

House Bill 563

By: Representatives Leverett of the 123rd, Gunter of the 8th, Reeves of the 99th, Martinez of the 111th, Holcomb of the 81st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 19 of Title 45 of the Official Code of Georgia Annotated, the
2 "Fair Employment Practices Act of 1978," so as to provide for hearing before an
3 administrative law judge; to change provisions relating to the appointment of hearing
4 officers; to provide for a definition; to provide the administrator of the Commission on Equal
5 Opportunity with the power to order discovery; to change certain provisions relating to the
6 filing, amending, and investigation of a complaint regarding an unlawful practice; to change
7 provisions relating to an appeal seeking a review of a final order by a hearing officer and a
8 review of a dismissal of a complaint by the administrator; to provide penalty for willful
9 failure to provide testimony or discovery; to provide for a conforming cross-reference; to
10 provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 2 of Chapter 19 of Title 45 of the Official Code of Georgia Annotated, the "Fair
14 Employment Practices Act of 1978," is amended by revising Code Section 45-19-22, relating
15 to definitions, as follows:

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16 "45-19-22.

17 As used in this article, the term:

18 (1) 'Administrator' means the administrator of the Commission on Equal Opportunity
19 provided for by Code Section 45-19-24, which agency is composed of an Equal
20 Employment Division and a Fair Housing Division.

21 (2) 'Board' means the Board of Commissioners of the Commission on Equal Opportunity
22 created by Code Section 45-19-23.

23 (3) 'Disability' means a physical or mental impairment which substantially limits one or
24 more of a person's major life activities, unless an employer demonstrates that the
25 employer is unable to accommodate reasonably to an employee's or prospective
26 employee's disability without undue hardship on the conduct of the employer's operation.

27 (4) 'Discrimination' means any direct or indirect act or practice of exclusion, distinction,
28 restriction, segregation, limitation, refusal, denial, or any other act or practice of
29 differentiation or preference in the treatment of a person or persons because of race,
30 color, religion, national origin, sex, handicap, or age or the aiding, abetting, inciting,
31 coercing, or compelling of such an act or practice. ~~This~~ Such term shall not include any
32 direct or indirect act or practice of exclusion, distinction, restriction, segregation,
33 limitation, refusal, denial, or any other act or practice of differentiation or preference in
34 the treatment of a person or persons because of religion if an employer demonstrates that
35 the employer is unable to accommodate reasonably an employee's or prospective
36 employee's religious observance or practice without undue hardship on the conduct of the
37 employer's operation.

38 (5) 'Hearing officer' or 'administrative law judge' means an administrative law judge of
39 the Office of State Administrative Hearings, except where the Office of State
40 Administrative Hearings is a respondent, at which time such term shall mean a special
41 master selected by the Governor pursuant to subsection (e) of Code Section 45-19-23.

42 (6) 'Public employer' or 'employer' means any department, board, bureau, commission,
 43 authority, or other agency of the state which employs 15 or more employees within the
 44 state for each working day in each of 20 or more calendar weeks in the current or
 45 preceding calendar year. A person elected to public office in this state is a public
 46 employer with respect to persons holding positions or individuals applying for positions
 47 which are subject to the state system of personnel administration created by Chapter 20
 48 of this title, including the rules and regulations promulgated by the State Personnel Board
 49 or any personnel merit system of any agency or authority of this state. A person elected
 50 to public office in this state is not a public employer with respect to persons holding
 51 positions or individuals applying for positions on such officer's personal staff or on the
 52 policy-making level or as immediate advisers with respect to the exercise of the
 53 constitutional or legal powers of the office held by such officer.

54 ~~(6)~~(7) 'Public employment' means employment by any department, board, bureau,
 55 commission, authority, or other agency of the State of Georgia.

56 ~~(7)~~(8) 'Religion' means all aspects of religious observance and practice as well as belief.

57 ~~(8)~~(9) 'Unlawful practice' means an act or practice declared to be an unlawful practice
 58 in Code Sections 45-19-29 through 45-19-31, 45-19-32, or 45-19-45."

59

SECTION 2.

