

The House Committee on Judiciary offers the following substitute to HB 849:

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 that claims to have been injured by a violation  
 28 of Code Section 10-16-3 or that believes that they will be irrevocably injured by a  
 29 violation of Code Section 10-16-3 that is about to occur.

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

33 (4) 'Complainant' means the person, including the administrator, that files a complaint.

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

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

39 (7) 'Person' means one or more individuals, corporations, partnerships, associations,  
 40 labor organizations, legal representatives, mutual companies, joint-stock companies,  
 41 trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or  
 42 fiduciaries.

43 (8) 'Place of public accommodation' means:

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

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

51 (C) Any gas station;

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

54 (E) Any establishment which is physically located within the premises of any  
 55 establishment otherwise covered by this paragraph, or within the premises of which is  
 56 physically located any such covered establishment, and which holds itself out as serving  
 57 patrons of such covered establishment.

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

59 10-16-3.

60 All persons shall be entitled to the full and equal enjoyment of the goods, services,  
61 facilities, privileges, advantages, and accommodations of any place of public  
62 accommodation without discrimination or segregation on the basis of race, color, religion,  
63 sex, or national origin.

64 10-16-4.

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

68 10-16-5.

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

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

75 (b) The administrator may delegate any of the administrator's functions, duties, and powers  
76 to employees of the Commission on Equal Opportunity or to boards of such employees,  
77 including functions, duties, and powers with respect to investigating, conciliating, hearing,  
78 determining, ordering, certifying, reporting, or otherwise acting as to any work, business,  
79 or matter under this chapter. Insofar as possible, conciliation meetings shall be held in the  
80 cities or other localities where the violation of Code Section 10-16-3 allegedly occurred.

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

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

87 10-16-6.

88 (a) An aggrieved person may, not later than one year after such alleged violation has  
89 occurred or terminated, file a complaint with the administrator alleging such violation. The  
90 administrator, on the administrator's own initiative, may also file such a complaint.  
91 Complaints shall be in writing and under oath and shall contain such information and be  
92 in such form as the administrator requires. Upon the filing of a complaint under this

93 subsection, the administrator shall serve notice upon the aggrieved person acknowledging  
94 the filing and advising the aggrieved person of procedural time limits provided under this  
95 chapter.

96 (b) The administrator shall, not later than ten days after the filing of a complaint or the  
97 identification of an additional respondent under subsection (d) of this Code section, serve  
98 on the respondent a notice identifying the alleged violation of Code Section 10-16-3 and  
99 advise such respondent of the procedural rights and obligations under this chapter, together  
100 with a copy of the original complaint. Each respondent may file, not later than 30 days  
101 after receipt of notice from the administrator, an answer to the complaint.

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

104 (d) A person that is not named as a respondent in the original complaint, but that is  
105 identified as a respondent in the course of an investigation, may be joined as an additional  
106 or substitute respondent upon written notice to such person from the administrator as  
107 provided in subsection (b) of this Code section. In addition to meeting the requirements  
108 of subsection (b) of this Code section, the notice shall explain the basis for the  
109 administrator's belief that such person is properly joined as a respondent.

110 10-16-7.

111 (a) The administrator shall investigate an alleged violation of Code Section 10-16-3 and  
112 complete such investigation within 90 days after the filing of a complaint; provided,  
113 however, that the time for completing such investigation may be extended by 30 days at  
114 the election of the administrator.

115 (b) During the period beginning with the filing of such complaint and ending with the  
116 filing of a charge or a dismissal by the administrator, the administrator shall, to the extent  
117 feasible, engage in conciliation with respect to such complaint. A conciliation agreement  
118 arising out of such conciliation shall be an agreement between the respondent and the  
119 complainant and shall be subject to approval by the administrator. A conciliation  
120 agreement may provide for binding arbitration of the dispute arising from the complaint.  
121 Any such arbitration that results from a conciliation agreement may award appropriate  
122 relief, including monetary relief. Each conciliation agreement shall be made public unless  
123 the complainant and respondent otherwise agree and the administrator determines that  
124 disclosure is not required to further the purposes of this chapter.

125 (c)(1) At the end of each investigation under this Code section, the administrator shall  
126 prepare a final investigative report containing the following:

127 (A) The names of the individuals interviewed by the administrator or his or her  
128 designee, and the dates of such contacts;

129 (B) A summary and the dates of correspondence and other contacts made by the  
 130 administrator or his or her designee with the aggrieved person and the respondent;

131 (C) A summary description of other pertinent records;

132 (D) A summary of witness statements; and

133 (E) Answers to interrogatories.

134 (2) A final report under this subsection may be amended if additional evidence is later  
 135 discovered.

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

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

143 (2) Notwithstanding paragraph (1) of this subsection, the administrator shall make  
 144 available to the aggrieved person and the respondent at any time upon request following  
 145 completion of the administrator's investigation information derived from an investigation  
 146 and any final investigative report relating to such investigation.

