

House Bill 849

By: Representatives Golick of the 40th, Smyre of the 135th, Willard of the 51st, Jones of the 47th, Abrams of the 89th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and
2 trade, so as to protect the right to equal enjoyment of and privileges to public
3 accommodations; to provide for purposes; to provide for definitions; to provide for
4 enforcement; to provide for penalties; to amend Article 2 of Chapter 19 of Title 45 of the
5 Official Code of Georgia Annotated, relating to fair employment practices, so as to expand
6 the functions of the administrator of the Commission on Equal Opportunity; to provide for
7 a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Georgia Civil Rights in Public
11 Accommodations Act."

12 **SECTION 2.**

13 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
14 amended by adding a new chapter to read as follows:

15 "CHAPTER 16

16 10-16-1.

17 (a) It is the policy of the State of Georgia to provide, within constitutional limitations, for
18 equal enjoyment of public accommodations throughout this state.

19 (b) The general purpose of this chapter is to provide for execution in this state of the
20 policies embodied in 42 U.S.C. Section 2000a.

21 (c) This chapter shall be broadly construed to further the general purposes stated in this
22 Code section and the special purposes of the particular provision involved.

23 10-16-2.

24 As used in this chapter, the term:

25 (1) 'Administrator' means the administrator of the Commission on Equal Opportunity
 26 created under Article 2 of Chapter 19 of Title 45.

27 (2) 'Aggrieved person' means any person who claims to have been injured by a
 28 discriminatory public accommodations practice or who believes that he or she will be
 29 irrevocably injured by a discriminatory public accommodations practice that is about to
 30 occur.

31 (3) 'Board of commissioners' means the Board of Commissioners of the Commission on
 32 Equal Opportunity created by Code Section 45-19-23 or a panel of three members of said
 33 board.

34 (4) 'Complainant' means the person, including the administrator, who files a complaint
 35 under Code Section 10-16-6.

36 (5) 'Conciliation' means the attempted resolution of issues raised by a complaint, or by
 37 the investigation of such complaint, through informal negotiations involving the
 38 aggrieved person, the respondent, and the administrator.

39 (6) 'Conciliation agreement' means a written agreement setting forth the resolution of the
 40 issues in conciliation.

41 (7) 'Discriminatory public accommodations practice' means an act that is unlawful under
 42 Code Section 10-16-3.

43 (8) 'Person' means one or more individuals, corporations, partnerships, associations,
 44 labor organizations, legal representatives, mutual companies, joint-stock companies,
 45 trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or
 46 fiduciaries.

47 (9) 'Place of public accommodation' means:

48 (A) Any inn, hotel, motel, or other establishment which provides lodging to transient
 49 guests other than an establishment located within a building which contains not more
 50 than five rooms for rent or hire and which is actually occupied by the proprietor or
 51 owner of such establishment as his or her residence;

52 (B) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility
 53 principally engaged in selling food for consumption on the premises, including, but not
 54 limited to, any such facility located on the premises of any retail establishment;

55 (C) Any gas station;

56 (D) Any motion picture house, theater, concert hall, sports arena, stadium, or other
 57 place of exhibition or entertainment; or

58 (E) Any establishment which is physically located within the premises of any
 59 establishment otherwise covered by this paragraph, or within the premises of which is

60 physically located any such covered establishment, and which holds itself out as serving
 61 patrons of such covered establishment.

62 (10) 'Private establishment' means an establishment not in fact open to the general public.

63 (11) 'Respondent' means the person or other entity accused in a complaint of a
 64 discriminatory public accommodations practice and any other person or entity identified
 65 in the course of an investigation and notified as required with respect to respondents so
 66 identified under subsection (d) of Code Section 10-16-6.

67 10-16-3.

68 All persons shall be entitled to the full and equal enjoyment of the goods, services,
 69 facilities, privileges, advantages, and accommodations of any place of public
 70 accommodation without discrimination or segregation on the ground of race, color,
 71 religion, or national origin.

72 10-16-4.

73 The provisions of this chapter shall not apply to a private establishment, except to the
 74 extent that facilities of such private establishment perform as a place of public
 75 accommodation.

76 10-16-5.

77 (a)(1) The authority and responsibility for administering this chapter shall be vested in
 78 the administrator.

