

## House Bill 291

By: Representatives Cox of the 102<sup>nd</sup>, Everson of the 106<sup>th</sup>, Talton of the 145<sup>th</sup>, Byrd of the 20<sup>th</sup>, Casas of the 103<sup>rd</sup>, and others

## A BILL TO BE ENTITLED

## AN ACT

1 To establish "Georgia's Antidiscrimination Act of 2009"; to provide for legislative purpose  
2 and intent; to prohibit discrimination by post secondary schools; to amend Chapter 1 of Title  
3 7 of the Official Code of Georgia Annotated, relating to financial institutions, so as to change  
4 certain provisions related to corporate stock and securities and small minority business  
5 development corporations; to amend Code Section 20-3-65 of the Official Code of Georgia  
6 Annotated, relating to prohibiting the exclusion of persons from the University of Georgia  
7 for religious beliefs, so as to prohibit the exclusion of persons from certain educational  
8 institutions on the basis of race or gender and to clarify that certain post secondary schools  
9 are prohibited from discriminating on the basis of race or gender; to amend Chapter 10 of  
10 Title 36 of the Official Code of Georgia Annotated, relating to public works contracts by  
11 local governments, so as to prohibit discrimination and remove certain provisions relating  
12 to minority business; to amend Article 2 of Chapter 7 of Title 48 of the Official Code of  
13 Georgia Annotated, relating to the imposition, rate, and computation of income taxes and  
14 exemptions, so as to modify certain provisions relating to the taxation of corporations,  
15 computation of taxable net income, deduction for payments to minority subcontractors, and  
16 the certification as a minority business enterprise; to amend Article 3 of Chapter 5 of Title  
17 50 of the Official Code of Georgia Annotated, relating to state purchasing, so as to prohibit  
18 discrimination in government contracts and modify certain provisions relating to minority  
19 business enterprise development and the submission of information to a state agency by  
20 persons desiring to provide professional services and preliminary selections; to amend  
21 Article 1 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to  
22 general provisions pertaining to lottery for education, so as to prohibit discrimination and  
23 modify certain provisions for bonding requirements for vendors, qualification of vendors,  
24 competitive bid requirements, and the legislative oversight committee therefor; to provide  
25 for related matters; to provide for an effective date and applicability; to repeal conflicting  
26 laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 **SECTION 1.**

29 This Act shall be known and may be cited as "Georgia's Antidiscrimination Act of 2009."

30 **SECTION 2.**

31 Both the United States and Georgia Constitutions guarantee to all persons the right to be  
 32 treated fairly and equally under the laws created by this General Assembly. Such right  
 33 necessarily includes the right not to be subjected to discrimination based on a person's race  
 34 or gender. Currently, laws and government practices of this State authorize and attempt to  
 35 legalize discrimination on the basis of race and gender. As a result, many Georgia residents  
 36 are treated less favorably by our government and schools simply due to their race or gender.  
 37 It is the intent of the General Assembly through this Act to eliminate discriminatory practices  
 38 for the benefit of present and future generations. The time has come for all persons to be  
 39 treated equally under the laws of the State of Georgia.

40 **SECTION 3.**

41 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial  
 42 institutions, is amended in subparagraph (c)(2)(B) of Code Section 7-1-288, relating to  
 43 corporate stock and securities, as follows:

44 "(B) A business development corporation ~~or small minority business development~~  
 45 ~~corporation~~ authorized under Article 6 of this chapter;"

46 **SECTION 4.**

47 Said chapter is further amended by repealing Article 12, relating to small minority business  
 48 development corporations, and by designating said article as reserved.

49 **SECTION 5.**

50 Code Section 20-3-65 of the Official Code of Georgia Annotated, relating to prohibiting the  
 51 exclusion of persons from the University of Georgia for religious beliefs, is amended as  
 52 follows:

53 "20-3-65.

54 No person of any religious denomination shall be excluded from equal advantages of  
 55 education and the immunities of the University of Georgia on account of his or her  
 56 religious beliefs. Nor shall a person's race or gender be considered when determining  
 57 whether to admit a person to any university, college, or technical school that is funded, in  
 58 whole or part, by state revenue."

59

**SECTION 6.**

60 Chapter 10 of Title 36 of the Official Code of Georgia Annotated, relating to public works  
61 contracts by local governments, is amended by revising Code Section 36-10-2.1, relating to  
62 letting by counties with a population of 800,000 or more, as follows:

63 "36-10-2.1.

