

10 (c) With respect to peer harassment among fellow employees or students, an employer,
11 employment agency, or educational institution is responsible for any acts of peer
12 harassment in the workplace or educational institution where the employer, employment
13 agency, or educational institution, its agents, supervisory employees, or teachers knew or
14 should have known of the conduct, unless it can show that it took immediate and
15 appropriate corrective action.

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

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

27 1-2-33.

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

30 1-2-34.

31 Nothing in this article shall be construed to:

32 (1) Affect or prohibit court ordered remedies, affirmative action, or conciliation
33 agreements that are in accordance with the law; or

1 (2) Prohibit the state or any state agency, political subdivision, or public authority from
2 complying with federal law and regulations, taking action to prevent the forfeiture of or
3 permitting the receipt of federal funds, or securing information.

4 1-2-35.

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

7 (b) An individual claiming to be aggrieved by an unlawful practice, such an individual's
8 representative, or the Attorney General may file with the administrator a written, sworn
9 complaint stating that an unlawful practice has been committed setting forth the facts upon
10 which the complaint is based and setting forth facts sufficient to enable the administrator
11 to identify the respondent so charged. The form of the complaint shall be as determined by
12 the administrator. The administrator shall promptly investigate the allegations of unlawful
13 practice set forth in the complaint and, within a reasonable period of time, not to exceed
14 30 days, shall serve the respondent with a copy of the complaint. The complaint shall be
15 barred unless filed within two years after the alleged unlawful practice occurs.

16 (c) The administrator shall determine within a reasonable period of time, not to exceed 180
17 days, whether there is reasonable cause to believe the respondent has engaged in an
18 unlawful practice. If it is determined that there is no reasonable cause to believe that the
19 respondent has engaged in an unlawful practice, the administrator shall issue an order
20 dismissing the complaint.

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

29 (e) After investigation or after the review provided for in subsection (d) of this Code
30 section, if the administrator determines that there is reasonable cause to believe that the
31 respondent has engaged in an unlawful practice, then the administrator's staff shall first
32 endeavor to resolve the alleged unlawful practice by conference, conciliation, and
33 persuasion. The terms of a conciliation agreement reached with a respondent may require
34 the respondent to refrain from the commission of unlawful discriminatory practices in the
35 future and make such further provisions as may be agreed upon between the administrator
36 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) The administrator shall issue to the complainant and the respondent 90 days from the
15 date the complaint was filed, and every 90 days thereafter, a status report summarizing any
16 action taken with respect to the complaint. The status reports required by this subsection
17 shall be issued until final resolution of the complaint.

18 1-2-36.

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

26 1-2-37.

27 It shall be an unlawful practice for a party to a conciliation agreement made pursuant to
28 subsection (e) of Code Section 1-2-35 to violate the terms of the agreement.

29 1-2-38.

30 (a) The administrator may issue subpoenas in aid of investigations under this article. Such
31 subpoenas may order witnesses or parties to appear at a particular place and time and
32 submit to questions and produce documents, order a party to give access to premises or
33 property under the ownership or control of that party at a particular time, order a party or
34 witness to answer and swear to the truth of written interrogatories within 30 days of

1 service, or order a party to affirm or deny written admissions within 30 days of service. The
2 terms contained in this subsection should be interpreted as are similar terms contained in
3 Code Sections 9-11-27 through 9-11-35.

4 (b) Witnesses summoned by a subpoena under this Code section shall be entitled to the
5 same witness and mileage fees as witnesses in proceedings in superior courts. Fees payable
6 to a witness summoned by a subpoena issued at the request of a party shall be paid by the
7 party.

8 (c) If a party or witness fails or refuses to comply with a subpoena issued under
9 subsection (a) of this Code section, the administrator may apply, through the Attorney
10 General for an order compelling compliance with the subpoena to the appropriate superior
11 court. In considering the application for an order compelling compliance with the
12 subpoena, the superior court may use, at its discretion, any of the remedies available under
13 Code Section 9-11-35.

14 1-2-39.

15 (a)(1) When a charge of reasonable cause under Code Section 1-2-34 is issued, any party
16 may elect to request that the claims asserted in that charge be decided in a civil action
17 brought by the Attorney General on behalf of the aggrieved person as provided under
18 paragraph (2) of this subsection or to have the claims asserted in that charge decided in
19 an action brought before an administrative law judge under the Office of State
20 Administrative Hearings as provided for in subsection (d) of this Code section. In
21 addition, any named complainant to a charge of reasonable cause issued under Code
22 Section 1-2-35 may elect, without prejudice, to opt out of any action that may be brought
23 by the Attorney General or before an administrative law judge. The election must be in
24 writing and must be received by the commission not later than 20 days after the issuance
25 of the determination. The first election received by the commission controls the choice
26 of forum. In the absence of any valid election, the administrator shall decide the forum.
27 The person making such election shall give notice of doing so to all parties to whom the
28 charge relates.