60 Said article is further amended by revising subsection (e) of Code Section 45-19-23, relating
 61 to the creation of the Board of Commissioners of the Commission on Equal Opportunity,
 62 members, terms, officers, meetings, compensation of members, powers and duties of board,
 63 annual report to Governor and General Assembly, and special masters' list, as follows:

64 "(e) The board shall establish and certify to the Governor at the beginning of each fiscal
 65 year a list of not less than ~~12~~ eight persons, including females and minorities, licensed to
 66 practice law in Georgia, who have experience in labor law, ~~in~~ employment law, or
 67 administrative law, from which list the Governor may select, on the basis of rotation in

68 sequential order, special masters as provided for in Code Section 45-19-37. The board may
69 from time to time certify to the Governor additional persons to be added to the
70 aforementioned list."

71 **SECTION 3.**

72 Said article is further amended by revising paragraphs (3) and (11) of Code Section
73 45-19-27, relating to additional powers and duties of administrator, as follows:

74 "(3) Within the limitations provided by law, to appoint clerks and other employees and
75 agents as the administrator may deem necessary, to include employees and agents to
76 represent complainants at ~~special master~~ hearings before the hearing officer as provided
77 in Code Section 45-19-37;"

78 "(11) To require answers to interrogatories, examine witnesses, ~~and~~ require the
79 production of documents so long as it is relevant to the investigation of a complaint, and
80 order discovery pursuant to Article 5 of Chapter 11 of Title 9 in aid of investigations and
81 hearings under this article to the same extent and subject to the same limitations as would
82 apply if ordered or served in aid of a civil action in the superior court in which the
83 investigation is taking place;"

84 **SECTION 4.**

85 Said article is further amended by revising Code Section 45-19-32, relating to unlawful
86 practice for a party to violate conciliation agreement, as follows:

87 "45-19-32.

88 It is an unlawful practice for a party to a conciliation agreement made pursuant to
89 subsection ~~(e)~~(f) of Code Section 45-19-36 to violate the terms of the agreement."

SECTION 5.

90

91 Said article is further amended by revising Code Section 45-19-36, relating to filing
92 complaints of unlawful practice and action by administrator, as follows:

93 "45-19-36.

94 (a) As used in this Code section, the term 'respondent' means an employer charged with
95 an alleged unlawful practice.

96 (b) An individual claiming to be aggrieved by an unlawful practice or another person on
97 behalf of an individual claiming to be aggrieved by an unlawful practice may file with the
98 administrator a written, sworn complaint stating that an unlawful practice has been
99 committed setting forth the facts upon which the complaint is based and setting forth facts
100 sufficient to enable the administrator to identify the employer charged. The administrator's
101 staff shall promptly investigate the allegations of unlawful practice set forth in the
102 complaint and, within 15 days of filing, shall serve the respondent with a copy of the
103 complaint. The complaint shall be barred unless filed within 180 days after the alleged
104 unlawful practice occurs.

105 (c) The charges contained within the complaint and answers shall be verified and may be
106 reasonably and fairly amended at any time prior to the administrator rendering a decision
107 as to reasonable cause to believe that the respondent has engaged in an unlawful practice.

108 (d) Within 90 days after of the filing of the complaint has been filed, the administrator
109 shall determine whether there is reasonable cause to believe the respondent has engaged
110 in an unlawful practice, unless it is impracticable to do so or unless the administrator has
111 approved a conciliation agreement with respect to the complaint. If it is determined that
112 there is no reasonable cause to believe that the respondent has engaged in an unlawful
113 practice, the administrator shall issue an order dismissing the complaint. If the
114 administrator is unable to complete the investigation within 90 days of the filing of the
115 complaint, the administrator shall notify the complainant and respondent, in writing, of the
116 reasons for the failure to complete the investigation.

117 ~~(d)~~(e) Within ten days after receiving a copy of the order dismissing the complaint, the
118 complainant may file with the administrator an application for reconsideration of the order.
119 Upon such application, the administrator shall determine within 15 days whether there is
120 reasonable cause to believe that the respondent has engaged in an unlawful practice. If it
121 is again determined that there is no reasonable cause to believe that the respondent has
122 engaged in an unlawful practice, the administrator shall issue an order dismissing the
123 complaint and notifying the complainant that such complainant has the right to request a
124 right to bring an action letter from the appropriate federal agency or petition for review in
125 the appropriate superior court as provided for in Code Section 45-19-39.