147 10-16-8.

148 (a)(1) Upon completion of the investigation as provided for under Code Section 10-16-7,  
 149 if the administrator determines that reasonable cause exists to believe that a violation of  
 150 Code Section 10-16-3 has occurred or is about to occur, the administrator shall  
 151 immediately issue a charge on behalf of the aggrieved person.

152 (2) The charge shall consist of a short and plain statement of the facts upon which the  
 153 administrator has found reasonable cause to believe that a violation of Code Section  
 154 10-16-3 has occurred or is about to occur, shall be based on the final investigative report,  
 155 and need not be limited to the facts or basis alleged in the complaint.

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

159 (b)(1) Upon completion of the investigation as provided under Code Section 10-16-7, if  
 160 the administrator determines that no reasonable cause exists to believe that a violation of  
 161 Code Section 10-16-3 has occurred or is about to occur, the administrator shall promptly  
 162 dismiss the complaint and shall cause a copy of such dismissal to be served on each  
 163 respondent named in such complaint and on each aggrieved person on whose behalf the  
 164 complaint was filed by registered or certified mail or statutory overnight delivery.

165 (2)(A) An aggrieved person may appeal the dismissal of a complaint to the board of  
166 commissioners and the board of commissioners shall designate a panel of three of its  
167 members, one of whom shall be an attorney licensed to practice law in this state, and  
168 that tribunal shall hear such appeal. Such tribunal may affirm the determination of the  
169 administrator in a final order of the board of commissioners or direct the administrator  
170 to issue a charge pursuant to such tribunal's findings. Such members of the tribunal  
171 under this subparagraph shall not be qualified to hear the complaint as provided for  
172 under Code Sections 10-16-10 and 10-16-11.

173 (B) An aggrieved person shall notify the administrator within seven business days after  
174 service of the administrator's determination to dismiss the complaint of their request for  
175 an appeals hearing as provided for under subparagraph (A) of this paragraph.

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

179 10-16-9.

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

185 (b) Witnesses summoned by a subpoena under this Code section shall be entitled to the  
186 same witness and mileage fees as witnesses in proceedings in superior courts. Fees payable  
187 to a witness summoned by a subpoena issued at the request of a party shall be paid by the  
188 party.

189 (c)(1) Any person that willfully fails or neglects to attend and testify or to answer any  
190 lawful inquiry or to produce records, documents, or other evidence, if it is in such  
191 person's power to do so, in obedience to the subpoena or other lawful order under  
192 subsection (a) of this Code section, shall be guilty of a violation of Code Section  
193 16-10-20 and, upon conviction thereof, shall be punished as provided in such Code  
194 section.

195 (2) Any person that with intent thereby to mislead another person in any proceeding  
196 under this chapter:

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

200 (B) Willfully neglects or fails to make or to cause to be made full, true, and correct  
201 entries in such reports, accounts, records, or other documents; or  
202 (C) Willfully mutilates, alters, or by any other means falsifies any documentary  
203 evidence  
204 shall be guilty of a violation of Code Section 16-10-20 and, upon conviction thereof, shall  
205 be punished as provided in such Code section.

206 10-16-10.

207 (a) Upon the issuance of a charge, the administrator shall refer the case to the board of  
208 commissioners to conduct a hearing in accordance with this chapter. The board of  
209 commissioners shall designate members to conduct a hearing; one of such members shall  
210 be an attorney licensed to practice law in this state. The tribunal hearing the case shall  
211 have all the power and authority granted to agencies in conducting hearings and rendering  
212 final orders under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'  
213 including, but not limited to, subpoena power.

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

221 (c) The respondent shall serve an answer with the board of commissioners by registered  
222 or certified mail or statutory overnight delivery not more than 20 business days after receipt  
223 of the notice of hearing, such time to be extended by the board of commissioners in the  
224 board of commissioners' discretion for an additional time not to exceed ten business days.  
225 The respondent's answer shall show by a certificate of service that the respondent has  
226 served a copy of the answer on the complainant or the complainant's attorney at the last  
227 known address of the complainant or the complainant's attorney when the complainant is  
228 represented by an attorney. Upon leave of the board of commissioners, the complainant  
229 may amend the charges contained in the notice of hearing. The respondent may amend an  
230 answer at any time prior to the hearing or, upon leave of the board of commissioners, may  
231 amend thereafter. No final order shall be issued unless the respondent has had the  
232 opportunity of a hearing on the charges contained in the notice of hearing or amendment  
233 on which the final order is based. If the respondent fails to answer the complaint, the board  
234 of commissioners may enter the respondent's default. Unless the default is set aside for  
235 good cause shown, the hearing may proceed under the available evidence.