79 (2) The Commission on Equal Opportunity shall have a Public Accommodations
 80 Division to assist the administrator in carrying out the provisions of this chapter. For
 81 administrative purposes, such division may be combined with any other division of the
 82 Commission on Equal Opportunity at the discretion of the administrator.

83 (b) The administrator may delegate any of the administrator's functions, duties, and powers
 84 to employees of the Commission on Equal Opportunity or to boards of such employees,
 85 including functions, duties, and powers with respect to investigating, conciliating, hearing,
 86 determining, ordering, certifying, reporting, or otherwise acting as to any work, business,
 87 or matter under this chapter. Insofar as possible, conciliation meetings shall be held in the
 88 cities or other localities where the discriminatory public accommodations practices
 89 allegedly occurred.

90 (c) The administrator shall adopt, promulgate, amend, and rescind, subject to the approval
 91 of the Governor after giving proper notice and hearing to all interested parties pursuant to
 92 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such rules and
 93 regulations as may be necessary to carry out the provisions of this chapter.

94 (d) The administrator shall accept gifts, bequests, grants, or other public or private
95 payments on behalf of the state and pay such moneys into the state treasury.

96 10-16-6.

97 (a) An aggrieved person may, not later than one year after an alleged discriminatory public
98 accommodations practice has occurred or terminated, file a complaint with the
99 administrator alleging such discriminatory public accommodations practice. The
100 administrator, on the administrator's own initiative, may also file such a complaint.
101 Complaints shall be in writing and under oath and shall contain such information and be
102 in such form as the administrator requires. Upon the filing of a complaint under this
103 subsection, the administrator shall serve notice upon the aggrieved person acknowledging
104 the filing and advising the aggrieved person of procedural time limits provided under this
105 chapter.

106 (b) The administrator shall, not later than ten days after the filing of a complaint or the
107 identification of an additional respondent under subsection (d) of this Code section, serve
108 on the respondent a notice identifying the alleged discriminatory public accommodations
109 practice and advising such respondent of the procedural rights and obligations under this
110 chapter, together with a copy of the original complaint. Each respondent may file, not later
111 than 30 days after receipt of notice from the administrator, an answer to the complaint.

112 (c) Complaints and answers shall be verified and may be reasonably and fairly amended
113 at any time.

114 (d) A person who is not named as a respondent in a complaint, but who is identified as a
115 respondent in the course of an investigation, may be joined as an additional or substitute
116 respondent upon written notice to such person from the administrator as provided in
117 subsection (b) of this Code section. In addition to meeting the requirements of subsection
118 (b) of this Code section, the notice shall explain the basis for the administrator's belief that
119 such person is properly joined as a respondent.

120 10-16-7.

121 (a) The administrator shall investigate an alleged discriminatory public accommodations
122 practice and complete such investigation within 90 days after the filing of a complaint;
123 provided, however, that the time for completing such investigation may be extended by 30
124 days at the election of the administrator.

125 (b) During the period beginning with the filing of such complaint and ending with the
126 filing of a charge or a dismissal by the administrator, the administrator shall, to the extent
127 feasible, engage in conciliation with respect to such complaint. A conciliation agreement
128 arising out of such conciliation shall be an agreement between the respondent and the

129 complainant and shall be subject to approval by the administrator. A conciliation
 130 agreement may provide for binding arbitration of the dispute arising from the complaint.
 131 Any such arbitration that results from a conciliation agreement may award appropriate
 132 relief, including monetary relief. Each conciliation agreement shall be made public unless
 133 the complainant and respondent otherwise agree and the administrator determines that
 134 disclosure is not required to further the purposes of this chapter.

135 (c) At the end of each investigation under this Code section, the administrator shall prepare
 136 a final investigative report containing the following:

- 137 (1) The names and dates of contacts with witnesses;
 138 (2) A summary and the dates of correspondence and other contacts with the aggrieved
 139 person and the respondent;
 140 (3) A summary description of other pertinent records;
 141 (4) A summary of witness statements; and
 142 (5) Answers to interrogatories.

143 A final report under this subsection may be amended if additional evidence is later
 144 discovered.

145 (d) Whenever the administrator has reasonable cause to believe that a respondent has
 146 breached a conciliation agreement, the administrator shall refer the matter to the Attorney
 147 General with a recommendation that a civil action be filed for the enforcement of such
 148 agreement.

149 (e)(1) Nothing said or done in the course of conciliation under this chapter shall be made
 150 public or used as evidence in a subsequent proceeding under this chapter without the
 151 written consent of the parties concerned.