126 ~~(e)~~(f) After investigation or after the review provided for in subsection ~~(d)~~ (e) of this Code
127 section, if the administrator determines that there is reasonable cause to believe that the
128 respondent has engaged in an unlawful practice, then the administrator's staff shall first
129 endeavor to eliminate the alleged unlawful practice by conference, conciliation, and
130 persuasion. The terms of a conciliation agreement reached with a respondent may require
131 the respondent to refrain from the commission of unlawful discriminatory practices in the
132 future and make such further provisions as may be agreed upon between the administrator
133 and the respondent. If a conciliation agreement is entered into, the administrator shall issue
134 and serve on the complainant a final order stating its terms. Except for the terms of the
135 conciliation agreement, neither the administrator nor any agent thereof shall make public
136 without the written consent of the complainant and the respondent information concerning
137 efforts in the particular case to eliminate an unlawful practice by conference, conciliation,
138 or persuasion, whether or not there is a determination of reasonable cause or a conciliation
139 agreement.

140 ~~(f)~~(g) In the event the administrator determines that there is reasonable cause to believe
141 that an agency or authority has engaged in an unlawful practice as defined in this article
142 and the administrator's staff is unable to eliminate the alleged unlawful practice by

143 conference, conciliation, and persuasion, the administrator shall refer the complaint to a
 144 ~~special master~~ hearing officer as provided for in Code Section 45-19-37.

145 ~~(g)~~(h) At the expiration of one year from the date of a conciliation agreement and at other
 146 times in its reasonable discretion, the administrator's staff may investigate whether the
 147 terms of the agreement have been and are being complied with by the respondent. The
 148 administrator shall report the findings to the complainant and respondent. If the
 149 administrator finds reasonable cause to believe that the agreement has been breached, the
 150 complainant may seek enforcement of the agreement in the superior court of the county in
 151 which the alleged violation took place or in the county of the respondent's residence.

152 ~~(h) The administrator shall issue to the complainant and the respondent, 90 days from the~~
 153 ~~date the complaint was filed and every 30 days thereafter, a status report summarizing any~~
 154 ~~action taken with respect to the complaint. The status reports required by this subsection~~
 155 ~~shall be issued until final resolution of the complaint."~~

156 **SECTION 6.**

157 Said article is further amended by revising Code Section 45-19-37, relating to appointment
 158 of special master to conduct hearing on complaint and procedure, as follows:

159 "45-19-37.

160 (a) Unless the administrator has issued an order dismissing the complaint or stating the
 161 terms of a conciliation agreement ~~within 90 days after a complaint is filed~~, the
 162 administrator shall either refer the complaint to an administrative law judge of the Office
 163 of State Administrative Hearings, or, for complaints identifying the Office of State
 164 Administrative Hearings as the respondent, request that the Governor appoint, from the list
 165 provided for by subsection (e) of Code Section 45-19-23, a special master to conduct a
 166 hearing in accordance with this article. Not more than 15 working days after such request,
 167 the Governor shall select and appoint a special master who ~~must~~ shall be an attorney
 168 licensed to practice law in this state. The ~~special master hearing officer to whom the~~

169 complaint is referred shall have all of the power and authority granted to agencies in
170 conducting hearings and rendering final orders under Chapter 13 of Title 50, the 'Georgia
171 Administrative Procedure Act,' ~~including but not limited to subpoena power.~~ Act.'

172 (b) Not more than seven days after the ~~appointment of the special master~~ referral to the
173 hearing officer, the administrator shall serve on the respondent and on the complainant or
174 the complainant's attorney by registered or certified mail or statutory overnight delivery a
175 written notice together with a copy of the complaint requiring the respondent to answer the
176 charges contained therein at a hearing before the ~~special master~~ hearing officer at a time
177 and place specified in the notice. Such notice ~~must~~ shall contain all general and specific
178 charges against the respondent.

179 (c) The respondent shall serve an answer with the ~~special master~~ hearing officer by
180 registered or certified mail or statutory overnight delivery not more than 20 working days
181 after receipt of the notice of hearing, which 20 working days may be extended by the
182 ~~special master~~ hearing officer in the ~~special master's~~ hearing officer's discretion for an
183 additional time not to exceed ten working days. The respondent's answer ~~must~~ shall show
184 by a certificate of service that the respondent has served a copy of the answer on the
185 complainant or the complainant's attorney at the last known address of the complainant or
186 the complainant's attorney where complainant is represented by an attorney. Upon leave
187 of the ~~special master~~ hearing officer, the complainant may amend the charges contained in
188 the notice of hearing. The respondent may amend an answer at any time prior to the
189 hearing or, upon leave of the ~~special master~~ hearing officer, may amend thereafter. No
190 final order shall be issued unless the respondent has had the opportunity of a hearing on the
191 charges contained in the notice of hearing or amendment on which the final order is based.
192 If the respondent fails to answer the complaint, the ~~special master~~ hearing officer may enter
193 the respondent's default. Unless the default is set aside for good cause shown, the hearing
194 may proceed on the evidence in support of the complaint.