29 (2) If an election is made under paragraph (1) of this subsection to have the claims
30 asserted in a cause determination brought by the Attorney General on behalf of the
31 aggrieved person in a civil action, the administrator shall, within 30 days, refer the matter
32 to the Attorney General. Within 30 days of receipt of the referral the Attorney General
33 shall review the charge and determine whether such findings are well grounded in fact
34 and warranted by law. If the Attorney General concurs with the administrator's findings
35 of fact and conclusions of law, the Attorney General shall bring an action in a superior
36 court to enforce the provisions of this article within the time allowed by the appropriate

1 statute of limitations. The action so filed shall be styled 'Georgia Commission on Equal
2 Opportunity, on behalf of (the charging parties), and (any additional plaintiffs) versus the
3 respondents.' If the Attorney General disagrees with any or all of the administrator's
4 findings of fact and conclusions of law, the Attorney General shall remand the matter
5 back to the administrator, stating in writing, with particularity, the source and nature of
6 the disagreement. Upon such remand, the administrator shall, after all necessary
7 additional review and investigation, reissue the charge, dismiss the charge, or amend the
8 charge.

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

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

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

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

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

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

24 (A) Equitable relief, including a permanent or temporary injunction or other order
25 against the person responsible for the violation as is necessary to assure the full and
26 complete enjoyment of the rights guaranteed by this article; or

27 (B) Compensatory and punitive damages.

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

34 (e) If the administrator, at any time subsequent to the filing of a complaint, determines,
35 based upon evidence admissible under Chapter 11 of Title 9, the 'Georgia Civil Practice
36 Act,' that there is good reason to believe that an act prohibited by this article has or is about
37 to take place and will cause any aggrieved person to suffer irremediable harm thereby, the

1 administrator may issue temporary relief, including a temporary restraining order or
2 preliminary injunction. Such an order by the administrator shall contain findings of fact
3 supporting the order. An order issued by the administrator under this subsection may be
4 served upon the persons affected by the injunction in any manner necessary to constitute
5 actual notice of the order. An order issued by the administrator under this subsection may
6 be enforced by the Attorney General in the superior court in which any person or entity so
7 enjoined resides and shall expire within five days after the service of the order. In addition
8 to the power granted by this subsection, the administrator may seek, through the Attorney
9 General's office, such injunctive relief as is available under Code Section 9-11-65. No
10 order issued under this Code section will affect the initiation or continuation of
11 administrative processing or procedures, nor will it diminish any rights or remedies
12 available under this article.

13 1-2-40.

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

15 (b) No later than ten days after receipt of a written complaint of unlawful discrimination
16 under subsection (b) of Code Section 1-2-35, the commission shall notify the complainant
17 by certified mail of the right to pursue the matter in superior court under the terms of this
18 article.

19 (c) No complaint shall be filed under this article except with the administrator of the
20 commission, the administrator's designee, or with the superior courts. No complaint under
21 this article may be filed after the expiration of two years after the date upon which the
22 alleged unlawful practice occurred or the last occurrence in a pattern of ongoing
23 discriminatory practices.

24 1-2-41.

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

29 1-2-42.

30 (a) Any aggrieved person, within two years after the occurrence of an allegedly
31 discriminatory act, may initiate suit in superior court under this article after 60 days from
32 the filing a complaint with the commission. Upon the application of any party, a jury trial
33 shall be directed to try the validity of any claim under this article specified in the suit. All
34 remedies available in common-law tort actions shall be available to prevailing plaintiffs in

1 addition to any remedies provided by this article or any other state statute. Prosecution of
2 such suit in superior court under this article shall constitute a withdrawal of a complaint
3 filed with the commission during the pendency of such suit.

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

10 1-2-43.

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

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

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

22 (d) In a civil action brought by the Attorney General under this Code section the court may
23 use all remedies found in subsection (c) of Code Section 1-2-37 or subsection (a) of Code
24 Section 1-2-40.

25 (e) Upon timely application, any person may intervene in a civil action commenced by the
26 Attorney General under this article that involves an alleged discriminatory action to which
27 such person is an aggrieved party or a conciliation agreement to which such person is a
28 party. The court may grant such appropriate relief to any such intervening party as is
29 authorized under subsection (c) of Code Section 1-2-37 or subsection (a) of Code Section
30 1-2-40."

31 SECTION 2.

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