152 (2) Notwithstanding paragraph (1) of this subsection, the administrator shall make
 153 available to the aggrieved person and the respondent at any time upon request following
 154 completion of the administrator's investigation information derived from an investigation
 155 and any final investigative report relating to that investigation.

156 10-16-8.

157 (a)(1) Upon completion of the investigation as provided for under Code Section 10-16-7,
 158 if the administrator determines that reasonable cause exists to believe that a
 159 discriminatory public accommodations practice has occurred or is about to occur, the
 160 administrator shall immediately issue a charge on behalf of the aggrieved person.

161 (2) The charge shall consist of a short and plain statement of the facts upon which the
 162 administrator has found reasonable cause to believe that a discriminatory public
 163 accommodations practice has occurred or is about to occur, shall be based on the final

164 investigative report, and need not be limited to the facts or grounds alleged in the
165 complaint.

166 (3) After the administrator issues a charge under this Code section, the administrator
167 shall cause a copy thereof to be served on each respondent named in such charge and on
168 each aggrieved person on whose behalf the complaint was filed.

169 (b)(1) Upon completion of the investigation as provided under Code Section 10-16-7, if
170 the administrator determines that no reasonable cause exists to believe that a
171 discriminatory public accommodations practice has occurred or is about to occur, the
172 administrator shall promptly dismiss the complaint and shall cause a copy of such
173 dismissal to be served on each respondent named in such complaint and on each
174 aggrieved person on whose behalf the complaint was filed by registered or certified mail
175 or statutory overnight delivery.

176 (2)(A) An aggrieved party may appeal the dismissal of a complaint to the board of
177 commissioners and the board of commissioners shall designate a panel of three of its
178 members, one of whom shall be an attorney licensed to practice law in this state, and
179 that tribunal shall hear such appeal. Such tribunal may affirm the determination of the
180 administrator in a final order of the board of commissioners or direct the administrator
181 to issue a charge pursuant to such tribunal's findings. Such members of the tribunal
182 under this subparagraph shall not be qualified to hear the complaint as provided for
183 under Code Sections 10-16-10 and 10-16-11.

184 (B) An aggrieved party shall notify the administrator within seven working days after
185 service of the administrator's determination to dismiss the complaint of his or her
186 request for an appeals hearing as provided for under subparagraph (A) of this
187 paragraph.

188 (C) If an aggrieved party does not request an appeal or the board of commissioners
189 affirms the dismissal of the complaint as provided for under this paragraph, the
190 administrator shall make public disclosure of such dismissal.

191 10-16-9.

192 (a) The administrator and the board of commissioners may issue subpoenas and order
193 discovery in aid of investigations and hearings under this chapter. Such subpoenas and
194 discovery may be ordered to the same extent and subject to the same limitations as would
195 apply if the subpoenas or discovery were ordered or served in aid of a civil action in
196 superior court in which the investigation is taking place.

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

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

201 (c)(1) Any person who willfully fails or neglects to attend and testify or to answer any
202 lawful inquiry or to produce records, documents, or other evidence, if it is in such
203 person's power to do so, in obedience to the subpoena or other lawful order under
204 subsection (a) of this Code section, shall be guilty of a misdemeanor and, upon conviction
205 thereof, shall be punished by a fine of not more than \$1,000.00.

206 (2) Any person who, with intent thereby to mislead another person in any proceeding
207 under this chapter:

208 (A) Makes or causes to be made any false entry or statement of fact in any report,
209 account, record, or other document produced pursuant to subpoena or other lawful order
210 under subsection (a) of this Code section;

211 (B) Willfully neglects or fails to make or to cause to be made full, true, and correct
212 entries in such reports, accounts, records, or other documents; or

213 (C) Willfully mutilates, alters, or by any other means falsifies any documentary
214 evidence

215 shall be guilty of a misdemeanor and shall be fined not more than \$1,000.00.

216 10-16-10.

217 (a) Upon the issuance of a charge, the administrator shall refer the case to the board of
218 commissioners to conduct a hearing in accordance with this chapter. The board of
219 commissioners shall designate a panel of three of its members, one of which shall be an
220 attorney licensed to practice law in this state, and that tribunal shall have all the power and
221 authority granted to agencies in conducting hearings and rendering final orders under
222 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' including, but not
223 limited to, subpoena power.

