

Senate Bill 373

By: Senators Tate of the 38th, Orrock of the 36th, Butler of the 55th, Henson of the 41st, Fort of the 39th and others

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 repeal certain provisions relating to sex discrimination in employment and  
3 enact the "Georgia Equal Pay Act" to prohibit differential pay because of the sex of the  
4 employee; to provide for definitions; to provide for exceptions; to prohibit employers from  
5 preventing employees from inquiring about, discussing, or disclosing their wages or the  
6 wages of other employees except under certain circumstances; to provide for civil penalties;  
7 to provide for the powers and authority of the Commissioner of Labor; to provide for  
8 arbitration of certain disputes between employers and employees; to provide for a civil cause  
9 of action; to provide certain remedies; to establish the time within which certain actions shall  
10 be commenced; to prohibit discrimination against an employee for filing certain complaints  
11 or instituting certain actions; to require posting of the law by employers; to provide a short  
12 title; to provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 This Act shall be known and may be cited as the "Georgia Equal Pay Act."

16 style="text-align:center">**SECTION 2.**

17 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,  
18 is amended by repealing Chapter 5, relating to sex discrimination in employment, and  
19 enacting a new Chapter 5 to read as follows:

20 style="text-align:center">"CHAPTER 5

21 34-5-1.

22 As used in this chapter, the term:

23 (1) 'Business necessity' means a factor that bears a manifest relationship to the  
24 employment in question.

- 25 (2) 'Commissioner' means the Commissioner of Labor of the State of Georgia.  
 26 (3) 'Department' means the Georgia Department of Labor.  
 27 (4) 'Employee' means any individual employed by an employer.  
 28 (5) 'Employer' means any person or entity that employs one or more employees.  
 29 (6) 'Person' means an individual, partnership, association, corporation, business trust,  
 30 legal representative, or any other organized group of persons.

31 34-5-2.

32 (a) No employee shall be paid a wage at a rate less than the rate at which an employee of  
 33 the opposite sex in the same establishment is paid for equal work on a job, the performance  
 34 of which requires equal skill, effort, and responsibility and which is performed under  
 35 similar working conditions. For the purposes of this subsection, employees shall be  
 36 deemed to work in the same establishment if the employees work for the same employer  
 37 at workplaces located in the same geographical region, no larger than a county, taking into  
 38 account population distribution, economic activity, and the presence of municipalities.

39 (b)(1) Subsection (a) of this Code section shall not apply where payment is made  
 40 pursuant to a differential based on:

41 (A) A seniority system;

42 (B) A merit system;

43 (C) A system which measures earnings by quantity or quality of production; or

44 (D) A bona fide factor other than sex, such as education, training, or experience. Such  
 45 factor shall not be based upon or derived from a sex based differential in compensation  
 46 and instead shall be job related with respect to the position in question and shall be  
 47 consistent with business necessity.

48 (2) The exception provided for in paragraph (1) of this subsection shall not apply when  
 49 the employee demonstrates that:

50 (A) An employer uses a particular employment practice that causes a disparate impact  
 51 on the basis of sex;

52 (B) An alternative employment practice exists that would serve the same business  
 53 purpose and not produce such differential; and

54 (C) The employer has refused to adopt such alternative practice.

55 34-5-3.

56 (a) No employer shall prohibit an employee from inquiring about, discussing, or disclosing  
 57 the wages of such employee or another employee.

58 (b) An employer may, in a written policy provided to all employees, establish reasonable  
 59 workplace and workday limitations on the time, place, and manner for inquires about,

60 discussion of, or the disclosure of wages, provided that such limitations are consistent with  
61 standards promulgated by the Commissioner and with all federal laws and the laws of this  
62 state. Such written policy may include provisions prohibiting an employee from discussing  
63 or disclosing the wages of another employee without such employee's prior permission.  
64 The failure of an employee to adhere to such reasonable limitations in the employer's  
65 written policy shall be an affirmative defense to any claims made against an employer  
66 under this Code section, provided that any adverse employment action taken by the  
67 employer was for failure to adhere to such reasonable limitations and not for mere inquiry,  
68 discussion, or disclosure of wages in accordance with such reasonable limitations in such  
69 written policy.

70 (c) Subsection (a) of this Code section shall not apply to instances in which an employee  
71 has access to the wage information of other employees as a part of such employee's  
72 essential job functions and discloses the wages of such other employees to individuals who  
73 do not otherwise have access to such information, unless such disclosure is in response to  
74 a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action  
75 or an investigation conducted by the employer.

76 (d) Nothing in this Code section shall be construed to limit the rights of an employee  
77 provided under any other provision of law or a collective bargaining agreement.

78 (e) Nothing in this Code section shall require an employee to disclose his or her wages to  
79 another employee.

80 (f) An employer that violates subsection (a) of this Code section shall be subject to a civil  
81 fine of not less than \$100.00 and not more than \$500.00 for each and every such violation.

82 34-5-4.

83 (a) The Commissioner shall have the power and it shall be his or her duty to carry out this  
84 chapter, and for this purpose, the Commissioner or his or her authorized representative  
85 shall have the power to:

86 (1) Assist any employer to ensure that all employees are receiving pay in compliance  
87 with Code Section 34-5-2;

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

92 (3) Eliminate pay practices unlawful under this chapter by informal methods of  
93 conference, conciliation, and persuasion;

94 (4) Take any necessary action to enforce any civil penalties as a result of any violations  
95 of this chapter; and

96 (5) Bring any legal action provided for in Code Section 34-5-6.