64 In any county of this state having a population of 800,000 or more according to the United  
65 States decennial census of 2000 or any future such census, contracts for building or  
66 repairing any courthouse or other public building, jail, bridge, causeway, or other public  
67 works or public property shall be let to the lowest responsible bidder, but the governing  
68 authority of any such county shall have the right to reject any or all bids for any such  
69 contract. The governing authority of any such county, in considering whether a bidder is  
70 responsible, may consider the bidder's quality of work, general reputation in the  
71 community, financial responsibility, and previous employment on public works, ~~and~~  
72 ~~compliance with a minority business enterprise participation plan or making a good faith~~  
73 ~~effort to comply with the goals of such a plan."~~

74

**SECTION 7.**

75 Said chapter is further amended by revising Code Section 36-10-2.2, relating to letting by  
76 certain counties with a population of more than 150,000, as follows:

77 "36-10-2.2.

78 In any county having a population of more than 150,000 in any metropolitan statistical area  
79 having a population of not less than 260,000 nor more than 360,000 according to the  
80 United States decennial census of 1980 or any future such census, contracts for building  
81 or repairing any courthouse or other public building, jail, bridge, causeway, or other public  
82 works or public property shall be let to the lowest responsible bidder, but the governing  
83 authority of any such county shall have the right to reject any or all bids for any such  
84 contract. The governing authority of any such county, in considering whether a bidder is  
85 responsible, may consider the bidder's quality of work, general reputation in the  
86 community, financial responsibility, and previous employment on public works, ~~and~~  
87 ~~compliance with a minority business enterprise participation plan or making a good faith~~  
88 ~~effort to comply with the goals of such a plan."~~

89

**SECTION 8.**

90 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
91 imposition, rate, and computation of income taxes and exemptions, is amended by revising  
92 paragraph (11) of Code Section 48-7-21, relating to taxation of corporations, as follows:

93 ~~"(11) There shall be subtracted from taxable income a portion of qualified payments to~~  
 94 ~~minority subcontractors, as provided in Code Section 48-7-38. Reserved."~~

95 **SECTION 9.**

96 Said article is further amended by revising paragraph (6) of subsection (a) of Code Section  
 97 48-7-27, relating to computation of taxable net income, as follows:

98 ~~"(6) A portion of the qualified payments to minority subcontractors, as provided in Code~~  
 99 ~~Section 48-7-38; Reserved;"~~

100 **SECTION 10.**

101 Said article is further amended by repealing Code Section 48-7-38, relating to deduction for  
 102 payments to minority subcontractors and certification as a minority business enterprise, and  
 103 by designating said Code section as reserved.

104 **SECTION 11.**

105 Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to state  
 106 purchasing, is amended by repealing Part 4, relating to minority business enterprise  
 107 development, and enacting a new Part 4 to read as follows:

108 "Part 4

109 50-5-130.

110 No agency, department, authority, commission, or other governmental entity of this state  
 111 or any subdivision of this state shall discriminate on the basis of race, gender, or ethnicity  
 112 in awarding or entering into any contract. The race, gender, or ethnicity of an owner, board  
 113 member, contractor, subcontractor, or other person or the minority status of an  
 114 organization, group, business, or entity shall not be a factor considered by a state or local  
 115 governmental entity when determining whether to enter into an agreement, award a bid, or  
 116 execute a contract for the procurement of goods or services."

117 **SECTION 12.**

118 Code Section 50-22-4 of the Official Code of Georgia Annotated, relating to the submission  
 119 of information to state agency by persons desiring to provide professional services and  
 120 preliminary selections, is amended by revising subsection (b) as follows:

121 (b) For each proposed project for which professional services are required, the principal  
 122 representative or his or her designee of the state agency for which the project is to be done  
 123 shall evaluate statements of qualifications and performance data as required in the public  
 124 notice provided for in Code Section 50-22-3 and shall conduct discussions with not less

125 than three persons regarding their qualifications, approaches to the project, abilities to  
 126 furnish the required professional services, anticipated design concepts, and use of  
 127 alternative methods of approach for furnishing the required professional services. The  
 128 principal representative or his or her designee shall then select not less than three nor more  
 129 than five persons deemed to be most highly qualified to perform the required professional  
 130 services after considering, and based upon, such factors as the ability of professional  
 131 personnel, past performance, willingness to meet time requirements, project location, office  
 132 location, the professional's current and projected workloads, the professional's approach,  
 133 quality control procedures, and the volume of work previously awarded to the person by  
 134 the state agency, ~~and the extent to which said persons have and will involve minority~~  
 135 ~~subcontractors, with the object of effecting an equitable distribution of contracts among~~  
 136 ~~qualified persons as long as such distribution does not violate the principle of selection of~~  
 137 ~~the most highly qualified person.~~ In selection, as mentioned in this Code section, persons  
 138 who maintain an office in Georgia shall be given preference when qualifications appear to  
 139 be equal."

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### SECTION 13.