224 (b) Not more than seven working days after the case has been referred to the board of
225 commissioners, the administrator shall serve on the respondent and the person aggrieved
226 or the aggrieved person's attorney by registered or certified mail or statutory overnight
227 delivery a written notice together with a copy of the complaint requiring the respondent to
228 answer the charges contained therein at a hearing before the board of commissioners at a
229 time and place specified in the notice. Such notice shall contain all general and specific
230 charges against the respondent.

231 (c) The respondent shall serve an answer with the board of commissioners by registered
232 or certified mail or statutory overnight delivery not more than 20 working days after receipt
233 of the notice of hearing, such time to be extended by the board of commissioners in the
234 board of commissioners' discretion for an additional time not to exceed ten working days.

235 The respondent's answer shall show by a certificate of service that the respondent has
236 served a copy of the answer on the complainant or the complainant's attorney at the last
237 known address of the complainant or the complainant's attorney when the complainant is
238 represented by an attorney. Upon leave of the board of commissioners, the complainant
239 may amend the charges contained in the notice of hearing. The respondent may amend an
240 answer at any time prior to the hearing or, upon leave of the board of commissioners, may
241 amend thereafter. No final order shall be issued unless the respondent has had the
242 opportunity of a hearing on the charges contained in the notice of hearing or amendment
243 on which the final order is based. If the respondent fails to answer the complaint, the board
244 of commissioners may enter the respondent's default. Unless the default is set aside for
245 good cause shown, the hearing may proceed under the available evidence.

246 (d) At any time after a notice of hearing is served upon a respondent, discovery shall be
247 authorized in the same manner and fashion as discovery is permitted under Code Sections
248 9-11-26 through 9-11-37. Any order contemplated in Code Sections 9-11-26 through
249 9-11-37 may be issued by the board of commissioners. Judicial enforcement of any such
250 order may be obtained by the complainant or respondent in the same manner as is provided
251 for the enforcement of final orders in Code Section 45-19-40.

252 (e) A respondent who has filed an answer or whose default in answering has been set aside
253 for good cause shown may appear at the hearing, may examine and cross-examine
254 witnesses and the complainant, and may offer evidence. The complainant and, at the
255 discretion of the board of commissioners, any other person may intervene, examine and
256 cross-examine witnesses, and present evidence.

257 (f) Efforts at conference, conciliation, and persuasion shall not be received in evidence.

258 (g) Testimony taken at the hearing shall be under oath and shall be stenographically or
259 otherwise recorded by a certified court reporter. After the hearing, the board of
260 commissioners at the board of commissioners' discretion may take further evidence or hear
261 arguments upon notice to all parties with an opportunity to be present.

262 (h) Except as otherwise specifically provided for in this chapter, all proceedings of the
263 board of commissioners shall be conducted as provided for with respect to contested cases
264 in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The Attorney
265 General shall present the charge in proceedings conducted pursuant to this chapter.

266 10-16-11.

267 (a) If the board of commissioners determines that the respondent has not engaged in a
268 discriminatory public accommodations practice, the board of commissioners shall state the
269 board of commissioners' findings of fact and conclusions of law and shall issue a final

270 order dismissing the complaint within 30 days after the hearing unless, for good cause
271 shown, such time is extended by the board of commissioners.

272 (b) If the board of commissioners determines that the respondent has engaged in a
273 discriminatory public accommodations practice, the board of commissioners shall state the
274 board of commissioners' findings of fact and conclusions of law and shall issue a final
275 order within 30 days after the hearing unless, for good cause shown, such time is extended
276 by the board of commissioners, granting such relief as may be appropriate, which may
277 include a fine, actual compensatory damages suffered by the aggrieved person, injunctive
278 or other equitable relief, or reasonable attorney's fees and costs, or any combination
279 thereof; provided, however, that any such fine shall not exceed:

280 (1) An amount equal to \$10,000.00, if the respondent has not previously been found to
281 have committed a discriminatory public accommodations practice;

282 (2) An amount equal to \$25,000.00, if the respondent has been found to have committed
283 one prior discriminatory public accommodations practice within the preceding five years;

284 or

285 (3) An amount equal to \$50,000.00, if the respondent has been found to have committed
286 two or more discriminatory public accommodations practices within the preceding seven
287 years.