195 (d) ~~At any time after a notice of hearing is served upon a respondent, discovery shall be~~
196 ~~authorized in the same manner and fashion as discovery is permitted under Code Sections~~
197 ~~9-11-26 through 9-11-37. Any order contemplated in Code Sections 9-11-26 through~~
198 ~~9-11-37 may be issued by the special master. Judicial enforcement of any such order may~~
199 ~~be obtained by the complainant or respondent in the same manner as is provided for the~~
200 ~~enforcement of final orders in Code Section 45-19-40.~~

201 (e) A respondent who has filed an answer or whose default in answering has been set aside
202 for good cause shown may appear at the hearing, may examine and cross-examine
203 witnesses and the complainant, and may offer evidence. The complainant and, at the
204 discretion of the ~~special master~~ hearing officer, any other person may intervene, examine
205 and cross-examine witnesses, and present evidence.

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

207 (g) ~~Testimony taken at the hearing shall be under oath and shall be stenographically or~~
208 ~~otherwise recorded by a certified court reporter. After the hearing, the special master at the~~
209 ~~special master's discretion may take further evidence or hear arguments upon notice to all~~
210 ~~parties with an opportunity to be present.~~

211 (h)(f) Except as otherwise specifically provided for in this article, all proceedings of the
212 ~~special master~~ hearing officer shall be conducted as provided for with respect to contested
213 cases in Chapter 13 of Title 50-, the 'Georgia Administrative Procedure Act.'

214 (i)(g) A complainant may retain at the complainant's own expense private counsel to
215 represent the complainant in any proceeding provided for under this article; however, the
216 complainant may utilize the services of an individual employed by the administrator
217 pursuant to paragraph (3) of Code Section 45-19-27 in presenting the complainant's case
218 before the ~~special master~~ hearing officer."

219 **SECTION 7.**

220 Said article is further amended by revising Code Section 45-19-38, relating to findings,
221 conclusions, and order of special master generally and order to cease and desist from
222 unlawful practice and to take remedial action, as follows:

223 "45-19-38.

224 (a) If the ~~special master~~ hearing officer determines that the respondent has not engaged in
225 an unlawful practice, the ~~special master~~ hearing officer shall state the ~~special master's~~
226 hearing officer's findings of fact and conclusions of law and shall issue a final order, within
227 30 days after the hearing unless, for good cause shown, such time is extended by the
228 ~~Governor~~ hearing officer, dismissing the complaint.

229 (b) If the ~~special master~~ hearing officer determines that the respondent has engaged in an
230 unlawful practice, the ~~special master~~ hearing officer shall state the ~~special master's~~ hearing
231 officer's findings of fact and conclusions of law and shall issue a final order, within 30 days
232 after the hearing unless, for good cause shown, such time is extended by the ~~Governor~~
233 hearing officer, requiring the respondent to cease and desist from the unlawful practice and
234 to take such remedial action as in the judgment of the ~~special master will~~ hearing officer
235 shall carry out the purposes of this article.

236 (c) Remedial action under this Code section may include but is not limited to:

237 (1) Hiring, reinstatement, or upgrading of employees with or without back pay. No
238 award of back pay shall be ordered pursuant to this article with respect to any period
239 more than two years prior to the date of the filing with the administrator of the complaint
240 with respect to which such award of back pay is ordered. Interim earnings,
241 unemployment benefits, workers' compensation benefits, or amounts earnable with
242 reasonable diligence by the person or persons discriminated against shall operate to
243 reduce the back pay otherwise allowable;

244 (2) Admission or restoration of individuals to participate in a guidance program,
245 apprenticeship training program, on-the-job training program, or other occupational

246 training or retraining program and the utilization of objective criteria in the admission of
247 individuals to such programs;

248 (3) The extension to all individuals of the full and equal enjoyment of the advantages,
249 facilities, privileges, and services of the respondent;

250 (4) Reporting as to the manner of compliance;

251 (5) Posting notices in conspicuous places in the respondent's place of operation in the
252 form prescribed by the administrator or ~~special master~~ hearing officer;

253 (6) Restoration of employment benefits not otherwise specified in this Code section; or

254 (7) Recommending to the Governor that the respondent be required to adopt and file with
255 the administrator, within a specified time limitation, for the administrator's approval a
256 plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance
257 in employment with respect to race, color, disability, religion, sex, national origin, or age.