141 Article 1 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to  
 142 general provisions pertaining to lottery for education, is amended by revising paragraph (17)  
 143 of Code Section 50-27-3, relating to definitions pertaining to the lottery for education, as  
 144 follows:

145

~~"(17) 'Minority business' means any business which is owned by:~~

146

~~(A) An individual who is a member of a minority who reports as his or her personal  
 147 income for Georgia income tax purposes the income of such business;~~

148

~~(B) A partnership in which a majority of the ownership interest is owned by one or  
 149 more members of a minority who report as their personal income for Georgia income  
 150 tax purposes more than 50 percent of the income of the partnership; or~~

151

~~(C) A corporation organized under the laws of this state in which a majority of the  
 152 common stock is owned by one or more members of a minority who report as their  
 153 personal income for Georgia income tax purposes more than 50 percent of the  
 154 distributed earnings of the corporation. Reserved."~~

155

### SECTION 14.

156 Said article is further amended by repealing Code Section 50-27-14, relating to participation  
 157 by minority business, and designating said Code section as reserved.

158 **SECTION 15.**

159 Said article is further amended in Code Section 50-27-16, relating to bonding requirements  
 160 for vendors, qualifications of vendors, and competitive bid requirements, by revising  
 161 subsection (a) as follows:

162 ~~"(a)(1)~~ Each vendor shall, at the execution of the contract with the corporation, post a  
 163 performance bond or letter of credit from a bank or credit provider acceptable to the  
 164 corporation in an amount as deemed necessary by the corporation for that particular bid  
 165 or contract. In lieu of the bond, a vendor may, to assure the faithful performance of its  
 166 obligations, deposit and maintain with the corporation securities that are interest bearing  
 167 or accruing and that are rated in one of the three highest classifications by an established  
 168 nationally recognized investment rating service. Securities eligible under this Code  
 169 section are limited to:

170 ~~(A)(1)~~ Certificates of deposit issued by solvent banks or savings associations approved  
 171 by the corporation and which are organized and existing under the laws of this state or  
 172 under the laws of the United States;

173 ~~(B)(2)~~ United States bonds, notes, and bills for which the full faith and credit of the  
 174 government of the United States is pledged for the payment of principal and interest; and

175 ~~(C)(3)~~ Corporate bonds approved by the corporation. The corporation which issued the  
 176 bonds shall not be an affiliate or subsidiary of the depositor.

177 Such securities shall be held in trust and shall have at all times a market value at least equal  
 178 to the full amount estimated to be paid annually to the lottery vendor under contract.

179 ~~(2) Because of certain economic considerations, minority businesses may not be able~~  
 180 ~~financially to comply with the bonding, deposit of securities, or letter of credit~~  
 181 ~~requirements of paragraph (1) of this subsection. Notwithstanding any other provisions~~  
 182 ~~of this subsection, in order to assure minority participation in major procurement~~  
 183 ~~contracts to the most feasible and practicable extent possible, the chief executive officer~~  
 184 ~~is authorized and directed to waive the bonding, deposit of securities, and letter of credit~~  
 185 ~~requirements of paragraph (1) of this subsection for a period of five years from the time~~  
 186 ~~that a minority business enters into a major procurement contract for any minority~~  
 187 ~~business which substantiates financial hardship pursuant to the policies and procedures~~  
 188 ~~established by the board."~~

189 **SECTION 16.**

190 Said article is further amended by revising Code Section 50-27-34, relating to legislative  
 191 oversight committee, as follows:

192 "50-27-34.

193 (a) There is created as a joint committee of the General Assembly, the Georgia Lottery  
194 Corporation Legislative Oversight Committee, to be composed of the members of the  
195 House Committee on Regulated Industries and the Senate Committee on Economic  
196 Development and Tourism. The chairpersons of such committees shall serve as  
197 cochairpersons of the oversight committee. The oversight committee shall periodically  
198 inquire into and review the operations of the Georgia Lottery Corporation, as well as  
199 periodically review and evaluate the success with which the authority is accomplishing its  
200 statutory duties and functions as provided in this chapter. The oversight committee may  
201 conduct any independent audit or investigation of the authority it deems necessary.

202 ~~(b) The Georgia Lottery Corporation shall provide the oversight committee not later than~~  
203 ~~December 1 of each year with a complete report of the level of participation of minority~~  
204 ~~businesses in all retail and major procurement contracts awarded by the corporation."~~

205 **SECTION 17.**

206 This Act shall become effective on July 1, 2009; provided, however, that Sections 3 and 4  
207 of this Act shall become effective on July 1, 2009, and shall apply to all corporations created  
208 on or after such date; Sections 6, 7, 11, 12, 14, and 15 of this Act shall become effective on  
209 July 1, 2009, and shall apply to all contracts and agreements entered into on or after such  
210 date; and Sections 8, 9, and 10 of this Act shall become effective on January 1, 2010, and  
211 shall be applicable to all taxable years beginning on or after such date.

212 **SECTION 18.**

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