288 (c) In the case of an order with respect to a discriminatory public accommodations practice
289 that occurred in the course of a business subject to licensing or regulation by a
290 governmental agency, the administrator shall, not later than 30 days after the date of the
291 issuance of such order, or, if such order is judicially reviewed, 30 days after such order is
292 in substance affirmed upon review, send copies of the findings of fact, conclusions of law,
293 and the order to that governmental agency.

294 (d) If the board of commissioners finds that the respondent has not engaged or is not about
295 to engage in a discriminatory public accommodations practice, as the case may be, the
296 board of commissioners shall enter an order dismissing the charge. The administrator shall
297 make public disclosure of each such dismissal. A prevailing respondent may be awarded
298 reasonable attorney's fees and costs only upon a showing that the proceeding is frivolous,
299 unreasonable, or without foundation. Attorney's fees may be awarded against a
300 complainant or an aggrieved party if such party joined in the proceeding on its own as an
301 intervening party.

302 10-16-12.

303 (a) Any party to a hearing before the board of commissioners may appeal any adverse final
304 order of the board of commissioners by filing a petition for review in the superior court in
305 the county in which the alleged unlawful practice occurred or in the superior court of the

306 residence of the respondent within 30 days of the issuance of the final order. The board of
 307 commissioners shall not be a named party. The administrator shall be served with a copy
 308 of the petition for review. Within 30 days after the petition is served on the administrator,
 309 the administrator shall forward to the court a certified copy of the record of the hearing
 310 before the board of commissioners, including the transcript of the hearing before the board
 311 of commissioners and all evidence, administrative pleadings, and orders, or the entire
 312 record if no hearing has been held. For good cause shown, the court may require or permit
 313 subsequent corrections or additions to the record. All appeals for judicial review shall be
 314 in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act';
 315 provided, however, that if any provisions of Chapter 13 of Title 50 conflict with any
 316 provision of this chapter, this chapter controls.

317 (b) The court shall not substitute its judgment for that of the board of commissioners as
 318 to the weight of the evidence on questions of fact. The court may affirm a final order of
 319 the board of commissioners or remand the case for further proceedings. The court may
 320 reverse or modify the final order if substantial rights of the appellant have been prejudiced
 321 because the administrative findings, inferences, conclusions, or decisions are:

322 (1) In violation of constitutional or statutory provisions;

323 (2) In excess of the statutory authority of the agency;

324 (3) Made upon unlawful procedures;

325 (4) Affected by other error of law;

326 (5) Not supported by substantial evidence, which shall mean that the record does not
 327 contain such relevant evidence as a reasonable mind might accept as adequate to support
 328 said findings, inferences, conclusions, or decisions; or

329 (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted
 330 exercise of discretion.

331 (c) If, upon judicial review of any order of the board of commissioners or in a proceeding
 332 in which a complainant seeks enforcement of a conciliation agreement, the court rules in
 333 favor of the complainant, then the court may in its discretion render an award of reasonable
 334 attorney's fees and costs of litigation in the superior court to the complainant. A prevailing
 335 respondent may be awarded reasonable attorney's fees and costs only upon a showing that
 336 the action is frivolous, unreasonable, or without foundation.

337 10-16-13.

338 Any person affected by a final order of the administrator or the board of commissioners
 339 may file in the superior court of the county of the residence of the respondent a certified
 340 copy of a final order of the administrator or of the board of commissioners unappealed
 341 from or of a final order of the board of commissioners affirmed upon appeal, whereupon

342 said court shall render judgment in accordance therewith and notify the parties. Such
343 judgment shall have the same effect and all proceedings in relation thereto shall thereafter
344 be the same as though the judgment had been rendered in an action duly heard and
345 determined by the court.

346 10-16-14.

347 It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the
348 exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or
349 on account of such person's having aided or encouraged any other person in the exercise
350 or enjoyment of, any right granted or protected by this chapter."

351 **SECTION 3.**

352 Article 2 of Chapter 19 of Title 45 of the Official Code of Georgia Annotated, relating to fair
353 employment practices, is amended by revising Code Section 45-19-25, relating to the
354 functions of the administrator of the Commission on Equal Opportunity, as follows:

355 "45-19-25.

356 The function of the administrator shall be to encourage fair treatment for public employees,
357 ~~and~~ to discourage unlawful discrimination in public employment, and to perform such other
358 functions, duties, and responsibilities as provided for by law."

359 **SECTION 4.**

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