

WITHDRAWN

COMMITTEE OF CONFERENCE SUBSTITUTE TO HB 904

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 10 and 34 of the Official Code of Georgia Annotated, relating to commerce
 2 and trade and labor and industrial relations, respectively, so as to prohibit certain practices
 3 and change certain provisions related to employment; to provide legislative findings; to
 4 provide for a private cause of action for a violation of a nondiscrimination employment
 5 policy or nondiscrimination statement or pledge; to provide for definitions; to provide for a
 6 class action; to prevent fraud and abuse of the Unemployment Trust Fund by authorizing the
 7 Commissioner of Labor to submit to and receive from the state revenue commissioner certain
 8 information related to persons paying into or receiving funds from such fund; to provide
 9 penalties for the unlawful divulging of certain confidential information; to change certain
 10 contribution rates and credits; to change certain provisions relating to rate of employer
 11 contributions; to extend certain provisions relating to variations in the standard rate; to
 12 extend provisions relating to administrative assessments; to reduce the percentage of the
 13 administrative assessment to be assessed for a certain period; to provide exceptions; to
 14 change certain provisions relating to additional assessments for a new or newly covered
 15 employer; to extend the provision relating to automatic repeal; to provide for related matters;
 16 to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
 20 amended by adding a new subsection to Code Section 10-1-391, relating to the purpose and
 21 construction of part, to read as follows:

22 "(a.1) The General Assembly finds and declares that there is a public interest in the good
 23 faith fulfillment of nondiscrimination statements, pledges, and policies made in the course
 24 of engaging in employment practices or conducting any trade or commerce in part or
 25 wholly in this state. It is the intent of the General Assembly to protect consumers,

26 legitimate business enterprises, and other members of the public that rely on such
 27 statements, pledges, and policies."

28 **SECTION 2.**

29 Said title is further amended by adding a new paragraph to subsection (b) of Code
 30 Section 10-1-393, relating to unfair or deceptive practices in consumer transactions, to read
 31 as follows:

32 "(9.1)(A) For any business which manufactures or sells goods or services to violate a
 33 nondiscrimination statement or pledge published by such business or a
 34 nondiscrimination employment policy of such business.

35 (B) This paragraph shall not apply if the statement, pledge, or policy substantially
 36 restates or summarizes an existing law of the federal government or of this state.

37 (C) As used in this paragraph, the term:

38 (i) 'Business' means any corporation, partnership, proprietorship, firm enterprise,
 39 association, or other legal entity organized for profit.

40 (ii) 'Employment policy' means a written code of practice relating to the hiring,
 41 employment, or retention of employees. Such term shall include, but shall not be
 42 limited to, an employee handbook and an assertion on a job application or in an
 43 advertisement of a job opening.

44 (iii) 'Pledge' means a formal expression of commitment to abide by certain practices.

45 (iv) 'Publish' means to display, present, or release to the public orally or in writing,
 46 or to cause to be displayed, presented, or released to the public orally or in writing,
 47 in a newspaper or other publication, on the radio, on a website, on any social media
 48 or network, or on any other publicly available platform.

49 (v) 'Statement' means a declaration, assertion, or announcement made in the ordinary
 50 course of business with the intent that such declaration, assertion, or announcement
 51 be published."

52 **SECTION 3.**

53 Said title is further amended by revising subsection (a) of Code Section 10-1-399, relating
 54 to civil or equitable remedies by individuals, and by adding a new subsection to read as
 55 follows:

56 "(a) Any person who suffers injury or damages as a result of a violation of Chapter 5B of
 57 this title, as a result of consumer acts or practices in violation of this part, as a result of a
 58 violation of paragraph (9.1) of subsection (b) of Code Section 10-1-393, or as a result of
 59 office supply transactions in violation of this part or whose business or property has been
 60 injured or damaged as a result of such violations may bring an action individually, but not

61 in a representative capacity, against the person or persons engaged in such violations under
 62 the rules of civil procedure to seek equitable injunctive relief and to recover his or her
 63 general and exemplary that damages sustained as a consequence thereof in any court
 64 having jurisdiction over the defendant; provided, however, that exemplary damages shall
 65 be awarded only in cases of intentional violation. Notwithstanding any other provisions
 66 of law, a debtor seeking equitable relief to redress an injury resulting from a violation of
 67 paragraph (20) of subsection (b) of Code Section 10-1-393, upon facts alleged showing a
 68 likelihood of success on the merits, may not, within the discretion of the court, be required
 69 to make a tender. Nothing in this subsection or paragraph (20) of subsection (b) of Code
 70 Section 10-1-393 shall be construed to interfere with the obligation of the debtor to a lender
 71 who is not in violation of paragraph (20) of subsection (b) of Code Section 10-1-393. A
 72 claim under this Code section may also be asserted as a defense, setoff, cross-claim, or
 73 counterclaim or third-party claim against such person."