236 (d) At any time after a notice of hearing is served upon a respondent, discovery shall be  
237 authorized in the same manner and fashion as discovery is permitted under Code Sections  
238 9-11-26 through 9-11-37. Any order contemplated in Code Sections 9-11-26 through  
239 9-11-37 may be issued by the board of commissioners. Judicial enforcement of any such  
240 order may be obtained by the complainant or respondent in the same manner as is provided  
241 for the enforcement of final orders in Code Section 45-19-40.

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

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

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

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

256 10-16-11.

257 (a) If the board of commissioners determines that the respondent has not engaged in a  
258 violation of Code Section 10-16-3, the board of commissioners shall state the board of  
259 commissioners' findings of fact and conclusions of law and shall issue a final order  
260 dismissing the complaint within 30 days after the hearing unless, for good cause shown,  
261 such time is extended by the board of commissioners.

262 (b) If the board of commissioners determines that the respondent has engaged in a  
263 violation of Code Section 10-16-3, the board of commissioners shall state the board of  
264 commissioners' findings of fact and conclusions of law and shall issue a final order within  
265 30 days after the hearing unless, for good cause shown, such time is extended by the board  
266 of commissioners, granting such relief as may be appropriate, which may include a fine,  
267 actual compensatory damages suffered by the aggrieved person, injunctive or other  
268 equitable relief, or reasonable attorney's fees and costs, or any combination thereof;  
269 provided, however, that any such fine shall not exceed:

270 (1) An amount equal to \$10,000.00, if the respondent has not previously been found to  
271 have committed a violation of Code Section 10-16-3;



272 (2) An amount equal to \$25,000.00, if the respondent has been found to have committed  
273 one prior violation of Code Section 10-16-3 within the preceding five years; or

274 (3) An amount equal to \$50,000.00, if the respondent has been found to have committed  
275 two or more violations of Code Section 10-16-3 within the preceding seven years.

276 (c) In the case of an order with respect to a violation of Code Section 10-16-3 that  
277 occurred in the course of a business subject to licensing or regulation by a governmental  
278 agency, the administrator shall, not later than 30 days after the date of the issuance of such  
279 order, or, if such order is judicially reviewed, 30 days after such order is in substance  
280 affirmed upon review, send copies of the findings of fact, conclusions of law, and the order  
281 to that governmental agency.

282 (d) If the board of commissioners finds that the respondent has not engaged or is not about  
283 to engage in a violation of Code Section 10-16-3, as the case may be, the board of  
284 commissioners shall enter an order dismissing the charge. The administrator shall make  
285 public disclosure of each such dismissal. A prevailing respondent may be awarded  
286 reasonable attorney's fees and costs only upon a showing that the proceeding is frivolous,  
287 unreasonable, or without foundation. Attorney's fees may be awarded against a  
288 complainant or an aggrieved party if such person joined in the proceeding on its own as an  
289 intervening party.

290 10-16-12.

291 (a) Any party to a hearing before the board of commissioners may appeal any adverse final  
292 order of the board of commissioners by filing a petition for review in the superior court in  
293 the county in which the alleged violation of Code Section 10-16-3 occurred or in the  
294 superior court of the residence of the respondent within 30 days of the issuance of the final  
295 order. The board of commissioners shall not be a named party. The administrator shall be  
296 served with a copy of the petition for review. Within 30 days after the petition is served  
297 on the administrator, the administrator shall forward to the court a certified copy of the  
298 record of the hearing before the board of commissioners, including the transcript of the  
299 hearing before the board of commissioners and all evidence, administrative pleadings, and  
300 orders, or the entire record if no hearing has been held. For good cause shown, the court  
301 may require or permit subsequent corrections or additions to the record. All appeals for  
302 judicial review shall be in accordance with Chapter 13 of Title 50, the 'Georgia  
303 Administrative Procedure Act'; provided, however, that if any provisions of Chapter 13 of  
304 Title 50 conflict with any provision of this chapter, this chapter controls.

305 (b) The court shall not substitute its judgment for that of the board of commissioners as  
306 to the weight of the evidence on questions of fact. The court may affirm a final order of  
307 the board of commissioners or remand the case for further proceedings. The court may

308 reverse or modify the final order if substantial rights of the appellant have been prejudiced  
 309 because the administrative findings, inferences, conclusions, or decisions are:

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

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

312 (3) Made upon unlawful procedures;

313 (4) Affected by other error of law;

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

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

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

325 10-16-13.

326 Any person affected by a final order of the administrator or the board of commissioners  
 327 may file in the superior court of the county of the residence of the respondent a certified  
 328 copy of a final order of the administrator or of the board of commissioners unappealed  
 329 from or of a final order of the board of commissioners affirmed upon appeal, whereupon  
 330 said court shall render judgment in accordance therewith and notify the parties. Such  
 331 judgment shall have the same effect and all proceedings in relation thereto shall thereafter  
 332 be the same as though the judgment had been rendered in an action duly heard and  
 333 determined by the court.

334 10-16-14.

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

339

**SECTION 3.**

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

343 "45-19-25.

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

347

**SECTION 4.**

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