

Senate Bill 60

By: Senators Tate of the 38th, Henson of the 41st, Butler of the 55th, Seay of the 34th,
Parent of the 42nd 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.
- 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 any individual, partnership, association, corporation, business trust,
 30 legal representative, or 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 sex based differential; and

54 (C) The employer has refused to adopt such alternative employment 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 limitations in the employer's written policy
65 shall be an affirmative defense to any claims made against an employer under this Code
66 section, provided that any adverse employment action taken by the employer was for
67 failure to adhere to such limitations and not for mere inquiry, discussion, or disclosure of
68 wages in accordance with such limitations in such written policy.
- 69 (c) Subsection (a) of this Code section shall not apply to instances in which an employee
70 has access to the wage information of other employees as a part of such employee's
71 essential job functions and discloses the wages of such other employees to individuals who
72 do not otherwise have access to such information, unless such disclosure is in response to
73 a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action
74 or an investigation conducted by the employer.
- 75 (d) Nothing in this Code section shall be construed to limit the rights of an employee
76 provided under any other provision of law or a collective bargaining agreement.
- 77 (e) Nothing in this Code section shall require an employee to disclose his or her wages to
78 another employee.
- 79 (f) An employer that violates subsection (a) of this Code section shall be subject to a civil
80 fine of not less than \$100.00 and not more than \$500.00 for each and every such violation.

81 34-5-4.

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

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

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

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

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

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

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

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

108 34-5-5.

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

127 34-5-6.

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

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

148 34-5-7.

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

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

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

168 34-5-8.

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

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

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

179 34-5-9.

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

183 **SECTION 3.**

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