74 "(h) Notwithstanding subsection (a) of this Code section to the contrary, any person who
 75 has suffered injury or damages as a result of a violation of paragraph (9.1) of subsection (b)
 76 of Code Section 10-1-393 may in a representative capacity institute a class action pursuant
 77 to Code Section 9-11-23 for the recovery of damages."

78 SECTION 4.

79 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
 80 is amended by adding a new Code section to read as follows:

81 "34-8-130.

82 (a) To enforce the provisions of this article and to prevent fraud and abuse of the
 83 Unemployment Trust Fund, the Commissioner or his or her duly authorized representative
 84 may submit to the state revenue commissioner the names and social security numbers of
 85 any individuals who are required to report earnings to the department along with the
 86 amount of earnings such individuals have reported to the department during specified time
 87 periods. The state revenue commissioner shall compare the submitted earnings of such
 88 individuals with income reported by such individuals to the Department of Revenue and
 89 shall verify and report back to the department that the submitted earnings of each such
 90 individual are either equal to, greater than, or less than the amount of income reported by
 91 each such individual to the Department of Revenue. Furthermore, the department may
 92 submit to the state revenue commissioner the name of any employer along with the number
 93 of employees who are being reported to the department by such employer during specified
 94 time periods. The state revenue commissioner shall compare such records submitted by
 95 employers to the department with the number of employees reported by each such
 96 employer to the Department of Revenue and shall verify and report back to the department

97 that the number of employees reported to the department is either equal to, greater than, or
 98 less than the number of employees reported to the Department of Revenue for state income
 99 tax withholding purposes for the specified time period. The department shall pay the state
 100 revenue commissioner for all costs incurred by the Department of Revenue pursuant to this
 101 subsection. No report contemplated by this subsection shall be provided by the Department
 102 of Revenue to the department without a cooperative data sharing agreement executed by
 103 the two departments that is specific to the subject matter of this subsection. Any tax
 104 information secured from the federal government by the Department of Revenue pursuant
 105 to the provisions of Section 6103 of the Internal Revenue Code shall not be disclosed by
 106 the Department of Revenue pursuant to this subsection. Any person receiving any tax
 107 information under the authority of this subsection shall be subject to the provisions of Code
 108 Section 48-7-60 and to all penalties provided under Code Section 48-7-61 for unlawful
 109 divulging of confidential tax information, as well as the penalties provided under Code
 110 Section 34-8-125.

111 (b) Nothing in this Code section shall prevent the Department of Revenue or any other
 112 governmental agency from having access to records or information as provided for under
 113 Code Section 34-8-125."

114 **SECTION 5.**

115 Said title is further amended by revising Code Section 34-8-151, relating to rate of employer
 116 contributions, as follows:

117 "34-8-151.

118 (a) For periods prior to April 1, 1987, or after December 31, ~~2016~~ 2022, each new or
 119 newly covered employer shall pay contributions at a rate of 2.7 percent of wages paid by
 120 such employer with respect to employment during each calendar year until the employer
 121 is eligible for a rate calculation based on experience as defined in this chapter, except as
 122 provided in Code Sections 34-8-158 through 34-8-162.

123 (b) For periods on or after April 1, 1987, but on or before December 31, 1999, each new
 124 or newly covered employer shall pay contributions at a rate of 2.64 percent of wages paid
 125 by such employer with respect to employment during each calendar year until the employer
 126 is eligible for a rate calculation based on experience as defined in this chapter, except as
 127 provided in Code Sections 34-8-158 through 34-8-162.

128 (c) For periods on or after January 1, 2000, but on or before December 31, 2016, each new
 129 or newly covered employer shall pay contributions at a rate of 2.62 percent of wages paid
 130 by such employer with respect to employment during each calendar year until the employer
 131 is eligible for a rate calculation based on experience as defined in this chapter, except as
 132 provided in Code Sections 34-8-158 through 34-8-162.

133 (d) For periods on or after January 1, 2017, but on or before December 31, 2022, each new
 134 or newly covered employer shall pay contributions at a rate of 2.64 percent of wages paid
 135 by such employer with respect to employment during each calendar year until the employer
 136 is eligible for a rate calculation based on experience as defined in this chapter, except as
 137 provided in Code Sections 34-8-158 through 34-8-162."