97 (b) The Commissioner is authorized to request witnesses to appear and to produce  
98 pertinent records for examination by the Commissioner or his or her authorized  
99 representative in the county of the place of business of the employer, and such witnesses  
100 shall be paid the same fees as are allowed witnesses attending the superior courts of this  
101 state. In the event of failure of a person to attend, testify, or produce records voluntarily,  
102 the Commissioner may make application to the superior court of the county in which the  
103 business is located, and after notice and hearing, the court, in its discretion and upon proper  
104 cause shown, may issue an order requiring the person to appear before the Commissioner  
105 or his or her authorized representative and testify or produce records as requested by the  
106 Commissioner.

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

109 34-5-5.

110 In the event any dispute should arise between any employer and employee covered by this  
111 chapter in relation to any subject matter which is covered by this chapter, either of the  
112 parties shall have the right to request arbitration of the dispute. The party requesting  
113 arbitration shall file written notice of his or her request with the opposite party by either  
114 registered or certified mail or statutory overnight delivery. Within 30 days after receipt of  
115 such notice, the other party shall either accept or reject the arbitration offer. If the offer is  
116 accepted, the employer and the employee shall each select and appoint one arbitrator within  
117 ten days after acceptance. The arbitrators so selected shall then select a county adjoining  
118 the county in which the business of the employer is located and in which the dispute arose,  
119 and the judge of the superior court or the senior judge thereof in terms of length of service  
120 on the bench of the judicial circuit in which such selected county shall be located shall  
121 appoint a third arbitrator who shall act as the chairperson of the arbitration committee. The  
122 arbitration committee shall meet at such time as shall be fixed by the chairperson and, after  
123 giving notice of the hearing to the parties concerned and affording them an opportunity to  
124 appear and be heard on the matters in dispute, shall proceed to resolve all matters contained  
125 within the request for arbitration. The decision of the arbitration committee shall be  
126 binding upon the parties affected, provided that either party may appeal such decision to  
127 any court of competent jurisdiction within 30 days from publication of the decision.

128 34-5-6.

129 (a) On behalf of any employee paid less than the wage to which he or she is entitled under  
130 the provisions of Code Section 34-5-2, the Commissioner may bring any legal action  
131 necessary, including administrative action, to collect such claim, and as part of such legal  
132 action, in addition to any other remedies and penalties otherwise available under this title,  
133 the Commissioner shall assess against the employer the full amount of any such  
134 underpayment and an additional amount as liquidated damages, unless the employer proves  
135 a good faith basis for believing that its underpayment of wages was in compliance with the  
136 law. Liquidated damages shall be calculated by the Commissioner as no more than 100  
137 percent of the total amount of wages found to be due, provided that such liquidated  
138 damages may be up to 300 percent of the total amount of the wages found to be due for a  
139 willful violation of Code Section 34-5-2.

140 (b) In any action instituted in the courts upon a wage claim by an employee or the  
141 Commissioner in which the employee prevails, the court shall allow such employee to  
142 recover the full amount of any underpayment, all reasonable attorney's fees not to exceed  
143 25 percent of the judgment to be paid by the defendant, prejudgment interest as required  
144 under the civil practice law and rules, and, unless the employer proves a good faith basis  
145 to believe that its underpayment of wages was in compliance with the law, an additional  
146 amount as liquidated damages equal to 100 percent of the total amount of the wages found  
147 to be due, provided that such liquidated damages may be up to 300 percent of the total  
148 amount of the wages found to be due for a willful violation of Code Section 34-5-2.

149 34-5-7.

150 (a) The remedies provided in this chapter may be enforced simultaneously or  
151 consecutively so far as not inconsistent with each other.

152 (b) Notwithstanding any other provision of law, an action to recover upon a liability  
153 imposed by this chapter shall be commenced within six years. The statute of limitations  
154 shall be tolled from the date an employee files a complaint with the Commissioner or the  
155 Commissioner commences an investigation, whichever is earlier, until an order to comply  
156 issued by the Commissioner becomes final or, where the Commissioner does not issue an  
157 order, until the date on which the Commissioner notifies the complainant that the  
158 investigation has concluded. Investigation by the Commissioner shall not be a prerequisite  
159 to nor a bar against a person bringing a civil action under this chapter. All employees shall  
160 have the right to recover full wages, benefits and wage supplements, and liquidated  
161 damages accrued during the six years previous to the commencing of such action, whether  
162 such action is instituted by the employee or by the Commissioner.

163 (c) In any civil action by an employee or by the Commissioner, the employee or  
164 Commissioner shall have the right to collect attorney's fees and costs incurred in enforcing  
165 any court judgment. If any judgment remains unpaid upon the expiration of 90 days  
166 following issuance of judgment, or 90 days after expiration of the time to appeal and no  
167 appeal is then pending, whichever is later, the total amount of judgment shall automatically  
168 increase by 15 percent.

169 34-5-8.

170 (a) It shall be unlawful for any person to cause or attempt to cause an employer to  
171 discriminate against any employee in violation of this chapter.

172 (b) It shall be unlawful for any person to discharge or in any other manner discriminate  
173 against any employee covered by this chapter because such employee has made a  
174 complaint to his or her employer or any other person, has instituted or caused to be  
175 instituted any proceeding under or related to this chapter, or has testified or is about to  
176 testify in any such proceedings.

177 (c) Any person that violates any provision of this Code section shall be subject to a civil  
178 fine of not less than \$100.00 and not more than \$1,000.00 for each and every such  
179 violation.

180 34-5-9.

181 Every employer shall keep an abstract or copy of this chapter posted in a conspicuous place  
182 in or about the premises wherein any employee is employed. The department shall make  
183 copies or abstracts of this chapter available to all employers."

184 **SECTION 3.**

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