258 (d) Any monetary award ordered pursuant to this article shall be for actual damages only.

259 (e) The respondent shall comply without delay with the terms and conditions of such a
260 final order."

261 **SECTION 8.**

262 Said article is further amended by revising Code Section 45-19-39, relating to appeal to
263 superior court of final order of special master or complaint dismissed by administrator, as
264 follows:

265 "45-19-39.

266 (a) Any party to a hearing before a ~~special master~~ hearing officer or a complainant whose
267 complaint has been dismissed by the administrator may appeal any adverse final order of
268 a ~~special master~~ hearing officer or the final order of dismissal of the complaint by the
269 administrator by filing a petition for review in the superior court in the county in which the
270 alleged unlawful practice occurred or in the superior court of the residence of the
271 respondent within 30 days of the issuance of the final order. Neither the administrator nor

272 the ~~special master~~ hearing officer shall be a named party; however, the administrator ~~must~~
273 shall be served with a copy of the petition for review. For an appeal seeking the review of
274 a final order by the hearing officer, within ~~Within~~ 30 days after the petition is served on the
275 administrator, the administrator shall forward to the court a certified copy of the record of
276 the hearing before the ~~special master~~ hearing officer, including the transcript of the hearing
277 before the ~~special master~~ hearing officer and all evidence, administrative pleadings, and
278 orders, or the entire record if no hearing has been held. For an appeal seeking the review
279 of the dismissal of a complaint by the administrator, within 30 days after the petition is
280 served on the administrator, the administrator shall forward to the court a certified copy of
281 the entire record. For good cause shown, the court may require or permit subsequent
282 corrections or additions to the record. All appeals for judicial review shall be in
283 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act';
284 provided, however, that, if any provisions of Chapter 13 of Title 50 conflict with any
285 provision of this article, this article controls. An individual employed by the administrator
286 pursuant to paragraph (3) of Code Section 45-19-27 shall not have the authority to
287 represent the complainant in any appeal to superior court of a final order of the ~~special~~
288 ~~master~~ hearing officer or in any proceeding in any court, except to secure judicial
289 enforcement of preliminary procedural orders of a ~~special master~~ hearing officer.

290 (b) The court shall not substitute its judgment for that of the ~~special master~~ hearing officer
291 or the administrator as to the weight of the evidence on questions of fact. The court may
292 affirm a final order of the ~~special master~~ hearing officer or the administrator or remand the
293 case for further proceedings. Upon review of a final order of the hearing officer or the
294 administrator, the ~~The~~ court may reverse or modify the final order if substantial rights of
295 the appellant have been prejudiced because the administrative findings, inferences,
296 conclusions, or decisions are:

- 297 (1) In violation of constitutional or statutory provisions;
298 (2) In excess of the statutory authority of the agency;

- 299 (3) Made upon unlawful procedures;
300 (4) Affected by other error of law;
301 (5) Not supported by substantial evidence, which shall mean that the record does not
302 contain such relevant evidence as a reasonable mind might accept as adequate to support
303 said findings, inferences, conclusions, or decisions; or
304 (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted
305 exercise of discretion.
- 306 (c) If, upon judicial review of any order of a ~~special master~~ hearing officer or in a
307 proceeding in which a complainant seeks enforcement of a conciliation agreement, the
308 court rules in favor of the complainant, then the court may in its discretion render an award
309 of reasonable attorney's fees and costs of litigation in the superior court to the
310 complainant."

311 **SECTION 9.**

312 Such article is further amended by revising Code Section 45-19-40, relating to entry of court
313 judgment based upon final order of administrator or special master, notification of parties,
314 and effect of judgment, as follows:

315 "45-19-40.