138 **SECTION 6.**

139 Said title is further amended by revising the introductory language in subsections (c) and (e)
 140 of Code Section 34-8-155, relating to benefit experience and variations from standard rate,
 141 as follows:

142 "(c) For the periods prior to April 1, 1987, or after December 31, ~~2016~~ 2022, variations
 143 from the standard rate of contributions shall be determined in accordance with the
 144 following requirements:"

145 "(e) For the periods on or after January 1, 2000, but on or before December 31, ~~2016~~ 2022,
 146 variations from the standard rate of contributions shall be determined in accordance with
 147 the following requirements:"

148 **SECTION 7.**

149 Said title is further amended by revising Code Section 34-8-180, relating to creation of
 150 administrative assessment upon all wages and assessments due quarterly, as follows:

151 "34-8-180.

152 ~~(a) For the periods on or after April 1, 1987, but on or before January 1, 2000, there is~~
 153 ~~created an administrative assessment of .06 percent to be assessed upon all wages, as~~
 154 ~~defined in Code Section 34-8-49, except wages of the following employers:~~

155 ~~(1) Those employers who have elected to make payments in lieu of contributions as~~
 156 ~~provided by Code Section 34-8-158 or who are liable for the payment of contributions~~
 157 ~~as provided in said Code section; or~~

158 ~~(2) Those employers who, by application of the State-wide Reserve Ratio as provided~~
 159 ~~in Code Section 34-8-156, have been assigned the minimum positive reserve rate or the~~
 160 ~~maximum deficit reserve rate.~~

161 ~~(b)~~(a) For the periods on or after January 1, 2000, but on or before December 31, 2016,
 162 there is created an administrative assessment of 0.08 percent to be assessed upon all wages
 163 as defined in Code Section 34-8-49, except the wages of:

164 (1) Those employers who have elected to make payments in lieu of contributions as
 165 provided by Code Section 34-8-158 or who are liable for the payment of contributions
 166 as provided in said Code section; or

167 (2) Those employers who, by application of the State-wide Reserve Ratio as provided
 168 in Code Section 34-8-156, have been assigned the minimum positive reserve rate or the
 169 maximum deficit reserve rate.

170 (b) For the periods on or after January 1, 2017, but on or before December 31, 2022, there
 171 is created an administrative assessment of 0.06 percent to be assessed upon all wages as
 172 defined in Code Section 34-8-49, except the wages of:

173 (1) Those employers who have elected to make payments in lieu of contributions as
 174 provided by Code Section 34-8-158 or who are liable for the payment of contributions
 175 as provided in said Code section; or

176 (2) Those employers who, by application of the State-wide Reserve Ratio as provided
 177 in Code Section 34-8-156, have been assigned the minimum positive reserve rate or the
 178 maximum deficit reserve rate.

179 (c) Assessments pursuant to this Code section shall become due and shall be paid by each
 180 employer and must be reported on the employer's quarterly tax and wage report according
 181 to such rules and regulations as the Commissioner may prescribe. The assessments
 182 provided in this Code section shall not be deducted, in whole or in part, from the
 183 remuneration of individuals in the employ of the employer. Any deduction in violation of
 184 this subsection is unlawful."

185 SECTION 8.

186 Said title is further amended by revising Code Section 34-8-181, relating to additional
 187 assessment for new or newly covered employer, as follows:

188 "34-8-181.

189 ~~(a) For the periods on or after April 1, 1987, but on or before December 31, 1999, in~~
 190 ~~addition to the rate paid under Code Section 34-8-151, each new or newly covered~~
 191 ~~employer shall pay an administrative assessment of .06 percent of wages payable by it with~~
 192 ~~respect to employment during each calendar year until it is eligible for a rate calculation~~
 193 ~~based on experience as defined in this chapter, except as provided in Code Section~~
 194 ~~34-8-158.~~

195 ~~(b)(a)~~ For the periods on or after January 1, 2000, but on or before December 31, 2016, in
 196 addition to the rate paid under Code Section 34-8-151, each new or newly covered
 197 employer shall pay an administrative assessment of 0.08 percent of wages payable by it
 198 with respect to employment during each calendar year until it is eligible for a rate
 199 calculation based on experience as defined in this chapter, except as provided in Code
 200 Section 34-8-158.

201 (b) For the periods on or after January 1, 2017, but on or before December 31, 2022, in
 202 addition to the rate paid under Code Section 34-8-151, each new or newly covered

203 employer shall pay an administrative assessment of 0.06 percent of wages payable by it
204 with respect to employment during each calendar year until it is eligible for a rate
205 calculation based on experience as defined in this chapter, except as provided in Code
206 Section 34-8-158."

207 **SECTION 9.**

208 Said title is further amended by revising Code Section 34-8-185, relating to repealer of the
209 article, as follows:

210 "34-8-185.

211 This article shall stand repealed in its entirety on ~~December 31, 2016~~ January 1, 2023."

212 **SECTION 10.**

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