316 Any person affected by a final order of the administrator or a ~~special master~~ hearing officer
317 may file in the superior court of the county of the residence of the respondent a certified
318 copy of a final order of the administrator or of a ~~special master~~ hearing officer unappealed
319 from or of a final order of a ~~special master~~ hearing officer affirmed upon appeal,
320 whereupon said court shall render judgment in accordance therewith and notify the parties.
321 Such judgment shall have the same effect and all proceedings in relation thereto shall
322 thereafter be the same as though the judgment had been rendered in an action duly heard
323 and determined by the court."

324 **SECTION 10.**

325 Said article is further amended by revising Code Section 45-19-44, relating to unlawful
326 practices punishable by a civil fine, as follows:

327 "45-19-44.

328 (a) It shall be an unlawful practice for a person willfully to:

329 (1) Make public with respect to a particular employer or person without the employer's
330 or person's consent information obtained by the administrator or the administrator's
331 representatives or employees pursuant to their authority under Code Section 45-19-41,
332 except as shall reasonably be necessary to carry out the provisions of this article;

333 (2) Retaliate or discriminate in any manner against a person because the person has
334 opposed a practice declared unlawful by this article or because the person has made a
335 charge, filed a complaint, testified, assisted, or participated in any manner in any
336 investigation, proceeding, or hearing concerning an unlawful practice under this article;

337 (3) Aid, abet, incite, compel, or coerce a person to engage in any of the acts or practices
338 declared unlawful by this article;

339 (4) Obstruct or prevent a person from complying with this article or with any order
340 issued under this article;

341 (5) Resist, prevent, impede, or interfere with the administrator, or any of ~~his~~ the
342 administrator's representatives; ~~or employees, or with a special master hearing officer~~ in
343 the lawful performance of a duty under this article. Such unlawful practice may include,
344 but shall not be limited to, willfully neglecting or failing to comply or to fully comply
345 with a subpoena or other lawful order to;

346 (A) Attend and testify at any hearing or deposition;

347 (B) Answer any lawful inquiry; or

348 (C) Produce records, documents, or other requested evidence;

349 provided, however, that it shall not be a violation of this article for anyone to challenge
350 or resist any action by the administrator, or any of ~~his~~ the administrator's representatives

351 ~~or employees, or by a special master hearing officer~~ when there is a good faith belief that
 352 the administrator is, ~~or his~~ the administrator's representatives or employees are, or the
 353 ~~special master hearing officer~~ is acting unlawfully or acting in excess of statutory
 354 authority; or

355 (6) Initiate frivolous and unwarranted charges of discrimination against a public
 356 employer.

357 (b) A violation of this Code section shall not be deemed a crime; but any person who
 358 willfully violates this Code section may be punished by a civil fine not to exceed
 359 \$1,000.00."

360 SECTION 11.

361 Said article is further amended by revising Code Section 45-19-45, relating to unlawful
 362 conspiracies, as follows:

363 "45-19-45.

364 It shall be an unlawful practice for a person or for two or more persons to conspire:

365 (1) To retaliate or discriminate in any manner against a person because the person has
 366 opposed a practice declared unlawful by this article or because the person has made a
 367 charge, filed a complaint, testified, assisted, or participated in any manner in any
 368 investigation, proceeding, or hearing concerning an unlawful practice under this article;

369 (2) To aid, abet, incite, compel, or coerce a person to engage in any of the acts or
 370 practices declared unlawful by this article;

371 (3) To obstruct or prevent a person from complying with this article or any order issued
 372 under this article;

373 (4) To resist, prevent, impede, or interfere with the administrator, ~~or any of his~~ the
 374 administrator's representatives or employees, or a ~~special master hearing officer~~ in the
 375 lawful performance of a duty under this article. Such unlawful practice may include, but

376 shall not be limited to, willfully neglecting or failing to comply or to fully comply with
377 a subpoena or other lawful order to:
378 (A) Attend and testify under oath at any hearing or deposition;
379 (B) Answer any lawful inquiry; or
380 (C) Produce records, documents, or other requested evidence;
381 provided, however, that it shall not be a violation of this article for anyone to challenge
382 or resist any action by the administrator, ~~or any of his~~ the administrator's representatives
383 or employees, or a ~~special master~~ hearing officer when there is a good faith belief that the
384 administrator, ~~or his~~ the administrator's representatives or employees, or a ~~special master~~
385 the hearing officer is acting unlawfully or acting in excess of ~~his~~ statutory authority; or
386 (5) To initiate willfully frivolous and unwarranted charges of discrimination against a
387 public employer."

388

SECTION 12.

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